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, June 22, 2023
7:00 P.M.

A. ROLL CALL

B. PRESENTATIONS

1. Introduction of employee

2. Alameda County Fire Department Presentation

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 June 8, 2023 minutes

3. Adopt a resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to fund a CivicSpark Fellow to assist with the development of an update to the City's Climate Action Plan

4. Adopt a resolution related to Newark Police Department wellness program to approve agreements with Public Safety Family Counseling Group and Sigma Tactical Wellness, to authorize sole-source exemptions for Sigma Tactical Wellness and Mindbase LLC, and to approve an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

5. Adopt a resolution to authorize the City Manager to submit a proposal on behalf of the City Council to the Board of State and Community Corrections for the Organized Retail Theft Prevention Grant Program

6. Adopt a resolution accepting a grant of up to $40,000 through the California Automated Permit Processing Program for implementation of an automated solar permitting program (SolarAPP+) and approving an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

7. Adopt a resolution authorizing the City Manager to execute a three-year cooperation agreement for fiscal years 2024-2026 with Alameda County for participation in the Alameda County Urban County for the Community Development Block Grant (CDBG) Program

8. Adopt a resolution authorizing the City Manager to execute a Contractual Equipment and Services Agreement with Owen Equipment for the purchase of a Vactor catch basin cleaner, authorization for outfitting by Classic Graphics and amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

9. Approve the plans and specifications and adopt a resolution accepting the bid and awarding the contract for the Base Bid and Additive Alternate Bid No. 1 to VSS International, Inc. for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 and amending the 2022-2024 Biennial Budget and Capital Improvement Plan; Exempt from CEQA review per CEQA Guidelines Section 153013

10. Adopt a resolution approving the second amendment to the Contractual Services Agreement with Orion Security and amend the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

11. Adopt a resolution authorizing the City Manager to enter into a Contractual Services Agreement with Cintas Corporation for uniform rental and laundry services

12. Adopt a resolution authorizing the City Manager to execute the Fourth Amendment to the Contractual Services Agreement with 4Leaf Inc. to provide temporary professional planning services

13. Adopt a resolution authorizing the City Manager to execute Contractual Services Agreements for on-call support services with 4Leaf, Inc., BPR Consulting Group, LLC., Bureau Veritas North America, Inc., CSG Consultants, Inc., and True North Compliance Services, Inc. for the Building Inspection Division and amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

14. Adopt a resolution establishing the Fiscal Year 2024 Tax Appropriations Limit

15. Adopt a resolution approving an amendment to the Contractual Services Agreement with Gachina Landscape Management, Inc. to increase the contractual not-to-exceed amount for additional landscape maintenance services and amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

16. Adopt a resolution authorizing the City Attorney to execute a Certification and Mutual Indemnification Agreement with the County of Alameda for Fiscal Year 2024

17. Adopt a resolution approving the City's Investment Policy

18. Adopt a resolution authorizing the continued investment of monies into the Local Agency Investment Fund (LAIF) and designating officers authorized to sign on the account

19. Year-end Budget Review and approval of a resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023

E. PUBLIC HEARINGS

1. Hearing (continued from June 8, 2023) to consider approval of DR2021-006, a Resolution approving Design Review and Vesting Tentative Map for an 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings located at 36952 Mulberry Street (APNs 92-29-21 and 92-29-22)

F. OTHER BUSINESS

1. Adopt resolutions for approval of Annual Engineer's Reports, intention to levy and collect assessments and setting a public hearing for July 13, 2023, for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 for Fiscal Year 2024 in accordance with the provisions of the Landscaping and Lighting Act of 1972

2. Adopt a resolution for approval of the Road Repair and Accountability Act of 2017 (Senate Bill 1) Fiscal Year 2023-2024 Project List

3. Waive full reading, conduct second reading by title only, and adopt an ordinance adding Chapter 8.44, "Sustainable Foodware", to the Newark Municipal Code.

4. Adopt a resolution approving a fund balance and reserve policy

5. Waive full reading and, by title only, introduce ordinances repealing and replacing Chapter 3.04, “Purchasing System” of Title 3 “Revenue and Finance” of the Newark Municipal Code in its entirety and adding Chapter 3.05, “Informal Bid Procedures” to Title 3 “Revenue and Finance” of the Newark Municipal Code; adopt a resolution electing to become subject to the Uniform Public Construction Cost Accounting Act; and adopt a resolution establishing expenditure authority

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 pursuant to Government Code Section 54957, Public Employee Performance Evaluation, Title: City Manager

2. Closed session for conference with Labor Negotiator pursuant to California Government Code Section 54957.6. Agency Designated Representative: Mayor Hannon, Unrepresented employee: City Manager Benoun

I. ADJOURNMENT

MEETING INFORMATION

Members of the public may attend the meeting in person, virtually via Zoom, or watch it via YouTube or Cable Channel 26. The ability to participate and observe via Zoom, YouTube or Cable Channel 26 is predicated on those technologies being available and functioning without technical difficulties. Should those platforms not be available, or become non-functioning, or should the City Council otherwise encounter technical difficulties that make those platforms unavailable, the City Council will proceed with business in person unless otherwise prohibited by law.

How to view the meeting remotely:
Livestream online at YouTube: https://www.youtube.com/@cityofnewark3077/streams
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/87346377183

From a telephone dial 1- 669-900-9128, Webinar ID Number 873 4637 7183

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 interrupt the 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 at www.newark.org/departments/city-manager-s-office/agendas-minutes and will concurrently be made available for public inspection during regular business hours at the David W. Smith City Hall, 37101 Newark Boulevard, Newark CA. 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	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Introduction of employee

Siobhan Henderson joined the Finance Department in May as an Accounting Assistant I. Ms. Henderson will be introduced at the City Council meeting.

STAFF REPORT

Item B. 2.

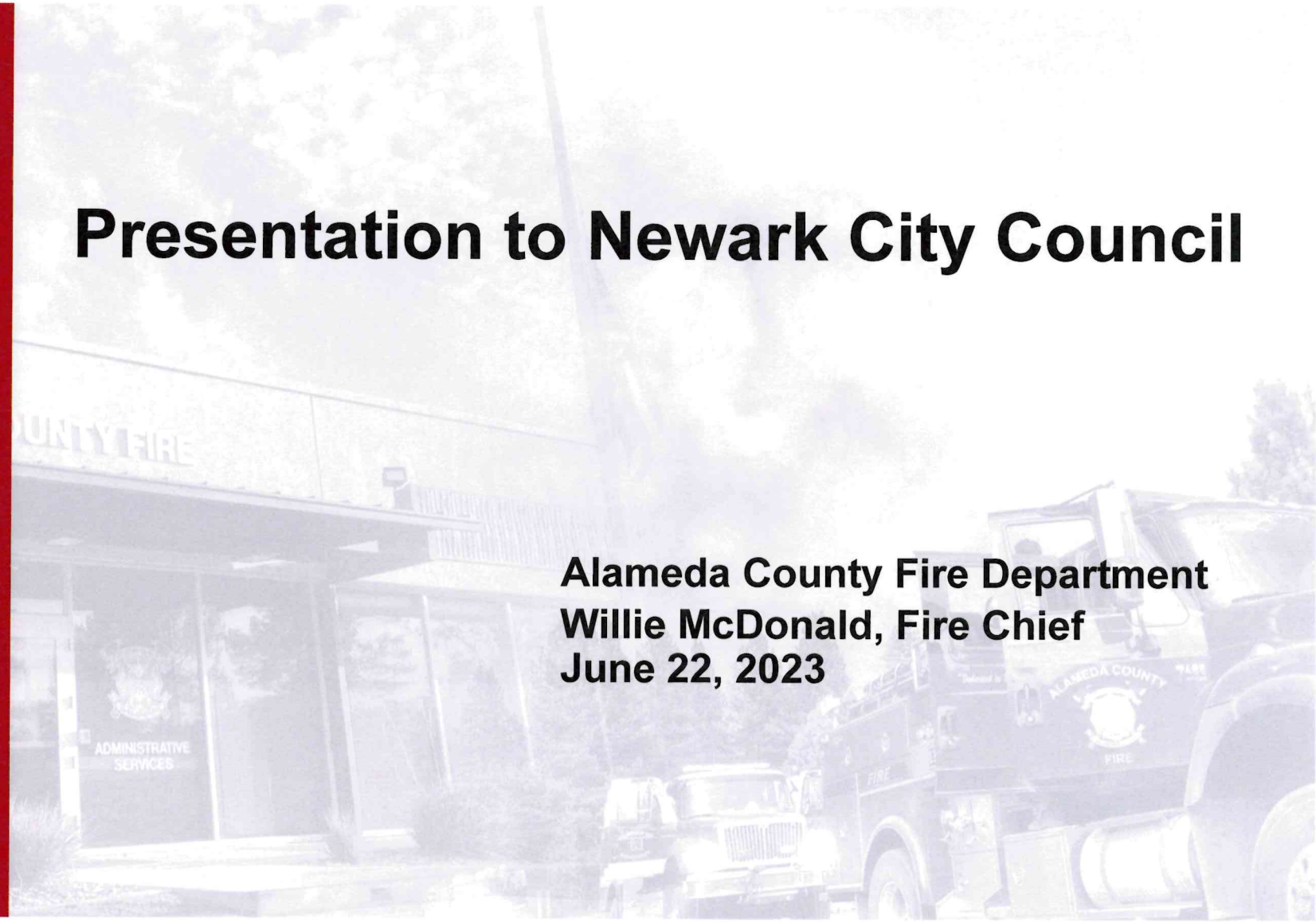
DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Alameda County Fire Department Presentation

Fire Chief Willie McDonald will give a presentation to the City Council on the Alameda County Fire Department (ACFD). The presentation will highlight resources and programs, current initiatives, fire season forecast, and the ACFD Strategic Business Plan for 2023 to 2033. A copy of the presentation is attached to the staff report.

Attachments

Presentation

Presentation to Newark City Council



Alameda County Fire Department
Willie McDonald, Fire Chief
June 22, 2023

Overview

- Introduction
- City of Newark
- About Alameda County Fire Department
  - Communities Served
- Resources and Programs
  - Budget, Employees, Stations, Operations
- Current Initiatives
  - Emergency Medical Services
  - Staffing
  - New Programs
  - Building Projects
- Fire Season Forecast
- Strategic Plan



City of Newark Fire Station 27



City of Newark Fire Station 28


CITY OF NEWARK
ALAMEDA COUNTY FIRE DEPARTMENT
STATION 29
NO PARKING ANY TIME
City of Newark Fire
Station 29

DEDICATED TO SUPERIOR SERVICE

City of Newark
ACFD Stats for 2022



ACFD Engine 27

Fires 63
EMS 714

Total Runs 1,181

ACFD Truck 28

Fires 69
EMS 1,207

Total Runs 1,959





ACF Engine 29

Fires 93
EMS 1,299

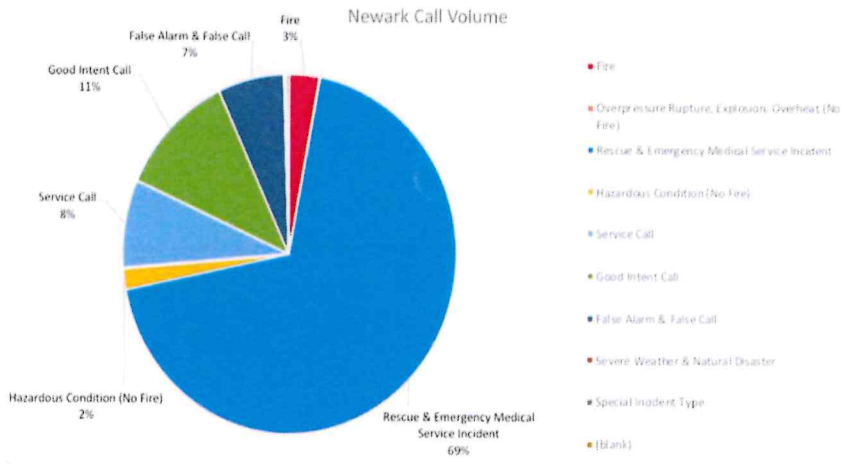
Total Runs 2,048

Newark

Newark Call Volume

Incident Type	Count of Incidents	Percentage
Fire	115	2.86%
Overpressure Rupture, Explosion, Overheat (No Fire)	3	0.07%
Rescue & Emergency Medical Service Incident	2764	68.86%
Hazardous Condition (No Fire)	77	1.92%
Service Call	318	7.92%
Good Intent Call	458	11.41%
False Alarm & False Call	258	6.43%
Severe Weather & Natural Disaster	1	0.02%
Special Incident Type	8	0.20%
(blank)	12	0.30%
Total Calls Dept wide	**4014**	

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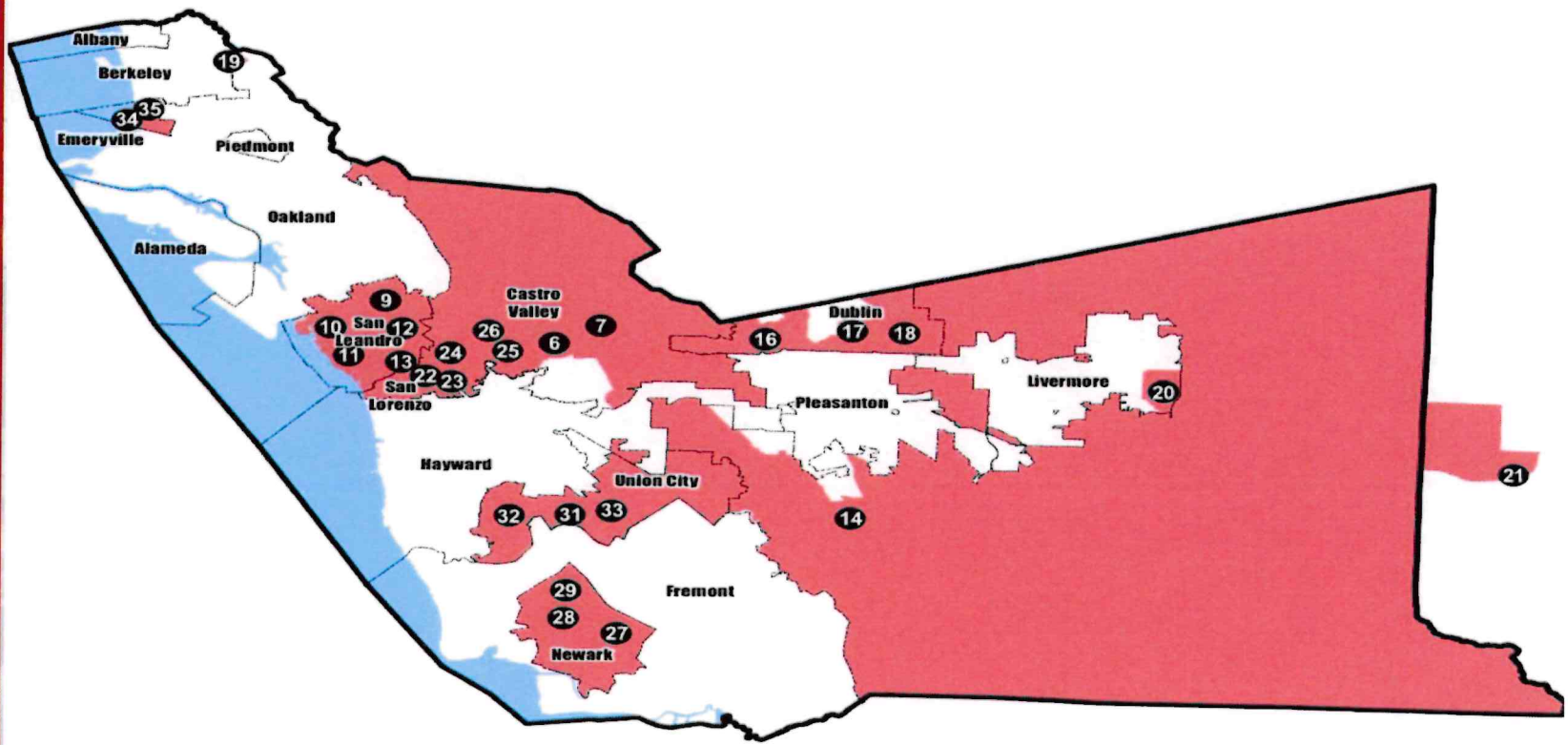




Alameda County Fire

- 545 Full Time Employees, 26 Fire Stations
  - 25 Engines, 7 Trucks, Heavy Rescue, Water Tender
- $186 Million Budget
- Alameda County Regional Emergency Communications Center
- Geographic Information Systems
- Fleet Maintenance and Repair

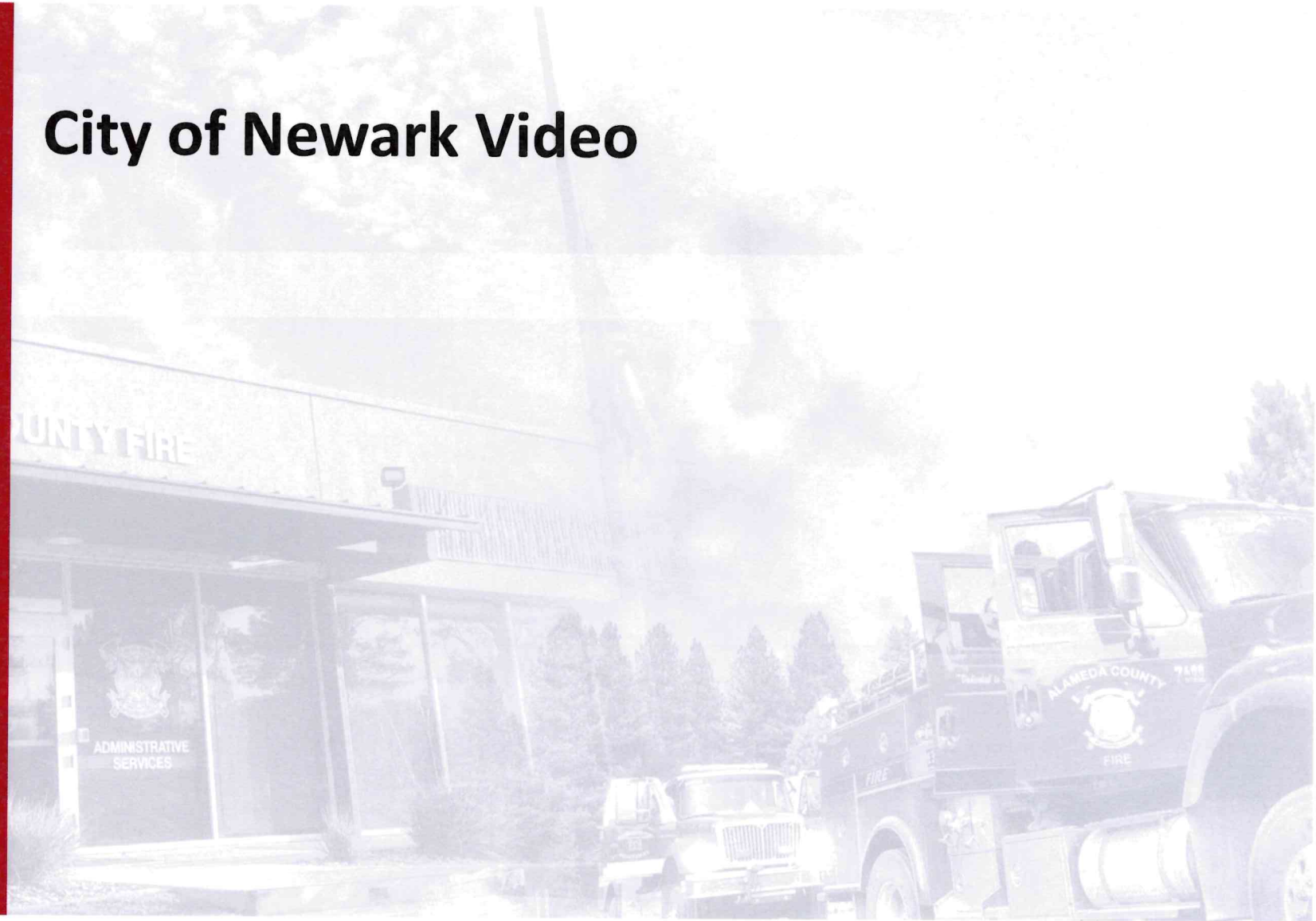
ACFD Communities Served



2022 Incidents and Activity

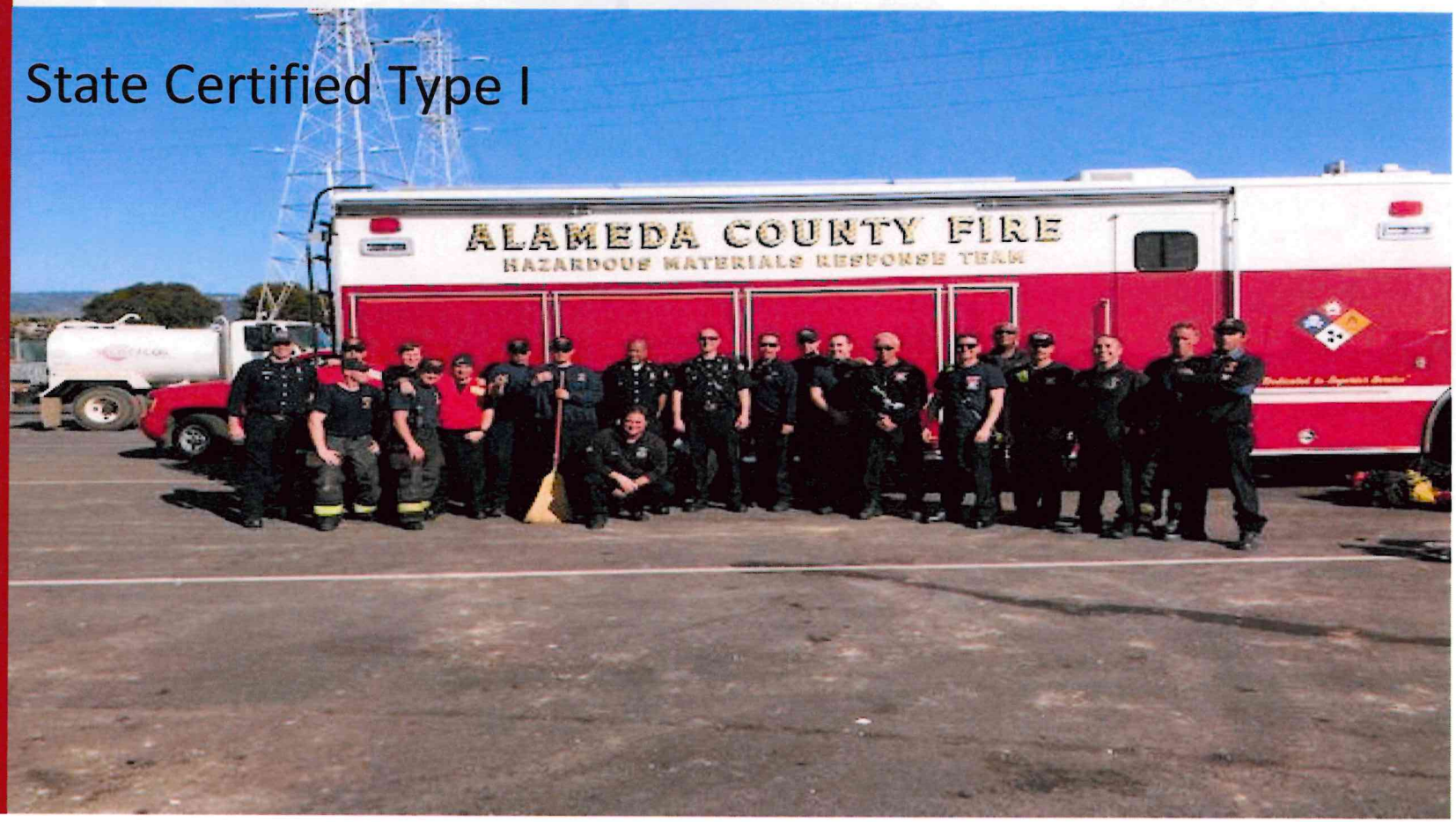
- 47,820 Emergency Calls for Service
- 1,311 Fires Extinguished
- 69.5 % Medical Aids Responses
- 4 minutes: 31 seconds Structure Fires
- 5 minutes: 59 seconds Medical Aids
- 9,200 Inspections
- 1,311 Plan Reviews

City of Newark Video



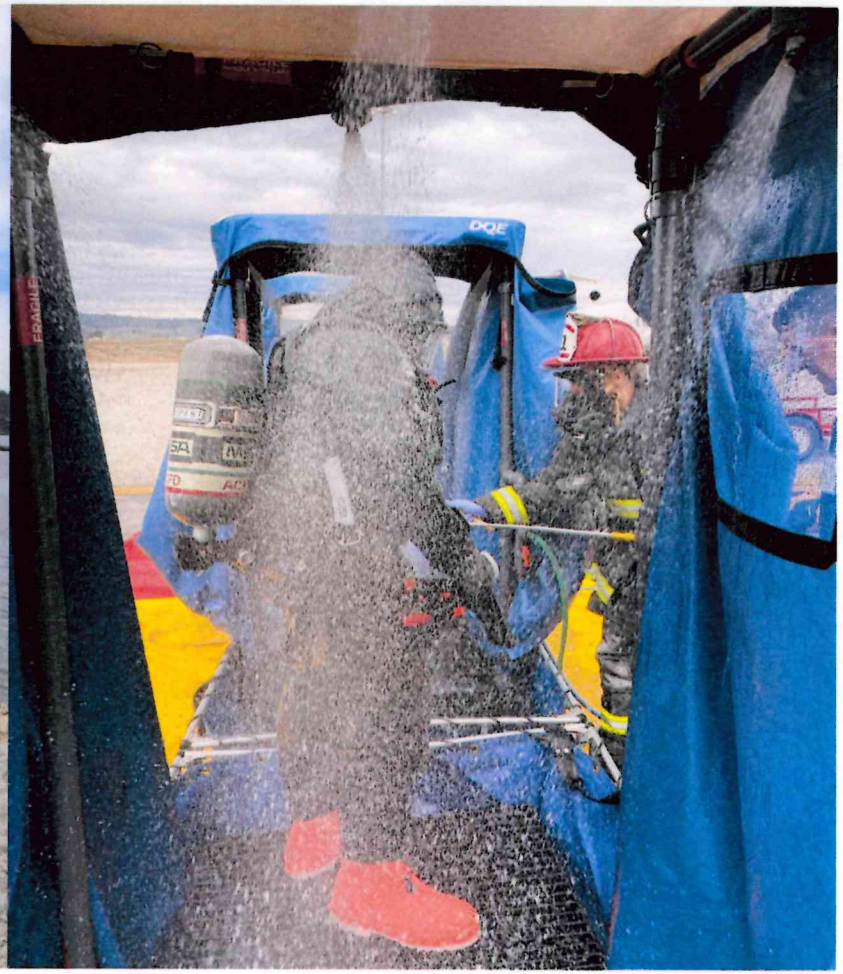
Hazardous Materials Response Team

State Certified Type I



Hazardous Materials Response Team



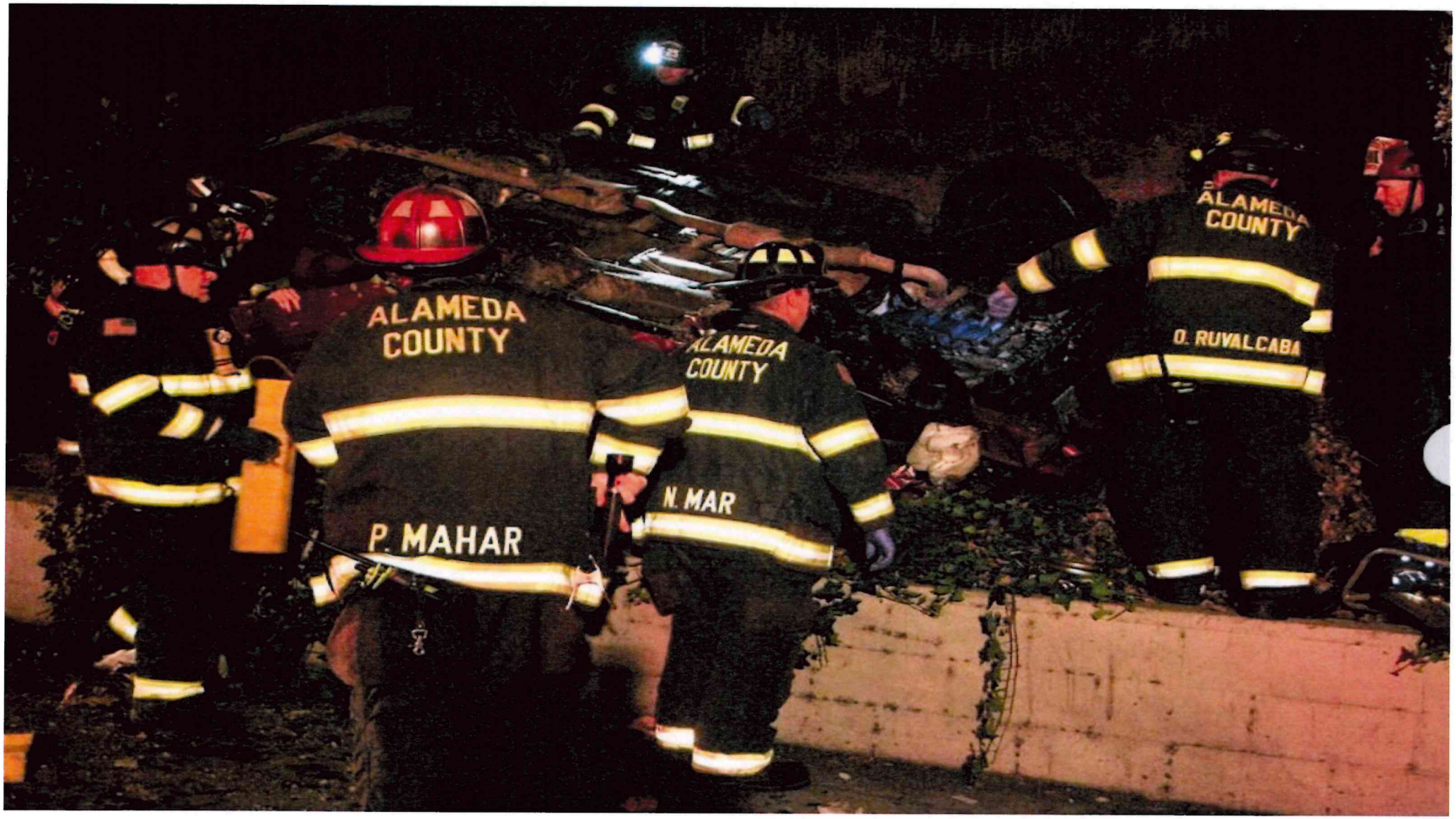


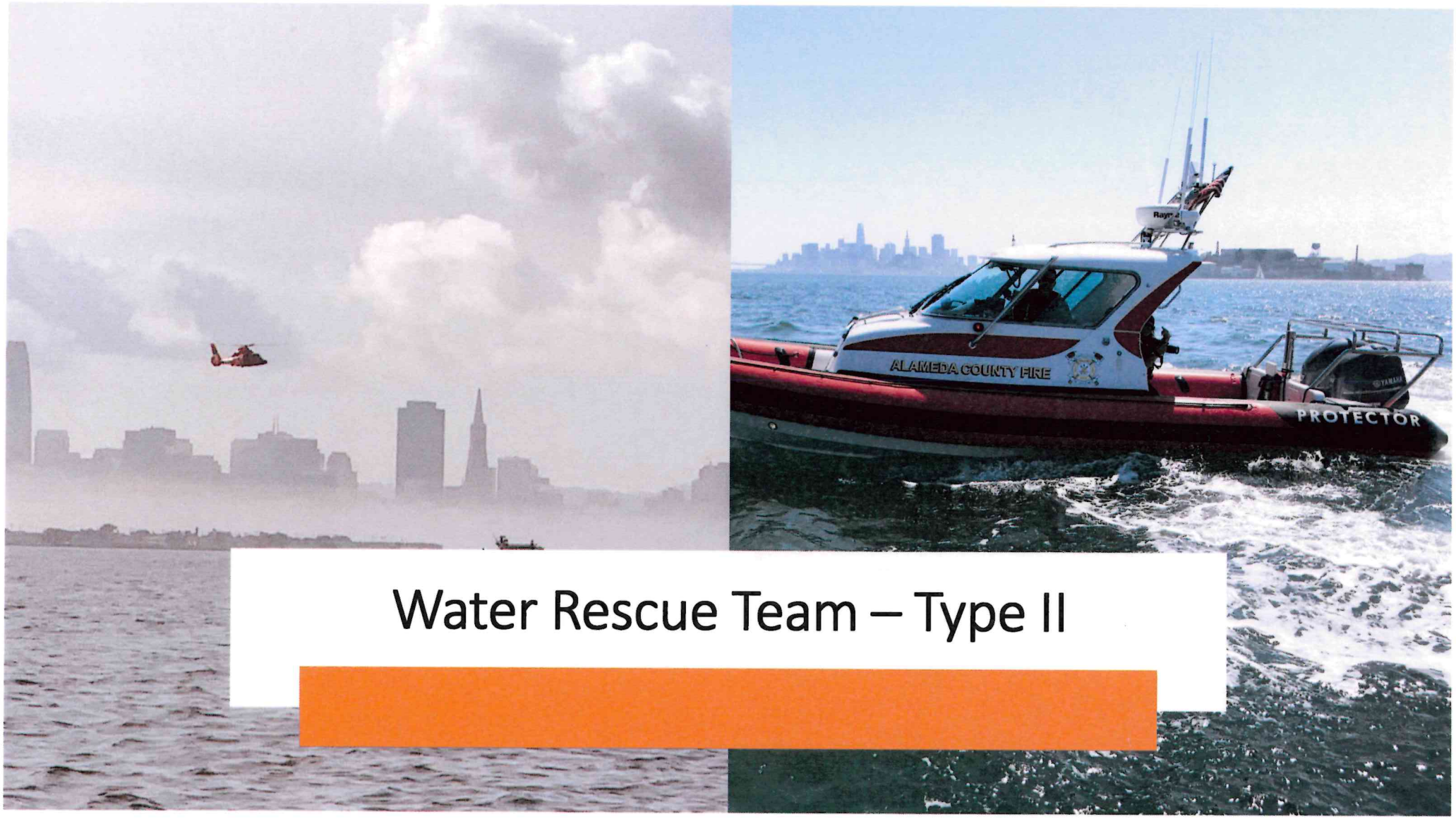


Technical Rescue

Technical Rescue Team – Type I




ALAMEDA
COUNTY
P. MAHAR
ALAMEDA
COUNTY
N. MAR
ALAMEDA
COUNTY
O. RUVALCABA



Water Rescue Team – Type II

Wildland



Wildland Resources





Invested in the Community



Invested in Community



Invested in the Community



2023 California Fire Season

- Rainfall
- Fuels – Grasses, Brush
- Fallen Trees
- Mild Temperatures
- Snow Pack
- Weather – El Nino
- Average, context

Grass
Brush



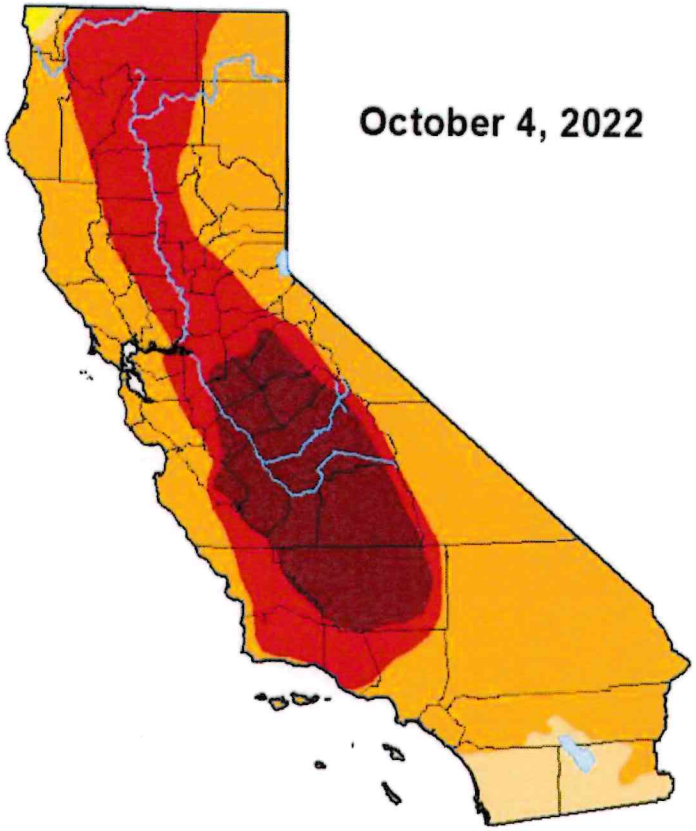






U.S. Drought Monitor

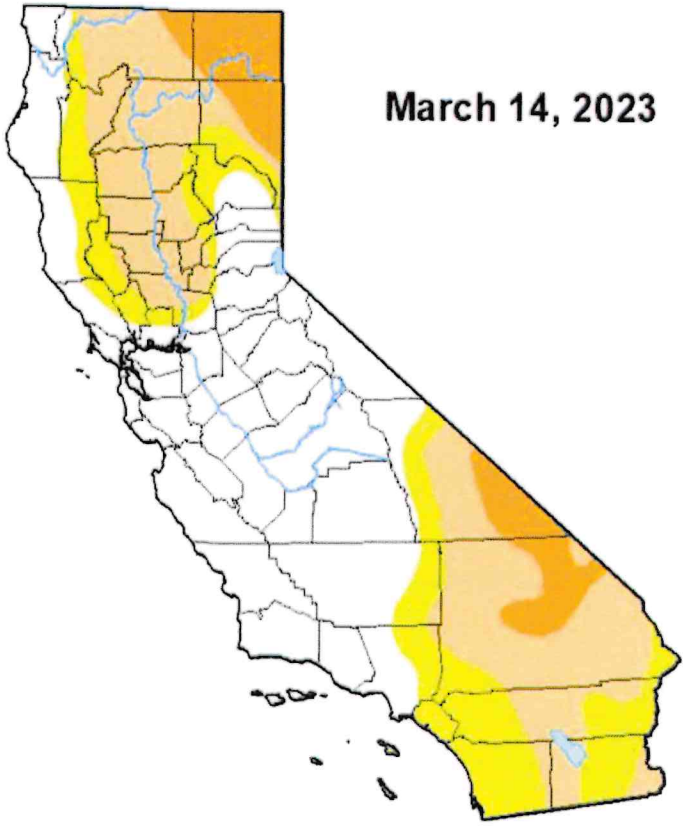
California



October 4, 2022

U.S. Drought Monitor

California



March 14, 2023

National Significant Wildland Fire Potential Outlook

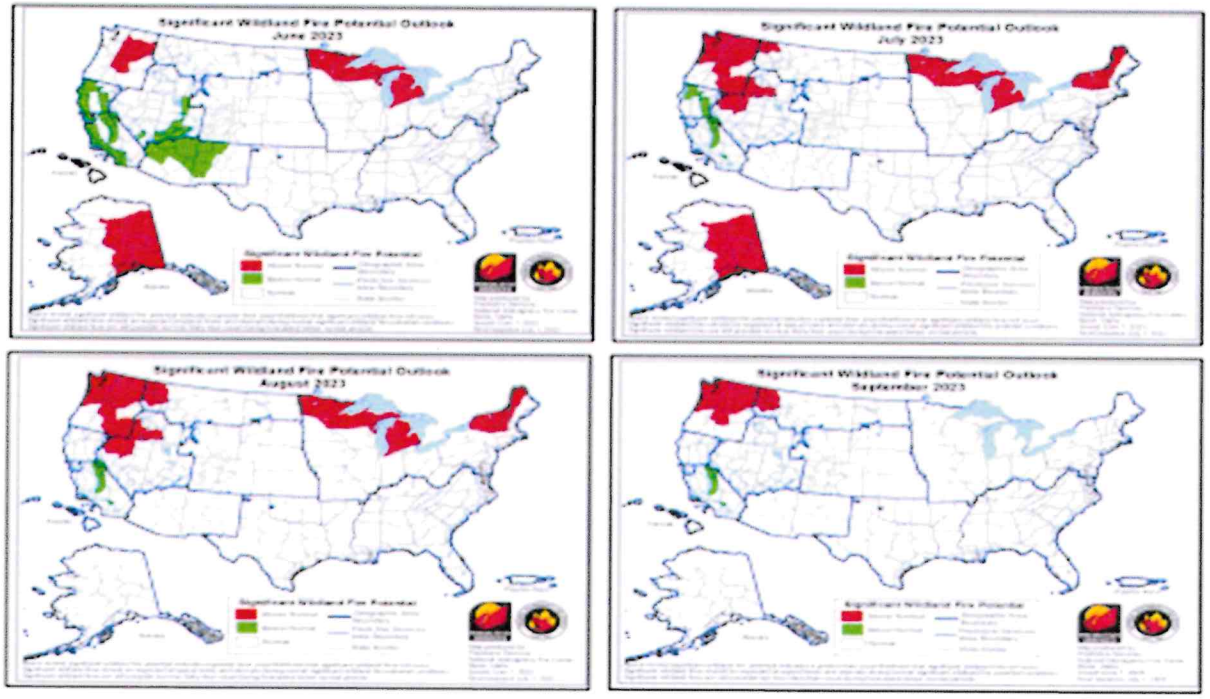
Predictive Services
National Interagency Fire Center

Issued: June 1, 2023
Next Issuance: July 1, 2023

Outlook Period – June through September 2023

Executive Summary

The significant wildland fire potential forecasts included in this outlook represent the cumulative forecasts of the ten Geographic Area Predictive Services units and the National Predictive Services unit.



Current Initiatives

- Staffing
- Emergency Medical Services
- Advanced Practitioner Unit
- Employee Health and Wellness
- Fuels Mitigation Program
- Design and Construction of Training Center
- New Fire Station Building Program
- Regional Training Center


Site Plan
Fire Apparatus Driving Course
Training Center
ALAMEDA COUNTY FIRE DEPARTMENT
TRAINING CENTER
Classroom Building
43 Parking Spaces

Fire Station Building Program



Strategic Business Plan 2023 - 2033

- Development of Plan
- Vision
- Mission
- Goals

  Fiscal Sustainability

  Organization Aligned With Community Needs

  Services and Resources To Meet the Mission

  Sustained Organizational Viability and Vitality

  Improved Organizational Systems and Processes

STAFF REPORT

Item D. 1.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Approval of Audited Demands

Attachments

Audited Demands 5.25.23
Audited Demands 6.1.23

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 05/25/2023

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	05/25/2023	8477 Accounts Payable	4LEAF INC		59,796.00
	Invoice	Date	Description		Amount
	J4123D	02/17/2023	TEMP PROFESSIONAL CODE ENFORCEMENT SVCS - 1/3/23-1/31/23		14,256.00
	J4123E	03/16/2023	TEMP PROFESSIONAL CODE ENFORCEMENT SVCS - 2/1/23-2/28/23		15,048.00
	J4123F	04/25/2023	TEMP PROFESSIONAL CODE ENFORCEMENT SVCS - 3/1/23-3/31/23		17,424.00
	J4123G	05/10/2023	TEMP PROFESSIONAL CODE ENFORCEMENT SVCS - 4/1/23-4/27/23		13,068.00
Check	05/25/2023	8478 Accounts Payable	ABBE & ASSOCIATES LLC		10,175.00
	Invoice	Date	Description		Amount
	N-16	05/04/2023	RECYCLING/ORGANICS CONSULTANT		10,175.00
Check	05/25/2023	8479 Accounts Payable	ACCESS		100.00
	Invoice	Date	Description		Amount
	10238174	04/30/2023	SHREDDING SVCS APRIL 2023		100.00
Check	05/25/2023	8480 Accounts Payable	PRINTS CHARLES REPROGRAPHICS		252.51
	Invoice	Date	Description		Amount
	112259	05/02/2023	STREET SIGNS		252.51
Check	05/25/2023	8481 Accounts Payable	HEALTH AND HUMAN RESOURCE CENTER, INC		247.86
	Invoice	Date	Description		Amount
	E0293221	05/04/2023	EMPLOYEE ASSISTANT PROGRAM (EAP)-JUNE 2023		247.86
Check	05/25/2023	8482 Accounts Payable	AIRGAS USA, LLC		90.20
	Invoice	Date	Description		Amount
	9997006490	04/30/2023	CYL ACETYLENE RENTAL 04/30/23		90.20
Check	05/25/2023	8483 Accounts Payable	ALAMEDA COUNTY FIRE DEPARTMENT		1,980,206.56
	Invoice	Date	Description		Amount
	2022-23-332	05/15/2023	FIRE TRUCK REPAIR #252, 241N, 242N		8,574.90
	2022-23-343	05/22/2023	FIRE TRUCK 243N SERVICE 5/8/23		172.00
	2022-23-336	05/19/2023	CONTRACT FIRE SERVICES - 05/23		985,729.83
	2022-23-308	04/15/2023	CONTRACT FIRE SERVICES - 04/23		985,729.83
Check	05/25/2023	8484 Accounts Payable	TREASURER OF ALAMEDA COUNTY		228.25
	Invoice	Date	Description		Amount
	APRIL 23	05/01/2023	CRIME LAB FEES APRIL 2023		228.25

Check	05/25/2023	8485 Accounts Payable	ALL CITY MANAGEMENT SERVICES, INC.	15,150.10

Invoice	Date	Description	Amount
85311	05/03/2023	SCHOOL CROSSING GUARD SVCS 4/16/23-4/29/23	7,616.43
85659	05/17/2023	SCHOOL CROSSING GUARD SVCS 04/30-05/13/23	7,533.67

Check	05/25/2023	8486 Accounts Payable	ALPINE AWARDS INC	4,098.27

Invoice	Date	Description	Amount
6102483	04/13/2023	LIFEGUARD UNIFORMS	4,098.27

Check	05/25/2023	8487 Accounts Payable	BAILEY FENCE COMPANY INC	771.00

Invoice	Date	Description	Amount
85177	05/04/2023	FENCE REPAIR-MAYHEWS PARK	771.00

Check	05/25/2023	8488 Accounts Payable	BAY AREA AIR QUALITY MGMT DIST.	436.00

Invoice	Date	Description	Amount
T152435	04/02/2023	FS 1 GENERATOR FEES 4/2/23	436.00

Check	05/25/2023	8489 Accounts Payable	APRO LLC	185.00

Invoice	Date	Description	Amount
040123-043023	04/30/2023	CAR WASH 04/01/23-04/30/23	185.00

Check	05/25/2023	8490 Accounts Payable	CITY OF FREMONT	3,750.00

Invoice	Date	Description	Amount
328239	03/08/2023	CASE MANAGEMENT FOR JUL22-SEPT22	1,250.00
328238	03/08/2023	CASE MANAGEMENT FOR OCT22-DEC22	1,250.00
328539	04/11/2023	CASE MANAGEMENT FOR JAN23-MAR23	1,250.00

Check	05/25/2023	8491 Accounts Payable	CITY OF FREMONT	13,861.00

Invoice	Date	Description	Amount
328822	05/02/2023	SHELTER OPERATING EXP MAY 2023	13,861.00

Check	05/25/2023	8492 Accounts Payable	PETTY CASH CUSTODIAN-JESSICA GURULE	578.94

Invoice	Date	Description	Amount
071922-050123	05/23/2023	REC DEPT PETTY CASH REPLENISHMENT V#1142-1158	578.94

Check	05/25/2023	8493 Accounts Payable	PETTY CASH CUSTODIAN-BEVERLY RYANS	747.94

Invoice	Date	Description	Amount
112123-050523	05/18/2023	PETTY CASH REPL V#3211-3232	747.94

Check	05/25/2023	8494 Accounts Payable	DAILY JOURNAL CORPORATION	165.00

Invoice	Date	Description	Amount
B3700387	05/17/2023	SUMMARY OF AN ORDINANCE PUBLISHED 5/16/2023	63.75
B3703159	05/23/2023	PH NOTICE 22-23 CITY COUNCIL - 36952 MULBERRY STREET	101.25

Check	05/25/2023	8495 Accounts Payable	GLORIA DEL ROSARIO	451.47

Invoice	Date	Description	Amount
0201-020323EXP	05/25/2023	EXPENSE REIMBURSEMENT - LODGING, MILEAGE	451.47

Check	05/25/2023	8496 Accounts Payable	DEPARTMENT OF JUSTICE	567.00

Invoice	Date	Description	Amount

	653159	05/03/2023	FINGERPRINTING FEES- 04/23	567.00
Check	05/25/2023	8497 Accounts Payable	ECS IMAGING, INC.	2,362.50
	Invoice	Date	Description	Amount
	17763	05/03/2023	LASERFICHE CLOUD UPGRADE & RENEWAL	2,362.50
Check	05/25/2023	8498 Accounts Payable	EWING IRRIGATION PRODUCTS INC.	109.49
	Invoice	Date	Description	Amount
	19305840	05/04/2023	PARKS SUPPLIES- COUPLINGS STAKINGS	109.49
Check	05/25/2023	8499 Accounts Payable	FASTENAL COMPANY	2,702.30
	Invoice	Date	Description	Amount
	CAS1132010	04/17/2023	STREET RIVET NUTS	2,702.30
Check	05/25/2023	8500 Accounts Payable	FEDEX	20.74
	Invoice	Date	Description	Amount
	8-129-44916	05/12/2023	PACKAGE DELIVERY - 05/02/23	20.74
Check	05/25/2023	8501 Accounts Payable	FITGUARD, INC	105.00
	Invoice	Date	Description	Amount
	0000199255	04/18/2023	FITNESS EQUIP MAINTENANCE	105.00
Check	05/25/2023	8502 Accounts Payable	FLYERS ENERGY LLC	1,751.62
	Invoice	Date	Description	Amount
	23-818583	05/05/2023	FLEET LUBRICANTS - MOVBIL DELVAC	1,751.62
Check	05/25/2023	8503 Accounts Payable	FRANK BONETTI PLUMBING INC	637.40
	Invoice	Date	Description	Amount
	45910	05/01/2023	FIRE STATION SINK SERVICE 2/27/23	637.40
Check	05/25/2023	8504 Accounts Payable	FREMONT ALARM	122.19
	Invoice	Date	Description	Amount
	41310	05/02/2023	COMMUNITY ALARM SERVICE 5/2/23	122.19
Check	05/25/2023	8505 Accounts Payable	FRONTIER BUILDING PRODUCTS PACIFIC, INC	640.00
	Invoice	Date	Description	Amount
	5-4-854877	05/04/2023	CORP YARD NEW TRACK INSTALLATION 5/4/23	640.00
Check	05/25/2023	8506 Accounts Payable	GRAINGER	31.55
	Invoice	Date	Description	Amount
	9676754758	04/17/2023	MONUMENT WALL PHOTOCONTROL	31.55
Check	05/25/2023	8507 Accounts Payable	GYM DOCTORS	225.00
	Invoice	Date	Description	Amount
	00142668	05/04/2023	PREVENTATIVE MAINTENANCE FOR GYM EQUIPMENT - MAY 2023	225.00
Check	05/25/2023	8508 Accounts Payable	ANTHONY HECKMAN	110.73
	Invoice	Date	Description	Amount
	051823EXP	05/19/2023	RECRUITMENT EQUIPMENT	110.73
Check	05/25/2023	8509 Accounts Payable	JESSICA HOLAMEITONGA	72.51
	Invoice	Date	Description	Amount

	0505-051023EXP		05/22/2023	TACTICAL DISPATCHER COURSE-SUNNYVALE	72.51
Check	05/25/2023	8510 Accounts Payable		HOME DEPOT CREDIT SERVICES	2,729.00
	Invoice		Date	Description	Amount
	APR' 23		04/13/2023	HOME DEPOT CC PURCHASE 3/13/23-04/12/23	2,729.00
Check	05/25/2023	8511 Accounts Payable		ARTURO INTERIANO	457.08
	Invoice		Date	Description	Amount
	032923-033123EXP		05/17/2023	COMMISSIONER BOGISICH'S HOTEL ACCOMM. - PC ACADEMY	457.08
Check	05/25/2023	8512 Accounts Payable		LANGUAGE LINE SERVICES	293.51
	Invoice		Date	Description	Amount
	10995918		04/30/2023	INTERPRETATION SVCS APRIL 2023	293.51
Check	05/25/2023	8513 Accounts Payable		LEGACY ROOFING & WATERPROOFING	2,120.00
	Invoice		Date	Description	Amount
	6009794-WO		05/16/2023	SVC ROOF SPOUT REPAIR 3/10 - 3/28/23	2,120.00
Check	05/25/2023	8514 Accounts Payable		LEXISNEXIS RISK DATA MANAGEMENT INC.	424.20
	Invoice		Date	Description	Amount
	1415640-20230430		04/30/2023	BACKGROUND CHECKS APRIL 2023	424.20
Check	05/25/2023	8515 Accounts Payable		LOOMIS	313.10
	Invoice		Date	Description	Amount
	13243613		05/22/2023	ARMORED CAR SERVICE - 04/23	313.10
Check	05/25/2023	8516 Accounts Payable		LYNN PEAVEY COMPANY	207.57
	Invoice		Date	Description	Amount
	398859		03/21/2023	EVIDENCE SUPPLIES	207.57
Check	05/25/2023	8517 Accounts Payable		MNS ENGINEERS INC	21,362.43
	Invoice		Date	Description	Amount
	83119		05/11/2023	PUBLIC WORKS CONSTRUCTION INSPECTION SVCS (04/01-04/30/23)	20,570.64
	83035		05/09/2023	PUBLIC WORKS CONSTRUCTION INSPECTION SVCS (04/01-04/30/23)	791.79
Check	05/25/2023	8518 Accounts Payable		CONCENTRA MEDICAL CENTERS	72.00
	Invoice		Date	Description	Amount
	79188700		05/10/2023	PRE-EMPLOYMENT/ DOT PHYSICALS -05/08/23	72.00
Check	05/25/2023	8519 Accounts Payable		OTIS ELEVATOR COMPANY	184.14
	Invoice		Date	Description	Amount
	L10000003161		04/24/2023	CIVIC CENTER LATE FEE	184.14
Check	05/25/2023	8520 Accounts Payable		PACIFIC GAS & ELECTRIC	71,554.24
	Invoice		Date	Description	Amount
	7578-051023		05/10/2023	CITYWIDE ELECTRICAL 5/10/23	69,402.73
	0552-050423		05/04/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 03/29-04/27/23	82.49
	0870-050823		05/08/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 03/31-05/01/23	83.77
	3926-050523		05/05/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 03/30-04/30/23	114.66
	1859-050523		05/05/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 03/30-04/30/23	1,870.59
Check	05/25/2023	8521 Accounts Payable		MORGAN PEDERSEN	265.14

	Invoice		Date	Description	Amount
	032823-033023EXP		05/18/2023	MATERIALS FOR FAMILY DAY @ THE PARK EVENT	125.89
	04172023EXP		05/18/2023	SUPPLIES FOR THE BUSINESS ACTION PLAN WRKSHP	107.58
	05102023EXP		05/17/2023	EDIBLE ITEMS FOR CHAMBER OF COMMERCE CEO RECRUITMENT MEETING	31.67
Check	05/25/2023	8522 Accounts Payable		PERFORMANCE PEST MANAGEMENT	267.00
	Invoice		Date	Description	Amount
	67639		04/04/2023	PEST SERVICES - CITY HALL #102699 4/4/23	267.00
Check	05/25/2023	8523 Accounts Payable		PHOENIX GROUP INFORMATION SYSTEMS	285.75
	Invoice		Date	Description	Amount
	042023101		04/19/2023	PARKING CITATION PROGRAM APRIL 2023	285.75
Check	05/25/2023	8524 Accounts Payable		PREFERRED ALLIANCE INC	65.00
	Invoice		Date	Description	Amount
	0186821-IN		04/30/2023	RANDOM & NON RANDOM DRUG TESTING ANNUAL FEE	65.00
Check	05/25/2023	8525 Accounts Payable		CAL COAST TELECOM	1,043.00
	Invoice		Date	Description	Amount
	S23A01641		04/13/2023	200 HID CARDS	1,043.00
Check	05/25/2023	8526 Accounts Payable		REDFLEX TRAFFIC SYSTEMS, INC.	17,400.00
	Invoice		Date	Description	Amount
	INV0053535		04/30/2023	REDLIGHT CAMERA MONITORING APRIL 2023	17,400.00
Check	05/25/2023	8527 Accounts Payable		RUGGERI-JENSEN-AZAR	2,297.00
	Invoice		Date	Description	Amount
	90146		05/17/2023	ON-CALL CIVIL ENGINEERING DEVELOPMENT PLAN REVIEW SVCS 04/30/23	2,297.00
Check	05/25/2023	8528 Accounts Payable		RUTAN & TUCKER, LLP	2,100.00
	Invoice		Date	Description	Amount
	960417		05/18/2023	AREA 4 CEQA - SVCS THRU 4/2023	2,100.00
Check	05/25/2023	8529 Accounts Payable		SHI INTERNATIONAL CORP.	4,052.83
	Invoice		Date	Description	Amount
	B16827444		05/05/2023	EMCO SOFTWARE - MSI PACKAGE BUILDER	2,892.96
	B16826548		05/05/2023	EMCO SOFTWARE - REMOTE SHUTDOWN	1,159.87
Check	05/25/2023	8530 Accounts Payable		STAPLES	2,258.17
	Invoice		Date	Description	Amount
	8069766925		03/31/2023	OFFICE SUPPLIES 3/14-3/29/23	1,008.27
	8069966384		04/15/2023	OFFICE SUPPLIES 4/5-4/14/23	322.95
	8070141015		04/30/2023	OFFICE SUPPLIES 4/17-4/28/23	926.95
Check	05/25/2023	8531 Accounts Payable		ANNE STEDLER	47.34
	Invoice		Date	Description	Amount
	041523-041623EXP		05/17/2023	PHOTOCOPIES OF ARTICLES (WEEKEND WORK)	47.34
Check	05/25/2023	8532 Accounts Payable		STEVE G. HOOS	3,097.97
	Invoice		Date	Description	Amount

	36411		04/12/2023	THORNTON FIRE DISHWASHER REPLACE AND INSTALL 04/12/23	3,097.97
Check	05/25/2023	8533 Accounts Payable		SUN STOPPERS NEWARK LLC	747.56
	Invoice		Date	Description	Amount
	000193		05/11/2023	FLEET TINTING SERVICES 5/11/23	747.56
Check	05/25/2023	8534 Accounts Payable		THE ED JONES CO INC	77.74
	Invoice		Date	Description	Amount
	53516		04/14/2023	514 STYLE BADGE - TOP RIBBON - J.LOMELI	77.74
Check	05/25/2023	8535 Accounts Payable		TREASURER OF ALAMEDA COUNTY	3,090.00
	Invoice		Date	Description	Amount
	23-03108		04/07/2023	BOOKING FEES MARCH 2023	3,090.00
Check	05/25/2023	8536 Accounts Payable		TURBO DATA SYSTEMS, INC	732.00
	Invoice		Date	Description	Amount
	40092		04/30/2023	E-CITATION HARDWARE AND TRAFFIC PROCESSING SERVICES	732.00
Check	05/25/2023	8537 Accounts Payable		ULINE	551.14
	Invoice		Date	Description	Amount
	163491726		05/10/2023	20'X10' SHADE CANOPY FOR ASH BUILDING	551.14
Check	05/25/2023	8538 Accounts Payable		UTILITY TELECOM GROUP, LLC	19,439.63
	Invoice		Date	Description	Amount
	MAY '23		05/16/2023	TELEPHONE & NETWORK PROVIDER - MAY 2023	19,439.63
Check	05/25/2023	8539 Accounts Payable		WASHINGTON HOSPITAL	125.00
	Invoice		Date	Description	Amount
	0423-NPD-LB		05/02/2023	LAB TESTS 04/30/2023	125.00
Check	05/25/2023	8540 Accounts Payable		BURLEIGH , KAITLYN	1,000.00
	Invoice		Date	Description	Amount
	676791		05/23/2023	REFUND FOR COMM CTR RENTAL DEPOSITS 7/7-7/11/22	1,000.00
Check	05/25/2023	8541 Accounts Payable		DELA CRUZ , MARIE	500.00
	Invoice		Date	Description	Amount
	677396		05/23/2023	REFUND FOR COMM CTR RENTAL DEPOSIT 3/6/23	500.00
Check	05/25/2023	8542 Accounts Payable		GONZALEZ , PATRICIA	500.00
	Invoice		Date	Description	Amount
	677410		05/23/2023	REFUND FOR COMM CTR RENTAL DEPOSIT 5/26/22	500.00
Check	05/25/2023	8543 Accounts Payable		LIN II , RONG-GONG	1.00
	Invoice		Date	Description	Amount
	2023-5327		05/22/2023	CHANGE BACK FOR MFD2023-0005	1.00
EFT	05/25/2023	580 Accounts Payable		SPECTRUM SMALL BUSINESS SERVICES, LLC 325084426 / 5348560846	4,550.00
	Invoice		Date	Description	Amount
	05152023-GENERAL		05/15/2023	CONSULT & REFERRAL TO BUSINESS SUPP AGENCIES-5TH AMEND-2/23-4/23	4,550.00
EFT	05/25/2023	581 Accounts Payable		PET BENEFIT SOLUTION 021000021 / 238821802	53.75
	Invoice		Date	Description	Amount

124543	05/17/2023	TOTAL PET PLAN - MAY PREMIUMS	53.75
AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 69	$2,265,013.42

Checks:	67	$2,260,409.67
EFTs:	2	$4,603.75

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 06/01/2023

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	06/01/2023	8544 Accounts Payable	ABACUS PRODUCTS INC		419.86
	Invoice	Date	Description		Amount
	B71541	05/05/2023	NOTICE TO QUARANTINE ANIMAL		419.86
Check	06/01/2023	8545 Accounts Payable	ALLIANT INSURANCE SERVICES		4,944.00
	Invoice	Date	Description		Amount
	2302734	05/16/2023	FY 23/24 UAV INSURANCE POLICY RENEWAL - 1/28/23-1/28/24		4,944.00
Check	06/01/2023	8546 Accounts Payable	BAIRD + DRISKELL COMMUNITY PLANNING		6,638.75
	Invoice	Date	Description		Amount
	1477	05/12/2023	ON CALL PLANNING SERVICES - 2/23 - 4/23		6,638.75
Check	06/01/2023	8547 Accounts Payable	BLAISDELL'S BUSINESS PRODUCTS		735.01
	Invoice	Date	Description		Amount
	APR' 23	04/01/2023	OFFICE SUPPLIES 3/23-3/30/23		735.01
Check	06/01/2023	8548 Accounts Payable	BOUNDTREE MEDICAL, LLC		1,060.98
	Invoice	Date	Description		Amount
	84961749	05/18/2023	GLOVES - MED, XL		1,060.98
Check	06/01/2023	8549 Accounts Payable	BUREAU VERITAS NORTH AMERICA INC.		1,263.76
	Invoice	Date	Description		Amount
	RI 23021294	05/09/2023	BI FIELD INSPECTION AND RELATED PROFESSIONAL SRVCS 4/24-5/4/23		538.75
	RI 23021321	05/09/2023	BI FIELD INSPECTION & RELATED PROFESSIONAL SVCS 04/19-05/08/23		725.01
Check	06/01/2023	8550 Accounts Payable	CARBONIC SERVICE		571.80
	Invoice	Date	Description		Amount
	503321	05/05/2023	POOL CHEMICALS		571.80
Check	06/01/2023	8551 Accounts Payable	ALAMEDA COUNTY INFORMATION TECHNOLOGY DEPARTMENT		3,407.50
	Invoice	Date	Description		Amount
	112-2304037	05/10/2023	AWS ACCESS FEE APRIL 2023		3,407.50
Check	06/01/2023	8552 Accounts Payable	DALE HARDWARE		440.16
	Invoice	Date	Description		Amount
	MAY' 23	05/25/2023	DALE SUPPLIES 05/25/2023		440.16

Check	06/01/2023	8553 Accounts Payable	DS SERVICES OF AMERICA, INC.	302.58

Invoice	Date	Description	Amount
15734365051323	05/13/2023	WATER SERVICE	302.58

Check	06/01/2023	8554 Accounts Payable	EWING IRRIGATION PRODUCTS INC.	122.61

Invoice	Date	Description	Amount
19366390	05/10/2023	PARK SUPPLIES-PVC AND COUPLER	122.61

Check	06/01/2023	8555 Accounts Payable	GHA TECHNOLOGIES, INC.	4,588.24

Invoice	Date	Description	Amount
11297576	05/09/2023	HP TROY MICR PRINTER	1,703.98
11297572	05/09/2023	FLUKE LINKIQ LIQ-KIT	2,884.26

Check	06/01/2023	8556 Accounts Payable	MELISSA TRUJILLO	21,500.00

Invoice	Date	Description	Amount
001	05/16/2023	2023 SUMMER CONCERT SERIES PAYMENT 1 - 6/16/23	21,500.00

Check	06/01/2023	8557 Accounts Payable	HILLYARD	727.27

Invoice	Date	Description	Amount
605116667	05/12/2023	BLDG VACUUM	727.27

Check	06/01/2023	8558 Accounts Payable	HOME DEPOT CREDIT SERVICES	6,591.57

Invoice	Date	Description	Amount
MAY' 23	05/12/2023	HOME DEPOT CC PURCHASE 4/13/23-05/11/23	6,591.57

Check	06/01/2023	8559 Accounts Payable	NICHOLAS ICASIANO	350.00

Invoice	Date	Description	Amount
0522-052423EXP	05/24/2023	BOOT REIMBURSEMENT 5/22/23-5/24/23	350.00

Check	06/01/2023	8560 Accounts Payable	INDUSTRIAL PLUMBING SUPPLY, LLC.	114.03

Invoice	Date	Description	Amount
107849	05/10/2023	SILLIMAN PLUMBLING SUPPLIES	61.49
107895	05/12/2023	SILLIMAN PLUMBING SUPPLIES-CONTROL STOP KIT	52.54

Check	06/01/2023	8561 Accounts Payable	LENCO ARMORED VEHICLES	542.83

Invoice	Date	Description	Amount
19963	05/12/2023	BEARCAT PARTS FOR REPAIR-LATCH AND HANDLE	542.83

Check	06/01/2023	8562 Accounts Payable	LIEBERT CASSIDY WHITMORE	425.00

Invoice	Date	Description	Amount
240746	04/30/2023	PROFESSIONAL SERVICES RENDERED THROUGH APRIL 30, 2023	425.00

Check	06/01/2023	8563 Accounts Payable	LINCOLN AQUATICS	735.75

Invoice	Date	Description	Amount
SL040949	04/21/2023	POOL CHEMICALS	735.75

Check	06/01/2023	8564 Accounts Payable	MEYERS NAVE, A PROFESSIONAL CORPORATION	28,995.53

Invoice	Date	Description	Amount
205374	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	130.33
205378	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	10,769.30
205379	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	1,316.70

	205380	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	2,060.10
	205381	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	8,386.40
	205385	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	2,801.10
	205386	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	490.50
	205387	05/24/2023	LEGAL SERVICES RENDERED THROUGH APRIL 30, 2023	3,041.10
Check	06/01/2023	8565 Accounts Payable	MIKE YORKS INVESTIGATIONS	17,400.00
	Invoice	Date	Description	Amount
	2023-17	04/26/2023	BACKGROUND INVESTIGATIONS 4/17-4/26/23	225.00
	2023-08	03/28/2023	BACKGROUND INVESTIGATIONS 3/3-4/18/23	3,225.00
	2023-04	02/20/2023	BACKGROUND INVESTIGATIONS 1/20-2/20/23	3,075.00
	2023-06	02/28/2023	BACKGROUND INVESTIGATIONS 2/14-3/29/23	3,075.00
	2023-09	03/29/2023	BACKGROUND INVESTIGATIONS 3/8-3/29/23	300.00
	2023-14	04/07/2023	BACKGROUND INVESTIGATIONS 3/24-4/7/23	3,450.00
	2023-05	02/10/2023	BACKGROUND INVESTIGATIONS 01/27-2/8/23	975.00
	2023-10	03/13/2023	BACKGROUND INVESTIGATIONS 2/9-3/12/23	3,075.00
Check	06/01/2023	8566 Accounts Payable	NEWARK UNIFIED SCHOOL DISTRICT	5,170.91
	Invoice	Date	Description	Amount
	INV23-00100	05/08/2023	NEWARK UNIFIED ACWD BILLING 3/3/23-5/2/23	5,170.91
Check	06/01/2023	8567 Accounts Payable	THE PERMANENTE MEDICAL GROUP, INC.	2,395.00
	Invoice	Date	Description	Amount
	3209033478510523	05/09/2023	PRE-EMPLOYMENT/ DOT PHYSICALS - 05/23	2,395.00
Check	06/01/2023	8568 Accounts Payable	LIGHTHOUSE SERVICES, LLC.	2,100.00
	Invoice	Date	Description	Amount
	1042668	04/01/2023	COMPLIANCE HOTLINE ANNUAL FEE 5/1/23-5/1/24	2,100.00
Check	06/01/2023	8569 Accounts Payable	PROFORCE LAW ENFORCEMENT	3,417.25
	Invoice	Date	Description	Amount
	519072	05/15/2023	TASER SUPPLIES	3,417.25
Check	06/01/2023	8570 Accounts Payable	CAL COAST TELECOM	281.27
	Invoice	Date	Description	Amount
	S23A0172	03/13/2023	PD TELECOM SERVICE 3/13/23	281.27
Check	06/01/2023	8571 Accounts Payable	REVENUE & COST SPECIALIST, LLC	8,745.00
	Invoice	Date	Description	Amount
	9132	05/10/2023	PROFESSIONAL SERVICES FOR COST ALLOCATIONS & USER FEE STUDY	8,745.00
Check	06/01/2023	8572 Accounts Payable	ALEXANDRIA RIDDLES	10.87
	Invoice	Date	Description	Amount
	052223EXP	05/30/2023	STREET RACING SLIDESHOW -MILEAGE-BENECIA	10.87
Check	06/01/2023	8573 Accounts Payable	WILLE ELECTRIC SUPPLY CO., INC	739.92
	Invoice	Date	Description	Amount
	S2143369.001	05/11/2023	SILLIMAN LIGHTS	739.92
Check	06/01/2023	8574 Accounts Payable	SAVAGE TRAINING GROUP LLC	304.00
	Invoice	Date	Description	Amount

	STG-7414	05/23/2023	DISPATCH PRIMING-PATRICIA LOPEZ	304.00
Check	06/01/2023	8575 Accounts Payable	SEDGWICK	4,240.00
	Invoice	Date	Description	Amount
	BRS-0020402	05/11/2023	REMOTE RISK CONTROL-APRIL 2023	4,240.00
Check	06/01/2023	8576 Accounts Payable	SIGNATURE CARPET ONE	2,560.00
	Invoice	Date	Description	Amount
	I-13918	05/26/2023	ROLLER DOOR INSTALLATION	2,560.00
Check	06/01/2023	8577 Accounts Payable	DRAGON GRAPHICS	1,081.88
	Invoice	Date	Description	Amount
	4237	05/02/2023	MEDIA CURVED WALL	1,081.88
Check	06/01/2023	8578 Accounts Payable	STANDARD INSURANCE COMPANY	1,414.20
	Invoice	Date	Description	Amount
	JUNE PREMIUMS	05/23/2023	STANDARD - JUNE 2023	1,414.20
Check	06/01/2023	8579 Accounts Payable	SUMMIT UNIFORMS CORP	2,047.50
	Invoice	Date	Description	Amount
	86644	05/09/2023	TRAINEE UNIFORMS-MOROZCO	1,023.75
	86645	05/09/2023	TRAINEE UNIFORMS-VINCENT TOWNSEND	1,023.75
Check	06/01/2023	8580 Accounts Payable	COREY SWADENER	827.48
	Invoice	Date	Description	Amount
	0522-052423EXP	05/30/2023	CSI ADVANCED - GARDEN GROVE	827.48
Check	06/01/2023	8581 Accounts Payable	SYSCO - SAN FRANCISCO	331.67
	Invoice	Date	Description	Amount
	550672854	04/03/2023	CAFE AND FOOD SUPPLIES	121.27
	550682770	04/08/2023	CAFE FOOD AND BEVERAGE SUPPLIES	75.04
	550740532	05/05/2023	CAFE FOOD AND SUPPLIES	135.36
Check	06/01/2023	8582 Accounts Payable	TEMPERATURE TECHNOLOGY INC.	1,200.00
	Invoice	Date	Description	Amount
	I2486	05/11/2023	LIBRARY HVAC SERVICE 5/11/23	1,200.00
Check	06/01/2023	8583 Accounts Payable	THE TACTICAL ADVANTAGE POLICE SUPPLY	1,080.99
	Invoice	Date	Description	Amount
	7257	03/24/2023	BULLETPROOF VESTS JACKMAN; APPROVAL #2023-12	1,080.99
Check	06/01/2023	8584 Accounts Payable	TIREHUB, LLC	937.11
	Invoice	Date	Description	Amount
	33252010	03/14/2023	TIRES-GY EAGLE RS AND ENFORCER	937.11
Check	06/01/2023	8585 Accounts Payable	TREASURER OF ALAMEDA COUNTY	5,665.00
	Invoice	Date	Description	Amount
	23-04108	05/11/2023	BOOKING FEES APRIL 2023	5,665.00
Check	06/01/2023	8586 Accounts Payable	TURBO DATA SYSTEMS, INC	742.00
	Invoice	Date	Description	Amount
	39655	02/28/2023	E-CITATION HARDWARE AND TRAFFIC PROCESSING SERVICES FEB '23	742.00

Check	06/01/2023	8587 Accounts Payable	URBAN PLANNING PARTNERS, INC.	2,042.50

Invoice	Date	Description	Amount
22002-230331	04/18/2023	PROJECT MGMT SERVICES - LEPAKSHI @ THORNTON 3/31/23	2,042.50

Check	06/01/2023	8588 Accounts Payable	U.S. BANK CORPORATE PAYMENT SYSTEMS	51,197.95

Invoice	Date	Description	Amount
052223STMT	05/22/2023	CC PAYMENT 05/22/23	51,197.95

Check	06/01/2023	8589 Accounts Payable	BOSCO OIL INC DBA VALLEY OIL	20,740.69

Invoice	Date	Description	Amount
157642	05/22/2023	FUEL 5/22/23	20,740.69

Check	06/01/2023	8590 Accounts Payable	MATTHEW WARREN	1,286.41

Invoice	Date	Description	Amount
0522-052423EXP	05/30/2023	CSI ADVANCED - GARDEN GROVE	1,286.41

Check	06/01/2023	8591 Accounts Payable	PENA , MARISOL	500.00

Invoice	Date	Description	Amount
678278	05/30/2023	REFUND FOR COMM CTR RENTAL DEPOSIT	500.00

AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 48	$222,936.83
Checks:	48	$222,936.83	

STAFF REPORT

Item D. 2.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Approval of June 8, 2023 minutes

Attachments

Minutes

Minutes

Thursday, June 8, 2023
7:00 P.M.

Alexander and Andrew from Boy Scout Troop 186 led the Pledge of Allegiance.

A. ROLL CALL

Mayor Hannon called the meeting to order at 7:00 p.m. Vice Mayor Collazo, Council Members Bucci, Freitas, and Jorgens were present.

B. PRESENTATIONS

1. Proclaiming June 8, 2023, as Arbor Day in Newark

Mayor Hannon presented the Arbor Day proclamation to Assistant Maintenance Superintendent Hornbeck.

C. PUBLIC COMMENT

No one requested to speak.

D. CONSENT CALENDAR

Council Member Bucci moved, Vice Mayor Collazo seconded, to approve Consent Calendar Items D.1 through D6, that the resolutions and ordinances be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 5 AYES.

1. Approval of Audited Demands

2. Approval of May 25, 2023 minutes

3. Waive full reading, conduct second reading by title only, and adopt an ordinance establishing a Planned Development Overlay District at 38288-38594 Cedar Boulevard
Ordinance No. 542

4. Adopt a resolution approving Amendment No. 1 to the Contractual Services Agreement with Pakpour Consulting Group for engineering project management services related to Central Avenue Overpass, Project No. 1014 and approving an amendment to the biennial budget
Resolution No. 11509
Contract No. 22048

5. Adopt a resolution authorizing the City Manager to execute Contractual Services Agreements, in a form approved by the City Attorney, with Interactive Resources, Inc., The KPA Group, and Verde Design for on-call architectural services
Resolution No. 11510
Contract No. 23034 to 23036

6. Adopt a resolution approving Amendment No. 2 to the Contractual Services Agreement with Fehr & Peers for additional traffic engineering and transportation planning services and amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan
Resolution No. 11511
Contract No. 20040

E. PUBLIC HEARINGS

1. Motion to continue the public hearing to consider approval of DR2021-006, a resolution approving Design Review and Vesting Tentative Map for an 8-unit for-sale condominium residential development comprised of four (4) two-unit dwellings located at 36952 Mulberry Street (APNs 92-29-21 and 92-29-22) to June 22, 2023
Motion Approved

Assistant City Manager Hovorka stated that staff required additional time and recommended opening and continuing the hearing to June 22, 2023.

Mayor Hannon opened the public hearing at 7:09

No one requested to speak.

Mayor Hannon closed the public hearing. At 7:10 p.m.

Council Member Freitas moved, Vice Mayor Collazo seconded, via motion, to continue the public hearing to June 22, 2023. The motion passed, 5 AYES.

F. OTHER BUSINESS

1. Adopt a resolution approving Amendment No.1 to the Contractual Services Agreement with West Coast Arborists, Inc. for additional tree maintenance services and amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan
Resolution No. 11512
Contract No. 19016

Vice Mayor Collazo stated that she would recuse herself from this item due to a pending tree removal request near her residence.

Vice Mayor Collazo left the City Council Chambers.

Assistant City Manager Hovorka gave the staff report recommending approval.

No one from the public requested to speak.

Council Member Bucci moved, Council Member Jorgens seconded to adopt the resolution approving Amendment No.1 to the Contractual Services Agreement with West Coast Arborists, Inc. for additional tree maintenance services and amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan. The motion passed 4 AYES, 1 RECUSED.

Vice Mayor Collazo returned to the City Council Chambers.

2. Introduction of an ordinance adding Chapter 8.44, Sustainable Foodware Ordinance, to the Newark Municipal Code to regulate the use of disposable foodware to improve the health and safety of the Newark community and environment. This item is exempt from CEQA per CEQA Guidelines Sections 15061(b)(3) and 15308
Ordinance Introduced

Vice Mayor Collazo stated that she would recuse herself from this item due to an economic conflict of interest as owner of the Mexico Tortilla Factory.

Vice Mayor Collazo left the City Council Chambers.

Environmental Services Manager Scanlin gave the presentation recommending approval. Presentation on file with the City Clerk.

No one from the public requested to speak.

Council Member Bucci moved, Council Member Jorgens seconded to introduce the ordinance adding Chapter 8.44, Sustainable Foodware Ordinance, to the Newark Municipal Code to regulate the use of disposable foodware to improve the health and safety of the Newark community and environment. The motion passed 4 AYES, 1 RECUSED.

Vice Mayor Collazo returned to the City Council Chambers.

G. CITY COUNCIL MATTERS

Council Member Jorgens encouraged the public to fill out the various surveys on the City website.

Council Member Bucci congratulated the Newark schools graduates and commended the Boys Scouts in the audience.

Vice Mayor Collazo thanked her colleagues for introducing the Sustainable Foodware Ordinance. She stated it was National Ocean Day. She complimented local restaurant Bear Bitez and encouraged everyone to try it. The annual Mariachi Festival would be held on Sunday, July 16. Shop Newark.

Mayor Hannon complimented the variety of cultural events in the City. He announced the Groovin at the Grove concert series. He stated that he wanted to try Bear Bitez, but they ran out of food the day he visited.

H. CLOSED SESSION

I. ADJOURNMENT

Mayor Hannon adjourned the meeting at 7:30 p.m.

STAFF REPORT

Item D. 3.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	James Scanlin, Environmental Services Manager
SUBJECT	Adopt a resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to fund a CivicSpark Fellow to assist with the development of an update to the City's Climate Action Plan

SUMMARY AND RECOMMENDATION

Staff is planning to develop an update to the City's Climate Action Plan (CAP) in Fiscal Year 2024, but lacks the necessary personnel resources to accomplish this major undertaking. Staff recommends that the City Council adopt a resolution to amend the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to provide a CivicSpark Fellow to assist with development of an update to the City's CAP.

BACKGROUND

The City adopted a Climate Action Plan (CAP) in 2010 to address the threats posed by climate change. The CAP set targets for greenhouse gas (GHG) emissions reductions for 2012, 2015, and 2020. In 2015 the Governor signed Executive Order B-30-15 which set aggressive targets for GHG reductions for 2030 and 2050. Updating its CAP will allow the City to align with the State's targets and to prioritize and effectively implement actions to reduce GHG emissions to protect the community and the environment.

DISCUSSION/ANALYSIS

Staff is planning to release a Request for Proposals in July to select a consultant with experience in CAP development and GHG emissions analysis to assist with the development of the updated CAP. As existing staffing resources are limited, bringing on a CivicSpark Fellow to provide in-house assistance with CAP development would be very useful.

CivicSpark is an AmeriCorps program dedicated to building capacity for local public agencies to address community resilience issues such as climate change. CivicWell (formerly, Local Government Commission), a California nonprofit, public benefit corporation, administers CivicSpark on behalf of AmeriCorps. CivicWell recruits college graduates interested in pursuing a career in environmental policy or science to become CivicSpark Fellows (Fellows), then matches Fellows with local government agencies. The Fellow would contract directly with CivicWell. CivicWell would handle payroll and related administration.

The CivicSpark Fellows program provides a low-cost and low-risk opportunity to acquire additional in-house staffing resources to assist in the development of the City's updated CAP. CivicWell would conduct outreach to recruit potential candidates and promote the opportunity on its website. The City would then interview interested potential Fellows. Many Bay Area agencies have utilized and continue to utilize CivicSpark Fellows including the cities of Alameda, Albany, Berkeley, Dublin, Oakland, Piedmont, and San Leandro as well as StopWaste. From the repeated use of the program, and staff's discussions with agencies using the program, it is clear that there are many qualified applicants. The Fellowship would start an 11-month term in September 2023, ending August 2024. The development of the updated CAP provides a great opportunity for a Fellow as the time frame lines up with the term of the program and there is a well-defined deliverable - the Climate Action Plan.

The total cost to the City would not exceed $31,000. An Agreement for Services with CivicWell is within the City Manager's approval authority pending sufficient budgetary funding.

FISCAL IMPACT

Funding from Development Maintenance Impact Fees (Fund 625) unappropriated fund balance will be necessary prior to execution of an Agreement for Services. Therefore, staff recommends an amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to appropriate $31,000 to the general contractual services account (625.90.091.910.6221).

REVIEW AND APPROVAL

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

Attachments

Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN TO PROVIDE A CIVICSPARK FELLOW TO ASSIST WITH THE DEVELOPMENT OF AN UPDATE TO THE CITY'S CLIMATE ACTION PLAN

WHEREAS, the City developed a Climate Action Plan in 2010 and intends to update its Climate Action Plan to establish greenhouse gas reduction targets for 2030 and 2025; and

WHEREAS, additional resources are needed to complete the update to the Climate Action Plan in a timely manner; and

WHEREAS, CivicSpark is a program of the federal AmeriCorps program that provides staffing resources to local governments to assist with the development and implementation of climate action plans; and

WHEREAS, CivicWell (formerly, Local Government Commission) administers the CivicSpark program for AmeriCorps; and

WHEREAS, execution of an Agreement for Services of Independent Contractor with CivicWell, in a form approved by the City Attorney, to provide assistance with the update to the City's Climate Action Plan for a not to exceed amount of $31,000 is within the City Manager's approval authority pending sufficient budgetary funding; and

WHEREAS, a budget amendment is necessary to allocate additional funding for this scope of activity.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark hereby approves an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for the allocation of $31,000.00 of unappropriated Community Development Maintenance Fees (Account 625.3000) to Contractual Services (Account 625.90.091.910.6221).

STAFF REPORT

Item D. 4.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Michelle Griese, Lieutenant
SUBJECT	Adopt a resolution related to Newark Police Department wellness program to approve agreements with Public Safety Family Counseling Group and Sigma Tactical Wellness, to authorize sole-source exemptions for Sigma Tactical Wellness and Mindbase LLC, and to approve an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

SUMMARY AND RECOMMENDATION

The City of Newark Police Department is committed to improving employee wellness through programs intended to improve physical and mental health and fitness. The wellness program aims to reduce employee injury and mitigate stressors that are unique to law enforcement personnel. The Department's wellness program currently includes peer support, critical incident stress management, a chaplain, an on-duty workout program, and providing ergonomic desk options.

Staff recommends that the City Council increase the Police Department wellness program budget for Fiscal Year 2024 from $13,000 to $70,000, an increase of $57,000, to purchase wellness services that will further improve employee physical and mental health and fitness, aid in employee retention, and assist in recruitment. Purchased with the funds will be cardiac/metabolic screening that will correlate known risk factors, genetics and occupational stressors that are characteristic of law enforcement; improved first responder mental health services and multi-level training; and first responder mental health focused technology. Staff also recommends that the City Council authorize the City Manager to execute agreements with Public Safety Family Counseling Group and Sigma Tactical Wellness and authorize sole-source exemptions for Sigma Tactical Wellness and Mindbase LLC.

BACKGROUND

The Police Department developed a wellness program aiming to reduce employee injury and mitigate stressors that are unique to law enforcement. The Department's wellness program currently includes peer support, critical incident stress management, a Chaplain, and an on-duty workout program.

PEER SUPPORT TEAM:
The Department currently has a peer support team comprised of eight members: one Lieutenant, one Sergeant, five officers, and one dispatcher. Peer support members receive initial training to learn how to identify potential stressors and behavior, conduct critical incident stress defusing and assist with critical incident stress debriefing. The peer support members are offered quarterly training to maintain their knowledge and skill.

PSYCHOLOGICAL SERVICES:
The Department contracts with the Public Safety Family Counseling Group to provide critical incident stress management consultation and response services. These services include: critical incident stress debriefings, crisis management briefings, on-site response, crisis intervention, and consultation as necessary following extraordinary events in the City; short-term individual crisis intervention; provide ongoing training, oversight and consultation to the peer support team; coordinate with staff to offer critical incident stress management support education services for line, supervisory and management staff as requested; and be available by phone for consultation or call-out 24 hours a day, 7 days a

week. The maximum number of contracted hours is 60 per year. The current budget for wellness programming is $13,000 and is solely to cover the contract for critical incident stress management and training.

With psychological services contracted for 60 hours per year, there are limitations for Department use. The limited hours are conserved for use during acute critical incident management and to treat acute stress post-incident. Preventative measures and maintenance of skills are rarely accommodated because training and maintaining wellness and resiliency skills could consume the bulk of the hours.

CHAPLAIN PROGRAM:
The Department has one volunteer chaplain. The mission of the chaplain is to provide counseling or emotional support to members of the Department, their families, and members of the public. The chaplain can be on-call to assist when requested and attend training related to services provided. The chaplain has been particularly beneficial supporting staff through loss of life events for their family or friends.

ON-DUTY WORKOUT PROGRAM:
The final component of the Department wellness program is the on-duty workout program. Current policy permits sworn staff to work out on duty. Utilization of the program assists staff with managing stress related to calls for service and maintaining operational fitness needs. To permit on-duty workouts, the Department maintains a workout room equipped with cardiovascular exercise equipment, plyometric equipment, weights, and self-defense training equipment.

CARDIOMETABOLIC HEALTH ASSESSMENTS:
The Department does not currently have a provider for law enforcement focused cardiac and metabolic assessments for staff. Cardiac and metabolic assessments provide staff members with a current understanding of their health and fitness levels and specifically measure for effects of stressors attributable to a career in policing.

INTEGRATED WELLNESS TECHNOLOGY:
The Department does not currently have wellness focused technology. In the culture of policing, there can be a stigma associated with seeking help for a work or personal life issue. Wellness technology can provide wellness-based information, assessments, and training via a mobile device application. Law enforcement wellness technology also can interface with a Computer Aided Dispatch (CAD) system and use the call data to determine calls for service that may negatively impact staff and could compound as calls for service continue. Such a system would notify peer support members to contact the employee and conduct an initial assessment.

DISCUSSION/ANALYSIS

Staff recommends that the City Council increase the Police Department wellness program budget from $13,000 to $70,000, an increase of $57,000 for Fiscal Year 2024, with an intent to continue these services on an ongoing basis. Purchasing wellness services will further improve employee physical and mental health and fitness, aid in employee retention, and assist in recruitment. Purchased with the funds will be cardiac/metabolic screening that will correlate known risk factors, genetics and occupational stressors that are characteristic of law enforcement; improve first responder mental health services and multi-level training; and first responder mental health focused technology.

“Policing is a difficult and stressful job, with higher physical and mental health risks than many other professions. Studies have shown that when officers’ physical and mental health issues go unaddressed, job performance decreases, decision-making abilities are impaired, and agency costs increase” (Forum, 2018). The Department recognizes these challenges and wishes to increase and enhance the wellness program to further provide for the mental and physical wellness of staff.

PSYCHOLOGICAL SERVICES:
Enhancing the Department’s wellness program begins with improving the psychological services

provided. Staff recommends that the City Council approve a contract with the Public Safety Family Counseling Group. The contract will include no annual hours cap. With the change to no annual hours limitation, the Department will add the following to the services that were provided in the previous contract: introductory briefing trainings; pre-academy wellness and resiliency training with employee and family; psychological and resilience based training for all staff (8-hours), supervisor training (2-hours), and command staff training (1-hour); counseling sessions with law enforcement specialty counselors, without referral, for all staff (10-sessions/year); post-retirement counseling sessions (5/employee); and counseling sessions for employees with long-term workers' compensation claims (5/employee).

CARDIOMETABOLIC HEALTH ASSESSMENTS:
The final wellness recommendation is law enforcement focused cardiac and metabolic assessments for staff. Cardiac and metabolic assessments provide each staff member with a current understanding of their health and fitness levels and specifically measure for effects of stressors attributable to a career in policing. “Police officers have an elevated risk of death relative to the general population overall and for specific causes” (John M. Violanti, 2016). A study utilizing police officers from Buffalo, New York found the average life expectancy of officers was 21.9 years less than the average life expectancy of the U.S. population. The average life expectancy of someone in the United States in 2020 was 77 years (Centers for Disease Control and Prevention, 2022). This study suggests that the average life expectancy of police officers is around 55 years. Possible reasons for shorter life expectancy among police include stress, shift work, obesity, and hazardous environmental work exposures.

With police officers eligible to retire at 50 or 57 years, and considering possible life expectancy, the need for annual health assessments is paramount. Unfortunately, regular doctor visits and annual checkups are designed utilizing the average life expectancy of a person in the United States, not respective of their career and stressors. Staff recommends contracting with a law enforcement focused cardiac/metabolic screening program annually. The assessment should include a comprehensive cardiac assessment to evaluate heart health, metabolic assessment to determine nutritional health, provide exercise and nutritional recommendations, along with a medical evaluation. Upon completion of an assessment, staff will understand what health, nutrition, fitness, or wellness modifications are needed to improve overall health and wellness.

The Department conducted a search for cardiac/metabolic assessment providers and identified Sigma Tactical Wellness as the only screening program designed for law enforcement that incorporates advanced cardiovascular biomarker detection, cardiac imaging, and cardiopulmonary exercise testing to assess comprehensive health, fitness, and wellness.

The primary service offered is cardiac/metabolic assessments. The assessment includes cardiac biomarker analysis via blood analysis; carotid ultrasound; cardiopulmonary exercise stress test; development of an individualized diet and exercise prescription; and medical evaluation.

The secondary service offered is the Sigma HeartStart Program which includes the advanced blood analysis, and consultation with mid-level clinician and registered dietitian.

Staff recommends conducting cardiac/metabolic assessments every three years. On years two and three the Sigma HeartStart Program is recommended so employees can determine the effectiveness of modifications and determine next steps.

INTEGRATED WELLNESS TECHNOLOGY:
Integrated wellness technology for policing is the third recommendation to improve the overall mental health of staff. “It’s estimated that 18-24% of dispatchers and 35% of police officers suffer from PTSD” (Weaver, 2021). The need for mental health services is extremely important for law enforcement staff. Seeking help is often stigmatized in the profession. An integrated wellness technology addresses this challenge. Via a mobile app, staff will have the ability to access: the roster and contact information for peer support staff; department clinician services contact information; third party clinicians’ information;

self-care information and assessments; track mental fitness; access the suicide hotline; and conduct self-driven wellness training. The wellness technology will integrate with CAD/RMS to provide real-time proactive detection and support. Peer support members will be able to provide support directly to those that respond to critical or stressful incidents, as identified by the application. This technology will be confidential and anonymous but provide aggregate information to the Department.

The Department conducted a search for integrated wellness technology and conducted demonstrations of the technology. The Department identified the Mindbase application as the only wellness technology specifically for law enforcement that integrates with Computer Aided Dispatch (CAD) and the Records Management System (RMS) and provides a portal for peer support members to address critical and/or stressful responses with Department staff.

FISCAL IMPACT

The wellness program enhancements recommended above require additional funding of $55,920 for Fiscal Year 2024. Staff recommends that the City Council approve a budget amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024, increasing the Police Department wellness program budget from $13,000 to $70,000. This includes $1,080 contingency funds for minor contract adjustments, should they be needed. The table below shows the breakdown of each new wellness program component, and the total cost for all new components. The tables that follow provide a brief description of each new component and each individual component cost. Three years of program costs are being provided, as the intent is for these services is to be ongoing and to take advantage of cost savings achieved with longer term contracts. Fiscal Years 2025 and 2026 funding will be requested during the regular budget process to develop the 2024-2026 Biennial Budget and Capital Improvement Plan and cannot be expended without City Council approval of the budget.

TOTAL ANNUAL WELLNESS PROGRAM COSTS:

Total Wellness Program Annual Cost	Psychological Services	Health Assessments	Wellness Technology	Grant Funds	**Total Cost**
Year 1	$25,000.00	$43,920.00	$14,850.00	($14,850.00)	**$68,920.00**
Year 2	$25,000.00	$43,920.00	$9,975.00	($9,950.00)	**$68,945.00**
Year 3	$25,000.00	$23,920.00	$10,000.00	($9,602.05)	**$49,317.95**

PSYCHOLOGICAL SERVICES:

The Public Safety Family Counseling Group, Inc provides “on-call/standby status for the delivery of Critical Incident Stress Management and Crisis Intervention services for law enforcement agencies following the International Critical Incident Stress Foundation (ICISF) protocols.” The Public Safety Family Counseling Group, Inc programs address the three ICISF phases of crisis intervention including pre-incident education and preparation, critical incident response, and post-incident recovery and intervention.

The cost of the contract with Public Safety Family Counseling Group, Inc is $25,000 per year for a term of three years.

Total Cost	
Year 1	$25,000.00
Year 2	$25,000.00
Year 3	$25,000.00

CARDIOMETABOLIC HEALTH ASSESSMENTS:

Sigma Tactical Wellness utilizes “novel testing modalities that have been proven effective in over 6500 law enforcement officers … from across the United States.” This selected vendor is the only supplier of this proprietary item.

The cost of the Sigma Tactical Wellness cardiac/metabolic assessment provider is $799 per person. The cost of the HeartStart program is $299 per person. Staff recommends permitting up to 40 employees to participate in the full cardiometabolic assessment and 40 employees participate in the HeartStart program the first year. The total cost is$43,920 for the first year. The cost for year two would be $43,920 to allow the remaining employees to participate in the full cardiometabolic assessment and the employees that participated in the year one full cardiometabolic assessment to participate in the Sigma HeartStart Program. The cost for year three would be $23,920 to allow all Department employees to participate in the Sigma HeartStart program.

Full cardiometabolic assessment	Cost/participant	Participants	Total Cost
Year 1	$799.00	40	$31,960.00
Year 2	$799.00	40	$31,960.00
Year 3	$799.00	0	$0.00

HeartStart assessment	Cost/participant	Participants	Total Cost
Year 1	$299.00	40	$11,960.00
Year 2	$299.00	40	$11,960.00
Year 3	$299.00	80	$23,920.00

Total Cost	
Year 1	$43,920.00
Year 2	$43,920.00
Year 3	$23,920.00

INTEGRATED WELLNESS TECHNOLOGY:
The Department conducted a search for integrated wellness technology and conducted demonstrations of the technology. The Department identified the Mindbase application as the only wellness technology specifically for law enforcement that integrates with CAD/RMS and provides a portal for peer support members to address critical and/or stressful responses with Department staff. This selected vendor is the only supplier of this proprietary item.

The annual cost of the application is $9,500. The first-year integration and support total cost is $5,350. The cost of Mindbase's integrated wellness technology is estimated to be $14,850 for the first year. Year 2 and Year 3's annual support would cost $475 and $500 respectively.

On March 23, 2023, City Council accepted an Officer Wellness and Mental Health Grant via Resolution Number 11476. The grant provided funding in the amount of $34,402.05. The Police Department plans to utilize these grant funds to fund the majority of the cost of the Integrated Wellness Technology.

Integrated Wellness Technology	Application Cost	Initial Integration Cost	Annual Support Cost	Grant Funds	Total Cost
Year 1	$9,500.00	$4,900.00	$450.00	($14,850.00)	$0.00
Year 2	$9,500.00	$0.00	$475.00	($9,975.00)	$0.00
Year 3	$9,500.00	$0.00	$500.00	($9,577.05)	$422.95

REVIEW AND APPROVAL

Prepared by - Michelle Griese, Police Lieutenant
Reviewed by - Gina Anderson, Police Chief
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Public Safety Family Counseling Group estimate

Sigma Tactical Wellness Delivery Proposal

Mindbase quote CA-220908B

RIMS to mindbase integration quote

City Council Resolution No 11476

Wellness Program Resolution

Public Safety Family Counseling Group, INC. (Consultant)

Exhibit A – Scope of Services and Compensation

SCOPE OF SERVICES

The primary purpose of this service contract is the ongoing support, training, and oversight of the Newark Police Department (City) peer support team, Critical Incident Stress Management (CISM) programs, and facilitation of the emotional wellness of City personnel while providing 24/7/365 response and support services to City and its employees.

SERVICES

1. 24/7 On-Call/Standby Availability

    1.1. Consultant will be available 24 hours a day, 7 days a week for Crisis Response and Stabilization Services for City and City's personnel.

2. Unlimited Crisis Response and Stabilization services. Such services may include, but are not limited to critical incident stress debriefings, crisis management briefings, on-site response, crisis intervention, and in person consultation as necessary following extraordinary events encountered by City's personnel or impacting the performance of City personnel's duties. Crisis Response and Stabilization services also include Consultant's expert response to and intervention with personnel experiencing a suicidal crisis.

    2.1. Crisis Response and Stabilization Services may be rendered at City's offices, in the field, at Consultant's offices, virtually, or any other location as deemed necessary and approved by Consultant.

    2.2. In the event that Consultant is requested to respond to an active scene or incident, City personnel shall accompany Consultant when requested.

    2.3. In the event of a catastrophic incident, loss of life, significant injury to personnel, or other major incident, Critical Incident Stress Management services will be extended to spouses and significant others of City personnel.

3. Individual Crisis Stabilization and Counseling Services

    3.1. Consultant will provide Individual Crisis Stabilization and Counseling Services as requested for City personnel, including 24/7 availability as needed.

    3.2. Consultant will provide first responder specialized support and individual crisis intervention and, as necessary, appropriate professional referrals to City's employee assistance program or other suitable venue as necessary subject to the terms of 3.2.2 below.

        3.2.1. Individual crisis intervention is defined as up to ten (10) one-hour, one-on-one crisis intervention sessions per year without the need for referral or authorization from City. Such sessions may be provided either in-person at Consultant's offices or virtually.

        3.2.2. In the event that employee self-refers, or is directed or referred by City, because of a suicidal crisis, services shall be rendered without regard to session or time limits until one

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of the following occurs. The suicidal crisis is stabilized, abated, or the affected employee is referred to a higher level or other suitable care. Sessions in excess of the 10 sessions allotted under the base contract shall be billed to the City as specified in Additional Service Fees section 15.

3.2.3. Referrals to third party services such as employee assistance programs, outside wellness training, or recovery/treatment retreats are not covered under this Agreement and are subject to other agreements between City and the third-party provider.

3.2.4. Additional Individual Crisis Intervention and Stabilization services may be rendered on a case-by-case basis as requested and authorized by City and approved by Consultant.

3.3. Consultant will provide up to three (3) individual transition specialized sessions for retired personnel or individuals separated from employment for any reason in order to help with the adjustment from active to retired status. Said sessions shall occur within one year of the employee's separation from service and within the term of this Agreement.

3.4. Consultant will provide up to one (1) individual sessions for employees placed on administrative leave in order to facilitate healthy coping and transition through any related process. Sessions will specifically focus on preparing personnel to return to duty following administrative leave or, where warranted, their transition out of the Department.

3.5. Consultant will provide one (1) session for any new hire and their spouse or significant other while the employee is in a POST Basic Academy in order to facilitate resiliency and successful completion of their training. This session should occur either just prior to or within the first two weeks of starting the academy. One (1) additional session may be offered to the new employee when entering the Field Training Program.

4. Workers Compensation

4.1. While Consultant does not accept Workers Compensation cases, Consultant will provide up to one (1) individual sessions for injured personnel with the specific goal of facilitating healthy coping and transition through any related process.

4.2. The Consultant shall not treat, diagnose, or otherwise engage or interfere in any part of the formal Workers Compensation process, treatment, or legal process. Consultant shall not provide reports of these sessions to the City or any other party without a properly executed release, legal mandate, or court order.

5. Telephone, email, and virtual Consultations

5.1. Expert collaboration with City Personnel regarding issues related to Critical Incident Stress, crisis intervention, education needs, organizational matters, disciplinary matters, terminations, or separation from service, and other psychological services as requested.

5.2. Provide on-going consultation to the City's Peer Support Team on topics including, but not limited to, program development, team selection, and team operations.

5.3. Consult with City Personnel regarding critical incident stress management support education services for line, supervisory, and management staff as requested.

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5.4. Unlimited telephone, email, and virtual consultations are provided under this agreement.

6. Peer Support Team Member Services

6.1. Consultant will provide, upon City's request, one (1), one-on-one check-in appointments per year for each peer support team member, coordinator, and liaisons for the purpose of fostering professional wellness in their assigned role and to support positive wellness habits.

7. Training Services

7.1. Program Presentations

7.1.1. Consultant will conduct, upon City's request, up to four (4) patrol briefing presentations for the purpose of introducing Consultant's firm, services, and program goals. Consultant will periodically solicit and compile peer support team member nominations following a blind nomination process as requested by City.

7.1.2. City agrees to plan for professional, non-sworn, and other administrative personnel to attend one of the aforementioned trainings.

7.2. Command Presentation and Training

7.2.1. Consultant will conduct, upon City's request, one (1), one hour presentation for Command Staff as requested in order to familiarize them with CISM and peer support team program goals and operations.

7.3. Management/Supervisory Presentation and Training

7.3.1. Consultant will conduct, upon City's request, one (1), two hour presentation for supervisory staff as requested in order to familiarize them with CISM and peer support team program goals and operations.

7.4. Line Personnel Training

7.4.1. Consultant will provide, upon City's request, up to two (2), four-hour training blocks per year covering CISM, wellness, and resiliency for line level personnel.

7.4.2. Training will be presented at City facilities or facilities arranged and paid for by City.

7.5. Regional Peer Support Continuing Education Training

7.5.1. Participation in Regional Peer Support Continuing Education Training for all City designated liaisons, coordinators, and peers is included.

7.5.2. Participating agencies share a rotating responsibility for hosting Regional Peer Support and Coordinator Meetings. Responsibility for hosting said trainings and meetings is split among participating agencies on a rotating basis.

7.5.3. Regional training may be offered in person or via a virtual electronic platform.

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7.5.4. Regional Training does not include any conference or other similar training that may be provided by Consultant to multiple agencies where an attendance fee is required.

7.6. Peer Led Trainings

7.6.1. Consultant shall design and supply one (1), 15-minute training program designed to be presented by peer support team members during briefing or other short format gatherings. This training program shall be designed to enhance resiliency, increase mental wellness, and/or address specific problems within the agency or industry as a whole (i.e., healthy alcohol consumption, dealing with personal crisis, available CISM resources). Consultant will train designated personnel in the delivery of this training program.

7.6.2. Consultant shall design and supply one (1) new hire training and orientation program designed to be presented by peer support team members during the first few weeks of a new employee's orientation to the City. These training programs shall be designed to increase stress awareness, understand the negative impacts of long-term stressors, enhance resiliency, increase mental wellness, orient new employees to peer support and other wellness resources within and outside of the agency, and/or address specific topics as requested by City. Consultant will train designated personnel in the delivery of this training program.

7.7. All training requests must be submitted at least 90 days in advance. City agrees to work cooperatively with Consultant to schedule requested training during mutually agreeable times.

7.8. International Critical Incident Stress Foundation (ICISF) certified courses are subject to additional fees and service requirements. Related terms and fees shall be agreed upon prior to any ICISF course being scheduled and may be approved by the Chief of Police or their designee.

8. Meetings

8.1. Consultant may, upon request by City, attend up to two (2) regular peer support team meetings exclusively for City's peer support team members. Said meetings shall be set up by a Peer Support Team Coordinator or Liaison and should occur at least once per quarter. These meetings may be held/attended in-person or virtually.

8.2. Consultant may, upon request by City, attend up to two (2) Command Staff meetings as requested for the purpose of discussing and making recommendations as to CISM, wellness, and peer support needs within the Department.

8.3. Consultant may, upon request by City, attend up to one (1) Supervisory Staff meetings as requested for the purpose of discussing and making recommendations as to CISM, wellness, and peer support needs within the Department.

8.4. Having Consultant periodically attend Command and Supervisory meetings provides the opportunity to embed wellness and mental health resources within the culture of the Department thereby enhancing the acceptance and delivery of Consultant's resources. It also allows for the discussion of sensitive or challenging issues facing the Department, as well as the identification of future challenges. Clinical presence at the command level helps serve as a reminder of the importance of wellness and resiliency that can then be modeled to the rest of the Department in order to enhance and promote a culture of resiliency and wellness. Additionally, it allows for the

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presentation of current research, industry trends, and other pertinent information in a timely manner allowing for rapid implementation and response to emerging issues.

9. Policy Development and Review

    9.1. Upon request, Consultant will supply City with a Sample Peer Support Policy and assist City personnel with review and recommendations for creating a comprehensive Peer Support Team and CISM Policy.

    9.2. City shall have their own City Attorney and/or risk manager review any recommended policy prior to implementation. City is responsible for ensuring that any proposed policy is compliant with city, state, and federal law.

10. When City requests services to be rendered onsite, City shall make suitable space available to Consultant. When suitable space is not available, City shall make other location arrangements appropriate for the services to be rendered.

11. When Consultant is unavailable or unable to render services as indicated above, Consultant shall make necessary arrangements for referral to appropriate mental health professionals for coverage and make contact information available to City personnel.

12. Consultant shall not be responsible for computer, video, audio, or other technological needs for City or City's personnel to attend training or access services.

COMPENSATION

13. City shall compensate Consultant a flat base fee of $25,000.00 per annum (Fiscal Year) for all services outlined under Scope of Services Sections 1 through 12, subject to the following provisions.

    13.1. Services may be rendered in-person, via telephone, email, or virtual platform based on the specific circumstances, nature, and needs of the service, City, and Consultant. Response services shall be provided in-person except under extraordinary circumstances.

    13.2. Regional Peer Support Continuing Education Training may be provided in person or virtually and may be rescheduled, postponed, or cancelled for extraordinary events.

    13.3. In the extraordinary circumstance that Consultant is unavailable or unable to provide 24/7 standby/on-call availability, Consultant shall make necessary arrangements with appropriate mental health professionals for coverage and any expense incurred by Consultant in doing so shall be the sole responsibility of Consultant.

ADDITIONAL SERVICE FEES

14. Additional Individual Counseling Services per section 4.2.3.

    14.1. The rate for in office counseling services under this section shall be $250.00 per session hour, billable in 30-minute increments with a one (1) hour minimum.

    14.2. A session hour is defined as 50-minute period of counseling services.

15. ICISF Licensed training courses are subject to the following additional approximated fees.

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15.1.	ICISF Registration and Licensing	$300 per course
15.2.	Materials Fees	$150 per person
15.3.	ICISF Certificates	$10 per course, per person

15.4. Training courses hosted by anyone other than City are not included within the scope of this Agreement and are subject to an additional fee. Fees for outside training are set by the host entity and City shall be responsible for any determination to send and all related costs for sending personnel to any outside training.

ADDITIONAL SERVICE TERMS

16. **Cancellation.** Due to legal and ethical requirement surrounding patient abandonment, any action resulting in the cancellation of this Agreement shall be initiated in writing by the cancelling party at least 30 days prior to the final date of service in order to allow for termination or transition of the clinical relationship between Consultant and any City personnel seeking care.

    16.1. The final day of service under this Agreement shall fall upon the last day of the month.

    16.2. Upon cancellation, all fees for services performed prior to cancellation shall become due and payable within 30 days of receipt of a final invoice for services rendered through the final date of service and all account hours are forfeit.

17. **Other Legal Services.** Services rendered under this Agreement do not include expert witness fees, deposition, court fees, representation, or testimony for or during any legal or formal administrative proceeding. Fees related to any actual or proposed action in any proceeding start at $500.00 per hour and are subject to a minimum advanced deposit prior to any required appearance.

18. **Copyright and Right of Use.** Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes or any original works of authorship created by Consultant or its subcontractors or subconsultants in connection with services performed under this Agreement shall be deemed the exclusive intellectual or otherwise licensed property of Consultant and Consultant shall retain all rights therein except where provided by a separate agreement.

19. **Works for Hire and Work Products.** Services rendered under this Agreement are not considered Works for Hire or Work Products. As such, anything produced or created by Consultant shall retain ownership and control over everything produced or created.

20. **HIPAA Requirements.** Confidentiality of Consultant's services and records are governed by State and Federal statues, court decisions, ethical standards, and generally accepted business practices for their profession. Notwithstanding any other section of this Agreement, no record or other identifying information, including but not limited to HIPAA protected information shall be released without a valid court order, written authorization from the individual(s) affected by the information release, or other legal authority compelling release of such information.

    20.1. Compliance with any audit or inspection requirement contained herein necessitates an

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investment of Consultant's time, efforts, and resources in order to maintain the required confidentially of records subject to audit or inspection and as such, shall be considered billable time outside of the scope of this Agreement at the rate of $250.00 per hour. This section shall supersede all other sections and shall survive termination, cancellation, or expiration and remain in effect indefinitely.

21. **Confidentiality of Information.** City shall not disclose any confidential or proprietary information received from Consultant, including but not limited to client information, to anyone except City's employees who require access to the information to access Consultant's services without adaptation by Consultant.

    21.1. Notwithstanding the foregoing, Consultant recognizes that City is obligated to comply with the California Public Records Act (California Government Code §§ 6252 et seq.) and that records in the possession of the City may be required to be disclosed. The City will assert exemptions as allowed, including protecting personal contact information and other confidential information as allowed by the Public Records Act.

    21.2. If the City receives a Public Records Act request for documents related to the Consultant, it will promptly notify the Consultant of such request. The Consultant may then seek to assert protections and privileges in court, as it may deem appropriate. The Consultant shall notify the City within 5 days if it will seek judicial intervention. If it does not, the City will release the requested documents. Nothing herein prohibits the City from asserting any exemptions to disclosure that it deems appropriate.

    21.3. Parties further agree to exercise at least the same care, control, and security over records, documents, and/or confidential information obtained from the other party as they would for their own records, documents, and/or confidential information.

22. **Billing and Invoices.** Consultant shall invoice the City at the commencement of the contract and monthly thereafter utilizing standard accounting practices to be payable within thirty (30) days. Failure to invoice the City within the billing month shall not be reason for nonpayment nor constitute a waiver of fees due to Consultant; however, Consultant shall provide an invoice for services prior to payment by the City.

    22.1. Consultant shall endeavor to provide a monthly utilization statement to the City no later than the 15th day of each month following the month in which services are provided. The utilization will include a description of services rendered and the date on which such services were provided. In addition, the monthly statement will provide a running account of hours utilized and remaining hours on account. Due to HIPAA restrictions individual client information shall not be included in accounting information. Utilization statements may be combined with monthly invoices for convenience.

    22.2. Failure of the City to pay any outstanding invoice within 90 days of receipt shall be grounds for cancellation of this contract by Consultant and forfeiture of fees paid by City and any services yet to be provided to City except where other payment arrangements are agreed to in writing.

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22.3. City shall ensure timely requests for and utilization of Consultant's services. All services not utilized within a single Service Period of this Agreement are non-refundable and will be lost as of June 30th of each year this Agreement remains in effect. Failure of City to utilize Consultant's services in a timely manner shall not be cause for default, refund, or extension of time.

23. **Shall Not Exceed Figures.** Any shall not exceed figure put into place related to this Agreement shall be sufficient to cover the face value of this Agreement over the entire time this Agreement is in place. Such figures shall also include a reasonable overage amount to cover any additional services outlined in this Agreement.

24. **Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, natural disaster, pandemic, death of Provider, public protest or riot, governmental acts that are not caused by or within the control of the nonperforming party, order or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

25. **Third Party Insurance Verification.** Neither Consultant nor Consultant's insurance providers are able to comply with demands from or supply documents to Third Party Insurance Verification services that City may or may not contract with to verify independent contractors' insurance policies. In the event that City utilizes such services, City shall designate a City staff member to collect insurance documents from Consultant and resolve any verification requirements.

26. **Agreement Term.** The term of this Agreement shall be July 1, 2023, through June 30, 2026. The term shall be divided into two Service Periods for the purposes of administration of compensation and delivery of services. The Service Periods shall run from July 1 through June 30.

    26.1. The fees outlined in this Agreement shall increase by 7.5% per year each year this Agreement remains in effect.

    26.2. The term of this Agreement may be extended or altered by amendment.

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SIGMA

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Sigma Tactical Wellness Delivery Proposal

Sigma Tactical Wellness has pioneered a novel system of cardiometabolic screening which incorporates advanced cardiovascular biomarker detection, cardiac imaging, and cardiopulmonary exercise testing to identify coronary disease before it takes a toll on an officer's life. Our unique testing modalities have been proven to be effective in identifying and eliminating the risks of the number one killer of men and women in uniform – heart disease.

There is absolutely no question that the number one killer of active and retired law enforcement officers and fire fighters is heart disease. The average age of a police officer who suffers a heart attack is 46, and the life expectancy of men and women in uniform is more than 20 years less than the general population. Published data shows that, between the ages of 55 and 60, the chance of a civilian dying from a heart attack is 1.6%. However, within populations of police officers and fire fighters, it is 56%. Moreover, fire-fighters are 16x more likely to die from an in-service line-of-duty heart attack than other occupations within public safety.

Through our aggressive screening strategy, early, pre-clinical heart disease markers were detected in otherwise fit appearing men and women as early as age 30. Once identified, the progression of heart disease can be halted. It should be noted that standard risk modeling (most commonly found in other wellness programs) often DOES NOT identify those at increased risk and can result in catastrophic misdiagnosis.

Police officers and fire-fighters also suffer from obesity, diabetes, and hypertension at rates that are much higher than their civilian counterparts. National statistical data shows that the obesity rate for police officers is 48% which is 20% higher than what is seen in the civilian sector. The rampant obesity epidemic creates concomitant diabetes, high blood pressure, sleep disorders, and significant musculoskeletal issues such as back, knee, and hip pain.

The Facets of Sigma Tactical Wellness:

Cardiac biomarker analysis

Sigma Wellness has developed a comprehensive cardiac laboratory screening evaluation along with an individualized nutritional and exercise prescription. The screening consists of non-invasive imaging as well as advanced lipid panel, and inflammatory biomarker analysis which can be used to predict the likelihood of a heart attack.

Metabolic Analysis with Exercise and Nutritional Modification

Secondly, a cardiopulmonary exercise stress test is performed on a stationary bicycle. This test measures functional capacity, the presence of any ischemia (lack of blood flow to the heart muscle) and utilizes a technique known as indirect calorimetry. Officers are shown the current state of their nutritional status and are guided through the development of an individualized diet and exercise prescription. This type of personalized exercise and nutritional intervention has been shown to be effective in providing each participating officer a full understanding of how to enhance physical and mental performance. This guidance creates improvement in fitness, mental-focus, and alertness. Furthermore, due to the significant rates of obesity in law-enforcement, a strong emphasis on weight optimization is used and has proven successful in

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providing the tools individual officers need to achieve and maintain a healthy body mass index (BMI).

Medical Evaluation

Finally, direct consultation with a physician or licensed medical professional (physician's assistant/nurse practitioner) will be performed. During this consultation, each officer will have all their tests reviewed and treatment strategies will be established. The participant will leave with a full understanding of his or her cardiac risk, their metabolic status, and the steps that can be taken to help ensure a long and healthy career and retirement. Comprehensive written results and recommendations will be provided for the participants to share with their personal health care providers.

Deployment Plan

A repeat partial screening analysis should be done on a *thirty-six-month rotation* so that effects of program adherence, changes in on-duty performance, and cost/benefits can be evaluated.

This includes all of the following components:

- Active electrocardiogram (ECG) with physician interpretation and evaluation
- Cardiometabolic stress test with expiratory gas analysis – determines contributions of fat and carbohydrate into total daily energy expenditure (indirect calorimetry)
- Advanced lipid panel including cardiac inflammatory biomarker analysis – also includes overview of hematology, liver/kidney function, thyroid, PSA (men), HbA1c (diabetes)
- Carotid Intima-media thickness ultrasound (CIMT) – performed on-site and interpreted in real-time
- Consultation with a mid-level clinician (Advanced-practice nurse/practitioner or physician's assistant)
- Consultation with exercise physiologist
- In-depth nutritional analysis based on individual results of cardiometabolic testing
- Aggregated data report prepared and delivered to command staff containing 20 different data points as a cross-section of personnel health status

COST: $799.00
(Includes $99.00 for carotid intima-media ultrasound as replacement of off-site coronary calcium score)

Civilians, spouses, and non-sworn personnel who may not be covered under the departmental funding model are welcome to participate. For convenience, Sigma Tactical Wellness can accept Flexible Spending Accounts as a form of payment.

Fire-Specific Cancer Screening

Members of fire-service are at an increased risk for certain types of cancer when compared to other members of public safety. In 2017, the Institute for Occupational Safety and Health (NIOSH) noted a 9% increase in cancer diagnosis and a 14% increase in cancer related deaths in fire-fighters when compared to the general population. Sigma Tactical Wellness employs a comprehensive immunological overview which has been shown to expose many types of cancer

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common to members of fire-service before other, more expensive, methods of detection (ultrasound). This not only reduces costs, but also reduces complexity by eliminating the need for multiple off-site medical visits.

Sigma HeartStart Program

HeartStart is specifically designed for individuals not wishing to undergo the full on-site screening experience (above) and/or for those wishing to participate without coordination through their department or agency, but who still desire to experience Sigma's proven methodologies in detection of early stage heart disease.

HeartStart includes the following components:

- Advanced lipid panel including cardiac inflammatory biomarker analysis – also includes overview of hematology, liver/kidney function, thyroid, PSA (men), HbA1c (diabetes)
- 20min Consultation with a mid-level clinician (Advanced-practice nurse/practitioner or physician's assistant)
- 30min Consultation with Registered Dietician (with coordination from Quest Diagnostics)

COST: $299.00

Estimated Cost Savings component

As an example, in a population of 200 police officers, based on our observed results, approximately 100 will have evidence of coronary artery disease, 80-160 will be clinically obese and approximately 60 will have evidence of undiagnosed hypertension and or diabetes.

The Commission of the Accreditation for Law Enforcement Agencies (CALEA) has placed the cost of an in-service heart attack between $450,000- $750,000. If assuming only 10% of the 100 officers with detected coronary plaque will have disease progression resulting in a heart attack within 5 years (low estimate), the total cost to the tax-payers ranges between $4.5 million to $7.5 million.

Based upon calculations from the 2019 Society of Actuaries, if the cost of untreated obesity is factored into the five-year analysis, there is an additional $1.22 million associated with overall health care, workmanship compensation, and disability cost.

Aside from the obvious cost-savings inherent in cardiovascular prevention, we have documented a 28% reduction in body fat percentage in overweight individuals, and a 29% reduction in body fat percentage in obese individuals (as much as 40lbs weight loss in some cases within compliant individuals). Most of the weight reduction is seen within the first 12 months of program adherence.

Total Cost Savings (200 officers) = $5.7m – $8.7m over 5 years

There have other substantial benefits and health savings. In conjunction with reduced health insurance-related expenses, Sigma has documented a significant reduction in worker's compensation claims over the last 5 years as measured by The Colorado Inter-Governmental

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Risk Sharing Agency (CIRSA). The cost savings have been so dramatic, that CIRSA currently agrees to cover 50% of the cost of screening their members.

It is critical to note that one indirect result of Sigma Wellness participation, which still permeates through populations of participants is the rate of successful tobacco cessation and alcohol use reduction. According to Sigma Wellness data, 91% of smokers and nearly 98% of over-consumers of alcohol significantly reduced their usage or quit altogether.

In Summary

Sigma Tactical Wellness incorporates novel testing modalities that have been proven effective in over 6500 law enforcement officers and fire-fighters from across the United States. It is through this aggressive and cutting-edge technology that the rates of heart attack, obesity, and other metabolic illness can be drastically reduced if not eliminated. This strategy allows participants to return home at the end of their shifts and enables them to enjoy a retirement that they have worked so hard for. It is also well understood that prevention of injury and illness saves countless dollars. This cost savings is more important than ever in the current environment of increased scrutiny of law enforcement funding.

mindbase

Proactive Peer Support Platform

Proposal For:

Newark Police Department

Presented By:

Mindbase, LLC



PO Box 4201 Logan, UT 84323 Phone: (888) 270-6463	QUOTE # CA-220908B DATE : 09-08-2022 EXPIRES : 07-31-2023
TO: Lt. Michelle Griese Newark Police Department 37077 Newark Blvd. Newark, CA 94560 Phone: 510-578-4345	**FROM:** Caleb Jenson Mindbase, LLC PO Box 4201 Logan, UT 84323 Phone: (435) 512-3586

COMMENTS OR SPECIAL INSTRUCTIONS:
Mindbase will provide Newark Police Department (customer) an Integrated Peer Support Platform consisting of 1) Agency Mobile Application (iOS & Android) + Family Wellness/Support App 2) Integrated CAD/RMS Wellness dashboard for analytics and reporting 3) One on-boarding session for administration personnel 4) On-going account management and support equal to the duration of the relationship and/or termination of services by customer.

TERM	DESCRIPTION	UNIT PRICE	TOTAL
3 Year	Mindbase Integrated Peer Support Platform for Public Safety – (site license for Newark Police Department- annual subscription)	$9,500	$28,500
3 Year	Family + Retiree Wellness/Support App (site license – annual subscription)	Incl	Incl
	Implementation Services	$0	$0
3 Year	On-going support and training	Incl	Incl
		SUBTOTAL	$28,500
		SALES TAX	0.00
		TOTAL DUE	**$28,500**

Estimated 4th Year Cost: $9,785

This Subscription Agreement (the "Agreement") is entered into by and between Mindbase LLC (Mindbase) and the Agency identified on this agreement. Terms and Conditions of this agreement are listed in Exhibit B. **Following expiration of the Initial Term, the Term of Service shall automatically renew for successive periods of one (1) year ("Renewal Term") unless and until either party gives the other party written notice of non-renewal at least 60 days prior to the next scheduled renewal date**. Mindbase may change the Fee for any Renewal Term upon written notice to Customer at least ninety (90) days prior to the next scheduled renewal date. Payment for services is Net 30.

Newark Police Department

Signature: _____

Name: _____

Title: _____

Date: _____

Mindbase

Signature: _____

Name: Caleb Jenson

Title: VP, Growth and Partnerships

Date: _____

Billing Contact Email: _____

A Comprehensive Wellness Platform

Mindbase provides the only comprehensive CAD/RMS/JMS data driven and proactive mental health and wellness platform on the market today. Mindbase believes in improving mental health by bringing people, knowledge, and intelligent technology together. Comprised of two connected components, the co-branded Mindbase platform provides all the necessary wellness tools for early detection and intervention in an iOS and Android driven application, and a cloud-based, web-accessed agency peer support administration portal.

Leverage the power of your data...

Proactive

We know peer support is not your only assignment. The Mindbase Platform helps teams keep track of which individuals most likely experienced elevated levels of trauma and should be reached out to, as well as who they have already talked to. Ensuring that no one is left to fight alone.

Actionable Insights

By automating monthly stat sheets, peer teams now have more accurate data to make decisions on. Track and manage your effectiveness as a peer team and provide the right support at the right time to your peers.

No One Left Behind

Auto generate debrief lists based on incident response. Make sure debriefs are occurring when they need to, ensuring all individuals are accounted for.

Help in the palm of your hand...

Wellness App

A comprehensive App compliments the Mindbase Admin dashboard, providing a suite of clinically validated wellness sessions and high impact learning modules all designed specifically for First Responders, First Responder Families, and Retirees. Ensure that your personnel have all the tools in their hand to build resilience and be mentally well.

Engagement Tools

Challenges are a great way to drive engagement and conversations. The Mindbase Wellness App comes with the ability to deploy fitness and nutrition challenges to create a rewarding and interactive experience for personnel.

Assessment Tools

Personal, confidential assessments provide users with the ability to self check and track their progress, connect with peer support team members, or clinicians as needed.

Mindbase Technology

The Mindbase app is built on a multi-platform development framework. This allows end users to access the portal on iOS, Android, or most web browsers. Platforms officially supported by Mindbase include:



- iOS v12 or greater
- Android v8 (Oreo) or greater
- Safari v14 or greater
- Chrome v102 or greater
- Firefox v91 or greater
- Edge v100 or greater

The administration portal is built as a cloud native web application that is designed to be viewed on a larger form factor, such as a computer monitor, but uses a responsive design so that it will also be functional on a mobile device. The platform is designed to be hosted in the AWS GovCloud, with specific roles and permissions given to the site administrators to manage and configure the system. All server hardware and operating systems are to be administered by the Mindbase team.

Always Available

The Mindbase App is available 24/7, delivering clinician backed wellness resources for law enforcement, 911 professionals, fire and EMS and any other current or retired employee of public safety agencies. The app is designed to support the families first responders; access and communication with Mindbase proprietary and agency defined content; local, regional or state-wide peer support personnel; agency contracted and/or culturally competent clinicians; local, state, or national resources and hotlines; periodic and agency defined assessments; individualized emotional fitness tracker; and agency defined personnel support plans to drive engagement. Additionally, peer team tracking, customizable data indicators, and advanced monitoring and support are all available through the peer support administration portal.

Privacy and Confidentiality

Mindbase takes privacy and security very seriously. Our goal is to provide beneficial resources to first responders in a completely anonymous manner. The app is secured by a username and password along with an agency code. The username and password are used to communicate directly with an individual through the app.

App usage data is never displayed by individual. Anonymized app usage data can be viewed by the site administrator(s), and the anonymous data may be used by Mindbase to determine if content should be added, removed or updated. The administration portal is secured by a username and password with roles and permissions assigned by the site administrator(s).

Create a Culture of Wellness

Taking care of those that take care of everyone else. Mindbase believes that people are your most important asset. With recruiting & retention trending negatively nationwide, an agency without a culture of wellness is at a significant disadvantage. Using Mindbase technology tools to establish peer support initiatives and standardize your wellness program can improve your agencies' culture. Well trained, long tenured, & healthy employees are key to supporting each other through the challenges of public safety demands.

The Mindbase Platform provides agencies with a comprehensive, one stop shop for their wellness programs. Within the app, agencies can easily share their Peer Support Team members, clinicians, and other resources available to support department personnel.

What our customers are saying:

"We used a wellness app from another company that has been in the business for many years, but after seeing the Mindbase platform, I feel like it is already light-years ahead of our previous vendor."

Katie Hill
Eureka Police Department

"Thank you Mindbase for taking the time to get to know the challenges in Monterey County and offering a solution to enhance the wellness of the Emergency Communications Dept. and our families."

Lee Ann Magoski
Monterey Co CA 911



"The Mindbase platform is such a valuable tool for our department to have quick and easy access to peer support and professional help. Our team now has the ability to help us remember to do our check-ins and figure out what we can do for our people. The app has so many self-help options to help us all learn and grow."

Race Black - Brigham City UT
Fire Department

We owe it to our men and women in uniform to protect not just their physical health, but their mental health as well. Lives depend on it. "

- Sheriff Rosie Rivera
Salt Lake County, UT

Exhibit B

Mindbase Master Services Agreement

The following terms and conditions apply to all Subscription Services purchased by Customer. Capitalized terms used but not defined herein shall have the meaning set forth in Mindbase's General Terms and Conditions, available at: https://getmindbase.com/terms-of-service. In the event of any inconsistency or conflict between Mindbase Master Services Agreement and those contained herein, the Terms and Conditions contained in this Exhibit B shall control.

1. Agreement.

1.1. Scope; Agreement Documents. This Subscription Software Agreement governs Customer's purchase of cloud-based software as a service products and other software which is licensed to Customer by Mindbase on a subscription basis ("**Subscription Software**") and related services, which may be recurring or one-time ("**Services**") provided by Mindbase. Subscription Software and Services are collectively referred to as the "**Software and Services**". Additional terms and conditions applicable to specific Software and Services are set forth in one or more addenda attached to this Subscription Software Agreement (each an "**Addendum**", and collectively the "**Addenda**"). In addition, the Parties may agree upon statements of work, schedules, technical specifications, and other ordering documents setting forth the Software and Services to be purchased by Customer and provided by Mindbase and additional rights and obligations of the Parties (the "**Ordering Documents**"). To the extent required by applicable procurement law, a proposal submitted by Mindbase in response to a competitive procurement process will be included within the meaning of the term Ordering Documents. This Subscription Software Agreement, the Addenda, and any Ordering Documents collectively form the Parties' "**Agreement**".

1.2. Order of Precedence. Each Addendum will control with respect to conflicting terms in this Subscription Software Agreement, but only as applicable to the Software and Services described in such Addendum. Each Ordering Document will control with respect to conflicting terms in this Subscription Software Agreement or any Addenda, but only as applicable to the Software and Services described on such Ordering Document.

2. Subscription Software.

2.1. Delivery. During the applicable Subscription Term (as defined below), Mindbase will provide to Customer the Subscription Software set forth in an Ordering Document, in accordance with the terms of the Agreement. Mindbase will provide Customer advance notice (which may be provided electronically) of any planned downtime. Delivery will occur upon Customer's receipt of credentials required for access to the Subscription Software or upon Mindbase otherwise providing access to the Subscription Software. If agreed upon in an Ordering Document, Mindbase will also provide Services related to such Subscription Software.

2.2. Modifications. Mindbase may modify the Subscription Software, recurring Services and any related systems so long as their functionality (as described in the applicable Ordering Document) is not materially degraded. Documentation (as defined below) for the Subscription

Software may be updated to reflect such modifications.

2.3. User Credentials. If applicable, Mindbase will provide Customer with administrative user credentials for the Subscription Software, and Customer will ensure such administrative user credentials are accessed and used only by Customer's employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Subscription Software through such user credential (including through any administrative user credentials), including any changes made to the Subscription Software or issues or user impact arising therefrom. To the extent Mindbase provides Services to Customer in order to help resolve issues resulting from changes made to the Subscription Software through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms below.

2.4. Beta Services. If Mindbase makes any beta version of a software application ("**Beta Service**") available to Customer, Customer may choose to use such Beta Service at its own discretion, provided, however, that Customer will use the Beta Service solely for purposes of Customer's evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered "as-is" and without any representations or warranties or other commitments or protections from Mindbase. Mindbase will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and Mindbase may discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

2.5. Customer Obligations. Customer will ensure that information Customer provides to Mindbase in connection with receipt of Software and Services are accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Mindbase to provide the Software and Services and perform its other duties under this Agreement. Unless the applicable Ordering Document states otherwise, Mindbase may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or Customer information, decisions, or approvals described in this Section. If any assumptions in the Ordering Documents or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, Mindbase's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.

2.6. Documentation. Software and Services may be delivered with documentation for the equipment, software, or data that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information (collectively, "**Documentation**"). Documentation is and will be owned by Mindbase, unless otherwise expressly agreed in an Addendum or Ordering Document that certain Documentation will be owned by Customer. Mindbase hereby grants Customer a limited, royalty-free, worldwide,

non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Software and Services.

2.7. Authorized Users. "**Authorized Users**" are Customer's employees, full-time contractors engaged for the purpose of supporting the Software and Services that are not competitors of Mindbase, spouses and significant others, retirees, and the entities (if any) specified in an Ordering Document or otherwise approved by Mindbase in writing (email from an authorized Mindbase signatory accepted), which may include affiliates or other Customer agencies. Customer may not make the Services available to the public or any unauthorized third party. The Services are owned by Mindbase and your use of them must be in accordance with these Terms.

2.8. Support of Downloaded Clients. The Mindbase Wellness App is available in the iOS App Store and Google Play store for download. Authorized Users may install the app on their mobile device(s) or access content through a web browser. Mindbase may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates.

2.9. Export Control. Customer, its employees, and any other Authorized Users will not access or use the Software and Services in any jurisdiction in which the provision of such Software and Services is prohibited under applicable laws or regulations (a "**Prohibited Jurisdiction**"), and Customer will not provide access to the Software and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Subscription Software or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.

3. Term and Termination.

3.1. Subscription Terms. The duration of Customer's subscription to the first Subscription Software and any recurring Services ordered under this Subscription Software Agreement (or the first Subscription Software or recurring Service, if multiple are ordered at once) will commence upon delivery of such Subscription Software (and recurring Services, if applicable) and will continue for a twelve (12) month period or such longer period identified in an Ordering Document (the "**Initial Subscription Period**). Following the Initial Subscription Period, Customer's subscription to the Subscription Software and any recurring Services will automatically renew for additional twelve (12) month periods (each, a "**Renewal Subscription Year**"), unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each Renewal Subscription Year will each be referred to herein as a "**Subscription Term**".) Mindbase may increase Fees prior to any Renewal Subscription Year. In such case, Mindbase will notify Customer of such proposed increase no later than thirty (30) days prior to commencement of such Renewal Subscription Year. Unless otherwise specified in the

applicable Ordering Document, if Customer orders any additional Subscription Software or recurring Services under this Subscription Software Agreement during an in-process Subscription Term, the subscription for each new Subscription Software or recurring Service will (a) commence upon delivery of such Subscription Software or Service, and continue until the conclusion of Customer's then-current Subscription Term (a "**Partial Subscription Year**"), and (b) automatically renew for Renewal Subscription Years thereafter, unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. Thus, unless otherwise specified in the applicable Ordering Document, the Subscription Terms for all Subscription Software and recurring Services hereunder will be synchronized.

3.2. Term. The term of this Subscription Software Agreement ("**Term**") will commence on the Effective Date and continue until the expiration or termination of all Subscription Terms under this Subscription Software Agreement, unless this Subscription Software Agreement is earlier terminated in accordance with the terms herein.

3.3. Termination. For Default. Following expiration of the Initial Term, the Term of Service shall **automatically renew for successive periods of one (1) year ("Renewal Term") unless** and until either party gives the other party written notice of non-renewal at least 60 **days prior to the next scheduled renewal date.** Either Party may terminate the Agreement or the applicable Addendum or Ordering Document if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Notwithstanding the foregoing, Mindbase may terminate the Agreement (or any Addendum or Ordering Documents hereunder), or suspend delivery of Subscription Software or Services, immediately upon notice to Customer if (a) Customer breaches **Section 10.3 – Subscription Software License**, **Section 10.4 – End User Licenses**, or **Section 10.5 – Customer Restrictions** of this Subscription Software Agreement, or any other provision related to Subscription Software license scope or restrictions set forth in an Addendum or Ordering Document, or (b) it determines that Customer's use of the Subscription Software poses, or may pose, a security or other risk or adverse impact to any Subscription Software, Mindbase, Mindbase's systems, or any third party (including other Mindbase customers). Customer acknowledges that Mindbase made a considerable investment of resources in the development, marketing, and distribution of the Subscription Software and Documentation, and that Customer's breach of the Agreement will result in irreparable harm to Mindbase for which monetary damages would be inadequate. If Customer breaches this Agreement, in addition to termination, Mindbase will be entitled to all available remedies at law or in equity (including immediate injunctive relief).

3.4. Addenda; Ordering Documents. Each Addendum and Ordering Document may be separately terminable as set forth therein.

3.5. Suspension of Services. Mindbase may terminate or suspend any Software and Services under an Ordering Document if Mindbase determines: (a) the related Subscription Software license has expired or has terminated for any reason; (b) Customer fails to make any payments when due; or (c) Customer fails to comply with any of its other obligations or otherwise delays Mindbase's ability to perform; (d) Mindbase plans to cease offering the applicable Subscription Software or Service to customers.

3.6. Effect of Termination or Expiration. Upon termination for any reason or expiration of this Subscription Software Agreement, an Addendum, or an Ordering Document, Customer and the Authorized Users will stop use of any Subscription Software and return or destroy (at Mindbase's option) all Mindbase Confidential Information in their possession or control and, as applicable, provide proof of such destruction. If Customer has any outstanding payment obligations under this Agreement, Mindbase may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer must pay Mindbase for Software and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by Mindbase and Customer's termination of this Agreement.

4. Payment and Invoicing.

4.1. Fees. Unless otherwise provided in an Ordering Document, Customer will prepay an annual subscription fee for each Subscription Software and recurring Service, and pay any fees specified for other Services provided hereunder in accordance with the applicable Addendum or Ordering Document (the "**Fees**"), before the commencement of each Subscription Term. For any Partial Subscription Year, the applicable annual subscription Fee will be prorated based on the number of months in the Partial Subscription Year. The annual subscription Fee for Subscription Software and recurring Services may include certain one-time Fees, such as start-up fees, license fees, or other fees set forth in an Ordering Document. Mindbase will have the right to suspend the Subscription Software and any recurring Services if Customer fails to make any payments when due. Fees may be changed by Mindbase at any time, except that Mindbase will not change the applicable Fees during a Subscription Term.

4.2. Taxes. The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in an Ordering Document. If Mindbase is required to pay any Taxes, Customer will reimburse Mindbase for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Mindbase will be solely responsible for reporting taxes on its income and net worth.

4.3. Invoicing; Payment. Customer will pay Fees upon the earlier of (a) thirty (30) days prior to the commencement of the applicable Subscription Term, and (b) within thirty (30) days of the applicable invoice date, or as otherwise specified in the applicable Addendum or Ordering Document. Late payments will be subject to interest charges, commencing upon the due date. Mindbase may invoice electronically via email, and Customer agrees to receive invoices via email. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Software and Services.

5. Additional Terms and Conditions

5.1. Except as set forth above, this Agreement is subject to Mindbase's General Terms and Conditions, available at: https://getmindbase.com/terms-of-service

Sun Ridge Systems, Inc.

To: Caleb Jenson of Mindbase on behalf of Newark Police Department

From: Tamera Melrose

Subject: Quotation for RIMS Software

Date: June 2, 2023

The following is a quotation for RIMS software based upon your recent request.

Item	Price
RIMS to Mindbase Link	$3,000
Installation Completed via Remote Access and Phone.	$1,900
Annual Support and Updates – First Year	$450
Annual Support and Updates – Second Year	$475
Annual Support and Updates – Third Year	$500
TOTAL	**$6,325**

This quotation is for RIMS software only and does not include any hardware or third-party software that may be required to support this interface.

The purpose of this interface will be to link RIMS with the Mindbase public safety mental health software application. RIMS will perform a daily push of call data, along with the personnel involved. including officers/deputies and dispatchers. Please refer to the attached RIMS to Mindbase technical documentation for further information about this interface.

This quote is valid for 90 days and may change thereafter. If you have any questions, please call me at 800-474-2565. Thank you for your continued interest in RIMS.

By signing and accepting this quote, I agree that I have signature authority on behalf of my department and/or organization and this signature will be an electronic representation of my signature for all purposes when I use them on documents, including legally binding contracts – just the same as a wet ink signature on paper.

_____ _____

Authorized by: Name and Title

Date:

RESOLUTION NO. 11476

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY TO ACCEPT THE 2023-2024 OFFICER WELLNESS AND MENTAL HEALTH GRANT THROUGH THE STATE OF CALIFORNIA OFFICE OF STATE AND COMMUNITY CORRECTIONS AND AMEND THE 2022-2024 BIENNIAL BUDGET.

WHEREAS, the Newark Police Department has been selected to receive the Officer Wellness and Mental Health Grant to further improve employee physical and mental health and fitness, aid in employee retention, and assist in recruitment; and

WHEREAS, funding in the amount of $34,402.05 has been allocated to the Newark Police Department aiming to reduce employee injury and mitigate stressors that are unique to law enforcement; and

WHEREAS, the Newark Police Department will submit information related to the Officer Wellness grant annually and will be required to submit an annual expenditure report no later than December 1, 2023, and December 1, 2024; and

WHEREAS, the Newark Police Department will submit a final impact and expenditure report describing how funding was used and the impact of the resources by December 1, 2025. The expenditure portion of the final report will be an Excel file that will be attached to the Final Impact Report form. Excel files will be customized for each grantee and emailed to each agency individually; and

WHEREAS, the Officer Wellness and Mental Health Grant Program, established in the 2022 Budget Act (Assembly Bill 178, Chapter 45, Statutes of 2022), provides $50 million for city and county law enforcement agencies for the purpose of improving officer wellness and expanding mental health sources. The funding may be used for any of the following purposes:

- Establishing or expanding officer wellness units
- Establishing or expanding peer support units
- Services provided by a licensed mental health professional, counselor or other professional that works with law enforcement.
- Expanding multiagency mutual aid programs focused on officer wellness and mental health.
- Other programs and services that are evidence-based or have a successful track record of enhancing officer wellness; and

WHEREAS, the 2022-2023 Officer Wellness and Mental Health Grant to purchase wellness services will further improve employee physical and mental health and fitness, aid in employee retention, and assist in recruitment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark authorizes the City to accept the 2022-2023 officer wellness and mental health grant through the California Board and Community Corrections (BSCC).

BE IT FURTHER RESOLVED that the City Council of the City of Newark approves an amendment to the 2022-2024 Biennial Budget and Capital Improvement Program as follows:

Increase Revenue: 234.30.030.300.4792
Increase Appropriation: 234.30.030.300.6221.BSCC.AB178

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on March 23, 2023, by Council Member Bucci who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES:	Council Members Bucci, Freitas, Jorgens, and Mayor Hannon
NOES:	None
ABSENT:	Vice Mayor Collazo
SECONDED:	Council Member Freitas

APPROVED:

s/MICHAEL K. HANNON
Mayor

ATTEST:

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
City Attorney

RESOLUTION NO. XXXXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AGREEMENTS WITH PUBLIC SAFETY FAMILY COUNSELING GROUP FOR CRITICAL INCIDENT STRESS MANAGEMENT AND EMOTIONAL WELLNESS SUPPORT SERVICES SIGMA TACTICAL WELLNESS FOR CARDIOMETABOLIC HEALTH ASSESSMENTS; AUTHORIZING SOLE-SOURCE EXEMPTIONS TO THE CITY'S FORMAL BIDDING REQUIREMENTS FOR THE AGREEMENT WITH SIGMA TACTICAL WELLNESS AND FOR AN AGREEMENT WITH MINDBASE LLC FOR A WELLNESS SUPPORT APPLICATION; AND APPROVING A BUDGET APPROPRIATION OF $57,000

WHEREAS, the City of Newark has been committed to enhancing wellness services within the police department that enables staff to improve employee physical and mental health and fitness, aid in employee retention, and assist in recruitment; and

WHEREAS, staff is seeking City Council approval to enter into three year agreements with Public Safety Family Counseling Group for critical incident stress management programs, oversight of the peer support team, and training programs and with Sigma Tactical Wellness for cardiometabolic screening, exercise and nutritional modification and medical evaluation; and

WHEREAS, Sigma Tactical Wellness is the sole developer and provider of a novel system of cardiometabolic screening for law enforcement; and

WHEREAS, Mindbase, LLC is the sole developer and provider of wellness technology specifically for law enforcement that integrates with computer aided dispatch and the records management system to provide a portal for peer support members to address critical and stressful responses to incidents with law enforcement staff; and

WHEREAS, pursuant to the City of Newark Purchasing Rules and Regulations, Section 10.b, formal bidding procedures shall not apply in the event that the City Council makes certain findings and declarations; and

WHEREAS, the City Council, having reviewed and considered the facts related to the services from Sigma Tactical Wellness and Mindbase, LLC finds and declares as to both vendors, as set forth below, and as required by the Purchasing Rules and Regulations, that:

1. Formal bids would work an incongruity and would be unavailing in affecting the final results since there is one vendor to provide the necessary equipment as required by the City, and therefore there is no comparable competitive product for which a competitive bid could be provided; and

2. Formal bids would not produce any advantage to the City since, as stated above, a formal bid would produce only a single bid from one vendor for the desired product;

or,

3. It is practically impossible to obtain what is required through the formal bidding process, because, as stated above, multiple competitive bids for the desired product cannot be obtained; and

WHEREAS, as described above in this Resolution, the proposed agreements with Sigma Tactical Wellness and Mindbase, LLC are exempt from formal bidding as sole-source exemptions.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the foregoing recitals are true and correct and are hereby incorporated as though fully set forth herein.

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute an agreement, in a form approved by the City Attorney, with Public Safety Family Counseling Group in the not-to-exceed amount of $75,000 for the procurement of on-call law enforcement crisis response and stabilizations services, law enforcement specific counseling services, oversight of law enforcement peer support team, and training services.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby authorize the City Manager to execute an agreement, in a form approved by the City Attorney, with Sigma Tactical Wellness in the not-to-exceed amount of $132,000 for the procurement of a novel system of cardiometabolic screening for law enforcement.

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby approves a total appropriation of $57,000 for the purchase of wellness services from Public Safety Family Counseling Group, Sigma Tactical Wellness, and Mindbase, LLC for three years which will be funded by the unappropriated fund balance:

From:	Description	Account	Amount
	Unappropriated Fund Balance	110.3000	$57,000
To:	Description	Account	Amount
	General Contractual Services	110.30.030.300.6221	$57,000

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to take all actions necessary to effectuate the intent of this Resolution.

STAFF REPORT

Item D. 5.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Jolie Macias, Captain
SUBJECT	Adopt a resolution to authorize the City Manager to submit a proposal on behalf of the City Council to the Board of State and Community Corrections for the Organized Retail Theft Prevention Grant Program

SUMMARY AND RECOMMENDATION

The California Board of State and Community Corrections (BSCC) Organized Retail Theft Prevention Grant Program is accepting proposals for grant funding that will assist the City in addressing the increase in catalytic converter theft. The grant program requires that the City Council submit the application to BSCC. Staff recommends that the City Council adopt a resolution to authorize the City Manager to serve as Authorized Officer to submit a proposal on behalf of the City Council to the State of California Board of State and Community Corrections for the Organized Retail Theft Prevention Grant Program.

BACKGROUND

The State Budget Act of 2022 (Senate Bill 154, Chapter 43, Statutes of 2022) established the Organized Retail Theft Prevention Grant Program. Funding is available to California city police departments, sheriff departments, and probation departments to support local law enforcement agencies in preventing and responding to organized retail theft, motor vehicle or motor vehicle accessory theft, or cargo theft. Proposals are due to BSCC by July 7, 2023. The Organized Retail Theft Prevention Grant Program Proposal Instruction Packet is attached for reference.

DISCUSSION/ANALYSIS

Permissible uses of grant funds include, but are not limited to, purchase of technology or other equipment to assist with strategies for preventing or responding to crime. These funds shall be used to supplement and not supplant existing funds for these activities. Organized Retail Theft Prevention Grant Program funds shall be used to support new program activities or to augment or expand existing program activities but shall not be used to replace existing funds. The proposal will include data demonstrating the nature and scale of both motor vehicle theft and motor vehicle accessory theft, specifically focusing on catalytic converter theft, within the City of Newark. As of the writing of this report, the City has received 148 reports of catalytic converter thefts, which indicates a continuance of a trend of increasing catalytic converter thefts each of the last three years.

The proposal will include clearly defined and measurable objectives for this grant. It will also include a description of how the funds will be used to achieve the stated objectives and will provide a discussion of how research and evidence will be used to indicate that the proposed activities would likely achieve the intended objectives.

FISCAL IMPACT

There is $242,250,000 appropriated in the FY2023-2024 and 2024-2025 State Budget Acts for this program. Medium Scope and Large Scope Projects are available. Medium Scope grant awards are up to $6,125,000, with total available funding of $85,750,000. Large Scope grant awards are up to $15,650,000, with a total available funding of $156,500,000. Proposals selected for funding will be under agreement from October 1, 2023, through December 31, 2026. An additional six months will be included in the term of the agreement for finalizing and submitting a required evaluation report and financial audit.

There is no immediate fiscal impact with associated with this item. If approved to move forward with this action, the department will return to City Council at a later date for grant award acceptance with details of the grant agreement, audits, reporting, and any budget impacts upon acceptance.

REVIEW AND APPROVAL

Prepared by - Jolie Macias, Police Captain
Reviewed by - Gina Anderson, Chief of Police
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution BSCC Grant
Grant Proposal Instructions

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO SUBMIT A PROPOSAL ON BEHALF OF THE CITY COUNCIL TO THE STATE OF CALIFORNIA BOARD OF STATE AND COMMUNITY CORRECTIONS FOR THE ORGANIZED RETAIL THEFT PREVENTION PROGRAM

WHEREAS, the City of Newark is experiencing a trend of increasing catalytic converter thefts, like other area cities in the Bay Area; and

WHEREAS, the City of Newark for the Newark Police Department desires to participate in the Organized Retail Theft Prevention Grant Program funded through the State Budget Act and administered by the Board of State and Community Corrections (hereafter referred to as the BSCC) to address vehicle and car parts theft.

NOW, THEREFORE, BE IT RESOLVED that the City Manager be authorized on behalf of the City Council to submit the grant proposal for this funding and sign the Grant Agreement with the BSCC, including and amendments thereof.

BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

BE IT FURTHER RESOLVED that the City of Newark agrees to abide by the terms and conditions of the Grant Agreement as set forth by the BSCC.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby authorize the City Manager to take all actions necessary to effectuate the intent of this Resolution.

Organized Retail Theft Prevention Grant Program

Proposal Instruction Packet

Release Date: April 14, 2023

Letter of Intent due: May 15, 2023

Proposals Due: July 7, 2023

STATE OF CALIFORNIA
BOARD OF STATE AND COMMUNITY CORRECTIONS
2590 VENTURE OAKS WAY, STE 200 ♦ SACRAMENTO CA 95833 ♦ WWW.BSCC.CA.GOV

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Table of Contents

Part I: Grant Information

Background Information 1
Contact Information 1
Proposal Due Date and Submission Instructions 1
Virtual Bidders' Conference 2
Notice of Intent to Apply 2
Scoring Panel 3
Description of the Grant 3
Funding Information 10
Data Collection, Reporting, and Evaluation Requirements 12
General Grant Requirements 13
Overview of the RFP Process 17

Part II: Proposal Instructions

Proposal Narrative Instructions 20
Proposal Budget Instructions 24

Part III: Appendixes

Appendix A: Senate Bill 154 27
Appendix B: Project Work Plan 30
Appendix C: Glossary of Terms 32
Appendix D: Grantee Assurance for Non-Governmental Organizations 35
Appendix E: Local Impact Letter(s) 37
Appendix F: Letter(s) of Commitment 38
Appendix G: Certification of Compliance with BSCC Polices on Debarment, Fraud, Theft and Embezzlement 39
Appendix H: Governing Board Resolution 40

PART I: GRANT INFORMATION

Background Information

The State Budget Act of 2022 (Senate Bill 154, Chapter 43, Statutes of 2022) established the Organized Retail Theft Prevention Grant Program. Funding is available to California city police departments, sheriff departments, and probation departments to support local law enforcement agencies in preventing and responding to organized retail theft, motor vehicle or motor vehicle accessory theft, or cargo theft.

Contact Information

This Request for Proposal (RFP) Instruction Packet provides the necessary information to prepare a proposal to the Board of State and Community Corrections (BSCC) for the Organized Retail Theft Prevention Grant Program.

The BSCC staff cannot assist the applicant or its partners with the preparation of the proposal. Any questions concerning this RFP, the proposal process, or the submission process must be submitted by email to: ORT@bscc.ca.gov.

The BSCC will accept and respond to written questions until June 12, 2023. A frequently asked questions and answers (FAQs) document will be posted to the BSCC website and periodically updated through June 16, 2023.

Proposal Due Date and Submission Instructions

Organized Retail Theft Prevention Grant Program proposals must be received by **5:00 P.M. (PST) on Friday, July 7, 2023.**

Submission Instructions

Applications for the Organized Retail Theft Prevention Grant Program must be submitted through the BSCC-Submittable Application portal. The BSCC-Submittable Application portal, Organized Retail Theft Prevention Grant Program Application, and all required attachments are available on the BSCC website.

To apply for this funding opportunity, applicants must create a free Submittable account OR use an existing Submittable account when prompted. After an account is established, applicants may proceed with the application process. As part of the submission process, applicants will be required to download mandatory forms that must be completed, signed, and uploaded to the BSCC-Submittable Application portal. All required documents are available on the BSCC website.

The BSCC-Submittable Application will not allow submissions after 5:00 p.m. (PST) on July 7, 2023. Please allow sufficient time to begin and submit your application. If the BSCC does not receive a submission by 5:00 p.m. (PST) on July 7, 2023, the proposal **will not be considered for funding**. Applicants are strongly advised to submit proposals well in advance of the due date and time to avoid disqualification.

Once you have successfully submitted your application and all required attachments, you will receive an email acknowledging your application has been received. If you experience challenges with your submission, please email the BSCC at: ORT@bscc.ca.gov. Be advised that applicants contacting the BSCC at the close of the submission due date/time may not receive timely responses. Please allow sufficient time for BSCC staff to provide technical assistance.

Virtual Bidders' Conference

Prospective applicants are invited to attend a virtual Bidders' Conference. Attendance at the virtual Bidders' Conference is not a requirement. The purpose of this Bidders' Conference is to answer technical questions from prospective bidders (applicants) and provide clarity on RFP instructions. Topics may include, but are not limited to, proposal submission instructions, eligibility, funding, and an overview of the rating factors. Bidders' Conference details are listed below:

Organized Retail Theft Prevention Grant Program
Virtual Bidders' Conference
Thursday, May 11, 2023, at 10:00 A.M.

Public access options for this meeting include:

Join by Zoom:

- https://us02web.zoom.us/j/86328175681?pwd=M0hTVVJ2SCtTbWFRUWxiWmtXRVRLQT09
- Meeting ID: 863 2817 5681| Passcode: 959280

Call In:

- 1-669-900-9128
- Meeting ID: 863 2817 5681| Passcode: 959280

Notice of Intent to Apply

Prospective applicants are asked (but not required) to submit a non-binding letter indicating their intent to apply. These letters aid the BSCC in planning for the proposal evaluation process. Please submit your letter in Microsoft Word or as a PDF.

There is no formal template for the letter, but it should include the following information:

1. Name of the applicant entity;
2. Name of a contact person; and
3. A brief statement indicating the applicant's intent to submit a proposal.

Failure to submit a Letter of Intent is not grounds for disqualification. Prospective applicants that submit a Letter of Intent and decide later not to apply will not be penalized.

Please email your non-binding Letter of Intent to Apply by Monday, May 15, 2023. Please identify the email subject line as "ORT Letter of Intent" and submit the letter to: ORT@bscc.ca.gov.

Scoring Panel

To ensure successful program design and implementation, the BSCC uses Executive Steering Committees (ESC) and Scoring Panels to inform decision making related to the Board's programs. The BSCC's ESCs and Scoring Panels are composed of subject matter experts, community partners, and interested parties representing both the public and private sectors. The BSCC makes every attempt to include diverse representation on its ESCs and Scoring Panels, in breadth of experience, geography and demographics.

The Organized Retail Theft Prevention Grant Program will convene a Scoring Panel. The Scoring Panel will read and rate submissions and develop funding recommendations for the Board. The Board may approve, reject, or revise those recommendations. Members of the Scoring Panel are not paid for their time but are reimbursed for travel expenses incurred to attend meetings. If the BSCC is unable to convene a full Scoring Panel, BSCC staff may rate proposals. Please check the BSCC website for updated information on the Scoring Panel.

Conflicts of Interest

Existing law prohibits any grantee, subgrantee, partner, or like party participating on the Organized Retail Theft Prevention Grant Program Scoring Panel from receiving funds from the grants awarded under this RFP. Applicants who are awarded grants under this RFP are responsible for reviewing the Scoring Panel membership roster and ensuring that no grant dollars are passed through to any entity represented by any member of the Scoring Panel.

Description of the Grant

The Organized Retail Theft Prevention Grant Program was established in Senate Bill 154 (SB 154) (Appendix A). Per SB 154:

> Grant funds shall be used to support local law enforcement agencies in preventing and responding to organized retail theft, motor vehicle or motor vehicle accessory theft, or cargo theft. Permissible uses of grant funds include, but are not limited to, purchase of technology or other equipment to help deter strategies for preventing or responding to crime. These funds shall be used to supplement and not supplant existing funds for these activities.
>
> All entities receiving grant funding shall be required to comply with all applicable privacy laws and regulations.
>
> Grants shall be made on a competitive basis to localities that can demonstrate, using data, that organized retail theft, motor vehicle or motor

vehicle accessory theft, or cargo theft pose a significant problem in their jurisdictions.

An applicant shall submit a proposal, in a form prescribed by the Board of State and Community Corrections, which shall include, but not be limited to, the following:

a) Data demonstrating the nature and scale of the specific crime problem, which the applicant proposes to address using grant funds.
b) Clearly defined and measurable objectives for this grant.
c) A description of how the applicant proposes to use the grant funds to achieve the stated objectives, including any plans to coordinate or collaborate with other entities such as public agencies, community organizations, or retailers.
d) A discussion of research or other evidence indicating that the proposed activities would likely achieve the intended objectives.
e) A discussion of how the applicant plans to sustain the proposed activities after grant funds expire or an explanation of why proposed activities are limited term in nature.
f) A description of existing or proposed policies to limit racial bias in utilizing these funds.
g) If proposing an investment in surveillance technologies, a description of existing or proposed policies to govern the use of those technologies, including how the applicant will comply with applicable privacy laws and secure any data collected or stored.

The Board of State and Community Corrections shall post to its public website all applications received.

In awarding grants, the Board of State and Community Corrections shall give preference to applicants whose grant proposals demonstrate the greatest need for additional resources and likelihood of success in reducing organized retail theft, motor vehicle or motor vehicle accessory theft, and cargo theft.

In support of these efforts, each applicant will develop a Project Work Plan that identifies measurable project goals, objectives, and commensurate timelines (Appendix B). Please reference the Glossary of Terms (Appendix C) to view key definitions for this RFP.

Eligibility to Apply

Eligible applicants are California police departments, sheriff departments, and probation departments.

Applications must be submitted by the City Council, Board of Supervisors, or the Chief County Administrative Officer. Eligible applicants **may not** submit more than one (1) proposal for funding consideration. However, two (2) or more applicants may submit a

collaborative proposal (e.g., multi-agency proposal). The agencies and jurisdictions comprising the collaborative application are not required to be contiguous.

Lead Public Agency

All applicants are required to designate a Lead Public Agency (LPA) to serve as the coordinator for all grant activities. The LPA is a governmental agency with local authority within the applicant city or county. The applicant may choose to fill the role of LPA itself or it may designate a department, agency, or office under its jurisdiction to serve as the LPA. The role of the LPA is to coordinate with local government agencies and non-governmental organizations to ensure successful implementation of the grant program. The LPA is responsible for data collection and management, invoices, meeting coordination (virtual and/or in-person) and will serve as the primary point of contact with the BSCC.

Eligible Activities

Applicants must propose activities, strategies, or programs that address a minimum of one (1) of the following Program Purpose Areas (PPAs):

- PPA 1: Organized Retail Theft
- PPA 2: Motor Vehicle or Motor Vehicle Accessory Theft
- PPA 3: Cargo Theft

Applicants may implement new activities, strategies, or programs, OR expand existing activities, strategies, or programs (without supplanting funds - see supplanting definition in the General Grant Requirements).

All proposed activities, strategies, or programs must have a link to the Organized Retail Theft Prevention Grant Program as described in the authorizing legislation and this RFP.

Organized Retail Theft Prevention Grant - Program Purpose Areas (PPA)

PPA 1: Organized Retail Theft

For the purposes of the PPA, the definition of organized retail theft is adopted from Penal Code section 490.4.

Organized Retail Theft is defined as acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value, acting in concert with 2 or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen, acting as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of a plan to commit theft, or recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake acts of theft.

For the purposes of this PPA, eligible activities, strategies, or programs, include but are not limited to:

- Programs that promote collaboration and coordination between law enforcement and retailers to reduce organized retail theft.
- Programs that promote collaboration and coordination between law enforcement and District Attorney Offices to prosecute organized retail theft.
- Development of organized retail theft policies and procedures, memorandum of understanding (MOU), and/or formal agreements between law enforcement and retailers.
- Deployment of law enforcement officers and taskforces to combat organized retail theft.
- Use of proactive approaches to minimize organized retail theft risks (e.g., anti-theft devices, use of cameras and security systems).
- Use of databases, equipment, software, and technology to combat organized retail theft.

PPA 2: Motor Vehicle or Motor Vehicle Accessory Theft

For purposes of this PPA, the definition of motor vehicle theft shall have the same meaning as California Vehicle Code section 10851, which defines vehicle theft or the unlawful taking of a vehicle as when any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing. Motor vehicle theft may also include violations of Penal Code section 487, subdivision (d)(1). Motor vehicle accessory theft may include the theft of any part of the vehicle or accessory thereof, including, but not limited to, violations of Penal Code sections 487 and 488.

For the purposes of this PPA, eligible activities, strategies, or programs, include but are not limited to:

- Investigations of motor vehicle and motor vehicle accessory theft.
- Motor vehicle theft prevention public awareness campaigns.
- Programs that deter motor vehicle or motor vehicle accessory theft.
- Use of databases, equipment, software, and technology to track stolen motor vehicles and/or motor vehicle accessories to combat organized retail theft.

PPA 3: Cargo Theft

For purposes of this PPA, cargo theft shall mean the unlawful taking of any cargo including, but not limited to, goods, chattels, money, or baggage that constitutes, in whole or in part, a commercial shipment of freight moving in commerce, from any pipeline system, railroad car, motor truck, or other vehicle, or from any tank or storage facility, station house, platform, or depot, or from any vessel or wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility, or from any intermodal container, intermodal chassis, trailer, container freight station, warehouse, freight distribution facility, or freight consolidation facility. For purposes of this definition, cargo shall be deemed as moving in commerce at all points between the point of origin and the

final destination, regardless of any temporary stop while awaiting transshipment or otherwise. Cargo theft shall also include violations of Penal Code section 487h.

For the purposes of this PPA, eligible activities, strategies, or programs, include but are not limited to:

- Investigations of cargo theft.
- Programs that promote collaboration and coordination between law enforcement and commercial cargo operators (trains, truck, busses, etc.) to reduce organized cargo theft.
- Programs that promote collaboration and coordination between commercial cargo operators and District Attorney Offices to prosecute organized cargo theft.
- Use of databases, equipment, software, and technology to prevent and track stolen cargo.

Grant Period

Proposals selected for funding will be under agreement from October 1, 2023 to June 1, 2027 with the BSCC. The grant agreement service period covers October 1, 2023 and ends on December 31, 2026. However, an additional six (6) months (January 1, 2027, to June 1, 2027) will be included in the term of the grant agreement for the sole purposes of finalizing and submitting a required Local Evaluation Report and finalizing and submitting a required financial audit.

A visual illustration of the grant agreement period is provided below:

October 1, 2023 to June 1, 2027

Implementation	Service Delivery	Service Delivery	Service Delivery	Data Evaluation/ Closeout
Up to 6-Months	**Year 1**	**Year 2**	**Year 3**	**Up to 6-Months**
October 1, 2023 - April 1, 2024	Start Date - December 31, 2024	January 1, 2025 - December 31, 2025	January 1, 2026 - December 31, 2026	January 1, 2027, - June 1, 2027
Implementation period for hiring, procurement, and other activities that facilitate a timely start. Grantees who do not need the full implementation period can begin service delivery at any time once under contract.	Service delivery and data collection	Service delivery and data collection	Service delivery and data collection	Data analysis and evaluation period to analyze data gathered during the service delivery period. Only expenses incurred for evaluation efforts may be incurred in this period.

Criteria for Non-Governmental Organizations

Applicants for the Organized Retail Theft Prevention Grant Program may elect to partner, contract, or establish agreements with non-governmental organizations (NGOs)[1] in the implementation of their program. All NGOs must adhere to terms described on the following page.

Eligibility Criteria for Non-Governmental Organizations Providing Services with BSCC Grant Funds

Any non-governmental organization that receives Organized Retail Theft Prevention Grant Program funds (as either a subgrantee or subcontractor) must:

- Have been duly organized, in existence, and in good standing for at least six (6) months prior to the effective date of its fiscal agreement with the BSCC or with the Organized Retail Theft Prevention Grant Program grantee;
    - Non-governmental entities that have recently reorganized or have merged with other qualified non-governmental entities that were in existence prior to the six (6) month date are also eligible, provided all necessary agreements have been executed and filed with the California Secretary of State prior to the start date of the grant agreement with the BSCC or the start date of the grantee subcontractor fiscal agreement;
- Be registered with the California Secretary of State's Office, if applicable;
- Have a valid Employer Identification Number (EIN) or Taxpayer ID (if sole proprietorship);
- Have a valid business license, if applicable;
- Have no outstanding civil judgments or liens;
- Have any other state or local licenses or certifications necessary to provide the services requested (e.g., facility licensing by the Department of Health Care Services), if applicable; and
- Have a physical address within California. (An agent for service of process with a California address is insufficient.)

All applicants must complete, sign, and submit the BSCC *Grantee Assurance for Non-Governmental Organizations* (Appendix D). Once under contract, grantees must submit an updated *Grantee Assurance for Non-Governmental Organizations* throughout the life of the grant agreement for any additional NGOs that receive funds through subcontracts after awards are made. The BSCC will not reimburse for costs incurred by NGOs that do not meet the BSCC's requirements.

[1] For the purposes of this RFP, NGOs include nonprofit and for-profit community-based organizations, faith-based organizations, evaluators (except government institutions such as universities), grant management companies, and any other non-governmental agency or individual.

Local Impacts

The Organized Retail Theft Prevention Grant Program encourages collaboration, communication, and innovation to combat organized retail theft. In supporting this approach, proposed projects may have impacts on retailers and local government agencies that prevent projects from operating as intended (e.g., increased law enforcement presence in retail spaces, increased referrals to the District Attorney's Office, overlapping or duplicative public awareness campaigns, etc.) As a part of the application, each Lead Agency will be required to acknowledge any anticipated impacts from the implementation of the proposed project (Attachment E).

Written Agreement from Key Partners

If the success of the applicant's proposed activity, strategy, or program relies on the participation of an outside agency or organization (i.e., an entity other than the applicant or LPA), the applicant must include a Letter of Commitment. Letter(s) of Commitment should reflect that the outside agency or organization is aware of the proposed project, is committed to ensuring the success of the project, their role, and agrees to participate.

Examples of key roles played by outside entities could include the following:

- Data Collection Partnerships
- Referral Sources
- Service Delivery Location

A Letter of Commitment must include the name of the outside entity, be signed by the executive officer, department head, or other authorized representative, and be dated within three (3) months of the proposal submission to the BSCC. Outdated letters or letters that speak to a partnership or grant activities outside of the activities listed in this proposal, will not be accepted. See Appendix F for a sample Letter of Commitment.

A Letter of Commitment is not required if the applicant has determined that an outside agency or organization is not critical to the launch or ongoing implementation of the proposed program.

Policies Limiting Racial Bias

Applicants must provide a description of existing or proposed policies to limit racial bias when utilizing these funds. Applicants will be required to upload existing or proposed policies in a Microsoft Word Document or PDF via the BSCC-Submittable Application portal. (Appendix A, Provision 5(f).)

Policies on Surveillance Technology

Applicants proposing an investment in surveillance technologies must provide a description of existing or proposed policies to govern the use of those technologies, including how the applicant will comply with applicable privacy laws and secure any data collected or stored. Applicants will be required to upload existing or proposed policies in a Microsoft Word Document or PDF via the BSCC-Submittable Application portal. (Appendix A, Provision 5(g).)

Organizational Capacity and Coordination

Applicants will be rated, in part, on how well they demonstrate they have the experience, a staffing plan, and any partnerships necessary to implement the proposed strategy. If an applicant is unable to identify staff and/or subcontractors until after the grant is awarded, the applicant should explain, at a minimum, the process and criteria by which they will select staff and/or subcontractors after the award. Distinct from administrative staff and partners, applicants must also demonstrate how they plan to ensure that the staff who deliver the services have backgrounds and experience that are relevant to the proposed strategy and/or target population.

Funding Information

This RFP makes $242,250,000[2] available competitively to city police, county sheriffs' departments, and probation departments to support local law enforcement agencies in preventing and responding to organized retail theft, motor vehicle or motor vehicle accessory theft, or cargo theft.

Funding Categories

Recognizing that applicants have different capacities, resources, and needs, there are two categories within which applicants will compete. An applicant may apply in either the Medium or Large Scope Category. This means Medium Scope Projects will compete against other Medium Scope Projects and Large Scope Projects will compete against other Large Scope Projects for funding.

The maximum an applicant may apply for is up to $6,125,000 in the Medium Scope category OR up to $15,650,000 in the Large Scope category. Applicants may apply for any dollar amount up to and including the maximum grant amount identified in each category. An illustration of the funding categories, maximum grant award, and total available funding by category is provided below:

Funding Categories	Maximum Grant Award	Total Available Funding
Medium Scope	Up to **$6,125,000**	$85,750,000
Large Scope	Up to **$15,650,000**	$156,500,000
Total Funding Available for Competitive Grants:		**$242,250,000**

***NOTE**: Funding must last for the entirety of the grant (October 1, 2023 to June 1, 2027).*

Multi-Agency Partnerships

Applicants may apply for funding as part of a multi-agency partnership (two or more agencies). The agencies and jurisdictions comprising the collaborative application are not required to be contiguous. One (1) Lead Public Agency must be identified on behalf of the partnership.

[2] Provided funding is appropriated in the FY 2023-2024 and 2024-25 State Budget Acts.

Multi-agency partnerships (Medium Scope or Large Scope) may apply for up to the maximum grant award in that category multiplied by the number of partnering applicants.

For Example:

- Four (4) eligible applicants in the Medium Scope category may submit one application for up to $24,500,000
    - $6,125,000 (Medium Scope Max) x 4 (# of Agencies) = $24,500,000
- Two (2) eligible applicants in the Large Scope category may submit one application for up to $31,300,000
    - $15,650,000 (Large Scope Max x 2 (# of Agencies) = $31,300,000

Funding Decisions

Applicants will compete for funds within the Medium or Large Scope Category. Proposals will be evaluated, scored, and a ranked list of all scored proposals will be generated. The BSCC will move down the ranked lists to fund all qualified applicants in each of the two funding categories until all funds in that category are exhausted. Applicants that fall at the cut-off point may be offered a partial award if there are not sufficient remaining funds to make a full award.

If funding remains in one or more categories, the following will occur:

- Funds remaining in the Medium Scope Category after all qualified applicants in that category have been fully funded, will be used to fund any additional qualified applicants in the Large Scope Category.

- Funds remaining in the Large Scope Category after all qualified applicants in that category have been fully funded, will be used to fund any additional qualified applicants in the Medium Scope Category.

If an applicant or grantee relinquishes an award, BSCC has authority to offer that award to the next qualifying applicant(s) on the ranked list.

Eligible Funding Activities

Organized Retail Theft Prevention Grant Program funds must address at least one (1) Program Purpose Areas (PPAs) as identified in the Eligible Activities section. To support local law enforcement agencies in preventing and responding to organized retail theft, motor vehicle or motor vehicle accessory theft, or cargo theft, eligible expenses for this RFP include, but are not limited to, the following:

- Automated License Plate Readers
- Cameras
- Case Management Systems
- Computers/Laptops/Tablets
- Databases
- Investigative Software
- Online and Print Advertising

- RFI Tracker/Tracking Devices
- Routers/Modems/Hotspots
- Staff expenses, including overtime
- Vehicles

Please note, the above list is not intended to be exhaustive. All proposed expenses must have a link to the Organized Retail Theft Prevention Grant Program as described in the authorizing legislation and this RFP.

Match Requirement

No match is required for the Organized Retail Theft Prevention Grant Program.

Data Collection, Reporting, and Evaluation Requirements

Projects selected for funding will be required to submit a Local Evaluation Plan and Local Evaluation Report. Applicants are encouraged, but not required, to use outside evaluators to ensure objective and impartial evaluations. This may include, but is not limited to, community colleges, universities, and research organizations.

Required Set-Aside for Evaluation Efforts

Grantees are required to set aside at least $75,000 but not more than 5% percent of the total grant award for data collection and evaluation efforts, including data collection for the Quarterly Progress Reports and statewide evaluation (see below) and the development of the Local Evaluation Plan and Local Evaluation Report.

Local Evaluation Plan

The purpose of the Local Evaluation Plan is to ensure that projects funded by the BSCC can be evaluated. Grantees will be expected to include a detailed description of how the applicant will assess the effectiveness of the proposed program in relationship to each of its goals and objectives identified in the proposal. A relationship between the goals and objectives identified in the proposal should be apparent in the Local Evaluation Plan.

The Local Evaluation Plan should describe the evaluation design or model that will be used to evaluate the effectiveness of the project component(s), with the project goals and the project objectives clearly stated. Applicants should also address process and outcome evaluations. Once submitted, any modifications to the Local Evaluation Plan must be approved in advance by the BSCC. More detailed instructions on the Local Evaluation Plan will be made available to successful applicants. The Local Evaluation Plan is due no later than April 1, 2024.

Local Evaluation Report

Following project completion, grantees are required to complete a Local Evaluation Report. The Local Evaluation Report must be in a format prescribed by the BSCC. The purpose of the Local Evaluation Report is to determine whether the overall project (including each individual component) was effective in meeting the goals laid out in the Local Evaluation Plan.

To do this, the grantee must assess and document the effectiveness of the activities that were implemented within each individual project component. These activities should have been identified in the previously submitted Local Evaluation Plan. More detailed instructions on the Local Evaluation Report will be made available to successful applicants. The Local Evaluation Report is due no later than June 1, 2027.

Statewide Evaluation

BSCC Research will conduct a statewide evaluation of the impact of the initiatives supported by the grant funding including the outcomes and objectives that were achieved. The evaluator will: develop the research methodology for the statewide evaluation; design and develop instruments for collecting and evaluating data from grantees; provide ongoing technical assistance to grantees for data collection and evaluation activities; compile, screen and analyze data obtained from grantees; and develop a final report on the impact of the program. As a condition of award, grantees agree to collect data requested for the evaluation (this may include standardized Quarterly Progress Report format with specified baseline, output, and/or outcome measures) and fully cooperate and share information within timelines set for the evaluation.

General Grant Requirements

Audit Requirements

Grantees are required to provide the BSCC with a financial audit that covers the service delivery period of the grant (October 1, 2023 - December 31, 2026). The audit report will be due no later than June 1, 2027. The financial audit shall be performed by a Certified Public Accountant or a participating county or city auditor that is organizationally independent from the participating county or city's project financial management functions. Expenses for the final audit may be reimbursed for actual costs up to $25,000.

In addition, the BSCC reserves the right to call for a program or financial audit at any time between the execution of the grant agreement and three (3) years following the end of the grant period. The Department of General Services, the California State Auditor, the Department of Finance, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this grant.

BSSC Grant Agreement

Applicants approved for funding by the BSCC Board are required to enter into a Grant Agreement with the BSCC. Grantees must agree to comply with all terms and conditions of the Grant Agreement. A sample Grant Agreement for the Organized Retail Theft Prevention Grant Program is available on the BSCC website.

The Grant Agreement start date is expected to be October 1, 2023. Grant Agreements are considered fully executed only after they are signed by both the grantee and the BSCC and the BSCC is in receipt of all required attachments including documentation of signing authority. Work, services, and encumbrances cannot begin prior to the Grant Agreement start date. Any work, services and encumbrances that occur after the start

date but prior to Grant Agreement execution may not be reimbursed. Grantees and all subgrantees are responsible for maintaining their Grant Agreement, all invoices, records, and relevant documentation for the life of the grant cycle plus three (3) years after the final payment under the contract.

Debarment, Fraud, Theft or Embezzlement

It is the policy of the BSCC to protect grant funds from unreasonable risks of fraudulent, criminal, or other improper use. As such, the Board will not enter into contracts or provide reimbursement to applicants that have been:

1. Debarred by any federal, state, or local government entities during the period of debarment; or
2. Convicted of fraud, theft, or embezzlement of federal, state, or local government grant funds for a period of three years following conviction.

Furthermore, the BSCC requires grant recipients to provide an assurance that there has been no applicable debarment, disqualification, suspension, or removal from a federal, state, or local grant program on the part of the grantee at the time of application and that the grantee will immediately notify the BSCC should such debarment or conviction occur during the term of the Grant contract.

BSCC also requires that all grant recipients include, as a condition of award to a subgrantee or subcontractor, a requirement that the subgrantee or subcontractor will provide the same assurances to the grant recipient. If a grant recipient wishes to consider a subgrantee or subcontractor that has been debarred or convicted, the grant recipient must submit a written request for exception to the BSCC along with supporting documentation. All applicants must complete an assurance certifying they are compliant with the BSCC's policies on debarment, fraud, theft, and embezzlement (Appendix G).

Governing Board Resolution

Successful applicants will be required to submit a Resolution from their Governing Board before the grant award can be finalized and funds awarded. A signed resolution is not required at the time of proposal submission, but applicants are advised that no financial invoices will be processed for reimbursement until the Governing Board Resolution has been received by the BSCC. A sample Governing Board Resolution can be found in (Appendix H).

Grantee Orientation

Following the start of the grant period, BSCC staff will conduct a Virtual Grantee Orientation (October 2023, date to be determined). The purpose of this mandatory session is to review the program requirements, invoicing, and budget modification processes, data collection and reporting requirements, as well as other grant management and monitoring activities. Typically, the Project Director, Financial Officer, and Day-to-Day Contact must attend. Grantees are also strongly encouraged to include the individual tasked with Data Collection and Evaluation. Award recipients will be provided additional details regarding the Grantee Orientation in October 2023.

Invoices

Disbursement of grant funds occurs on a reimbursement basis for costs incurred during a reporting period. The State Controller's Office (SCO) will issue the warrant (check) to the individual designated on the Applicant Information Form as the Financial Officer for the grant. Grantees must submit invoices to the BSCC on either a monthly or quarterly basis through an online process no later than 45 days following the end of the invoicing period. Grantees will make their choice between monthly or quarterly invoicing prior to grant agreement execution.

Grantees must maintain adequate supporting documentation for all costs claimed on invoices. BSCC staff will conduct a desk review, which requires grantees to submit electronic documentation to support all grant funds claimed during the invoicing period. In addition, BSCC staff may conduct on-site monitoring visits that include a review of documentation maintained as substantiation for project expenditures with grant funds. Additional information about invoicing can be found in the BSCC Grant Administration Guide.

Monitoring

The BSCC staff will monitor each project to assess whether the project is in compliance with grant requirements and making progress toward grant objectives. As needed, monitoring visits may also occur to provide technical assistance on fiscal, programmatic, evaluative, and administrative requirements. For your reference, a Comprehensive Monitoring Visit checklist can be found on the Corrections Planning and Grants Program website.

Quarterly Progress Reports

Grant award recipients are required to submit quarterly progress reports to the BSCC. Progress reports are a critical element in BSCC's monitoring and oversight process. Grantees who are unable to demonstrate that they are making sufficient progress toward project goals and objectives and that funds are being spent in accordance with the Grant Agreement could be subject to the withholding of funds. Once grants are awarded, BSCC will work with grantees to create custom progress reports.

Supplanting

Supplanting is the deliberate reduction in the amount of federal, state, or local funds being appropriated to an existing program or activity because grant funds have been awarded for the same purposes. Supplanting is strictly prohibited for all BSCC grants. Organized Retail Theft Prevention Grant Program funds shall be used to support new program activities or to augment or expand existing program activities but shall not be used to replace existing funds. It is the responsibility of the grantee to ensure that supplanting does not occur. The grantee must keep clear and detailed financial records to show that grant funds are used only for allowable costs and activities.

Travel

Travel is usually warranted when personal contact by project staff is the most appropriate method of conducting project-related business. Travel to and from training conferences may also be allowed. The most economical method of transportation, in terms of direct expenses to the project and the employee's time away from the project, must be used. Projects are required to include sufficient per diem and travel allocations for project related personnel, as outlined in the Grant Award, to attend any mandated BSCC training conferences or workshops outlined in the terms of the program.

- **Units of Government**
  Units of government may follow either their own written travel and per diem policy or the State's policy. Units of government that plan to use cars from a state, county, city, district carpool, or garage may budget either the mileage rate established by the carpool or garage, or the state mileage rate, not to exceed the loaning agency rate.

- **Non-Governmental Organizations (NGOs)**
  An NGO receiving BSCC funds must use the California State travel and per diem policy, unless the Grantee's written travel policy is more restrictive than the State's, in which case it must be used. Reimbursement is allowed for the cost of commercial carrier fares, parking, bridge, and road tolls, as well as necessary taxi, bus, and streetcar fares.

- **Out-of-State Travel**
  Out-of-state travel is restricted and only allowed in exceptional situations. Grantees must receive written BSCC approval prior to incurring expenses for out-of-state travel. Even if previously authorized in the Grant Award, Grantees must submit to the BSCC a separate formal request (on Grantee letterhead) for approval. Out-of-state travel requests must include a detailed justification and budget information.

  In addition, California prohibits travel, except under specified circumstances, to states that have been found by the California Attorney General to have discriminatory laws. The BSCC will not reimburse for travel to these states unless the travel meets a specific exception under Government Code section 11139.8, subdivision (c). For additional information, please see: https://oag.ca.gov/ab1887.

Overview of the RFP Process

Confirmation of Receipt of Proposal

Upon submission of a proposal, applicants will receive a confirmation email from the BSCC stating that the proposal has been received.

Disqualification

Disqualification - PLEASE REVIEW CAREFULLY



The following will result in an automatic disqualification:

- Submission is not received by 5:00 P.M. (PST) on Friday, July 7, 2023
- Applicant does not meet the Eligibility Criteria
- Application, and all required attachments, are not submitted via the BSCC-Submittable Application portal
- Budget Attachment is incomplete (e.g., impacted fields are not completed)
- Funding request exceeds allowable amount in the Medium or Large Scope category
- Attachment(s) are illegible
- Attachment(s) will not open, or the file(s) are corrupted

NOTE: Disqualification means that the proposal will not move forward to the Scoring Panel for the Proposal Rating Process, and, therefore, will NOT be considered for funding.

Proposal Rating Process

Unless disqualified, proposals will advance to the Scoring Panel for funding consideration. Proposals will be evaluated in accordance with the BSCC's *Grant Proposal Evaluation Process* (link) and as described below. The Scoring Panel will read and assign ratings to each proposal in accordance with the prescribed rating factors listed in the table below. Scoring Panel members will base their ratings on how well an applicant addresses the criteria listed under each rating factor within the Proposal Narrative and Budget Sections. Scoring Panel ratings, once submitted to the BSCC, will be final.

At the conclusion of this process, applicants will be notified of the Board's funding recommendations. It is anticipated that the Board will act on the recommendations at its meeting on September 14, 2023. Applicants and their partners are not to contact members of the Scoring Panel or the BSCC Board to discuss proposals.

Rating Factors

The Rating Factors that will be used and the maximum points allocated to each rating factor are shown in the table below. Applicants are asked to address each of these rating factors as a part of their proposal. A percent of total value is assigned to each Rating Factor, correlating to its importance within the overall project (see Percent of Total Value column).

	Rating Factors	Point Range	Percent of Total Value	Weighted Rating Factor Score
1	Project Need	0-5	20%	40
2	Project Description	0-5	35%	70
3	Project Organizational Capacity and Coordination	0-5	15%	30
4	Project Evaluation and Monitoring	0-5	10%	20
5	Project Budget	0-5	20%	40
Maximum Proposal Score:			**100%**	**200**

Raters will rate an applicant's response to each Rating Factor on a scale from 0 to 5, according to the Six-Point Rating Scale shown below. For each Rating Factor, the rating point received is then weighted according to the "Percent of Total Value" column associated with the Rating Factor to arrive at the final Weighted Rating Factor Score. The Weighted Rating Factor Scores are then added together for a final overall proposal score. The maximum possible proposal score is 200.

Senate Bill 154 requires the BSCC to give preference to applicants whose grant proposals demonstrate the greatest need for additional resources and likelihood of success in reducing organized retail theft, motor vehicle or motor vehicle accessory theft, and cargo theft. In fulfillment of this request, 110 out of a total of 200 points is allocated between the Project Need and Project Description categories.

Six Point Rating Scale

Not Responsive 0	Poor 1	Fair 2	Satisfactory 3	Good 4	Excellent 5
The response **fails to address** the criteria.	The response addresses the criteria in a **very inadequate** way.	The response addresses the criteria in a **non-specific or unsatisfactory** way.	The response addresses the criteria in an **adequate** way.	The response addresses the criteria in a **substantial** way.	The response addresses the criteria in an **outstanding** way.

Summary of Key Dates

The following table shows the key dates for the Organized Retail Theft Prevention Grant Program.

Activity	Date
Present the RFP for BSCC Board approval	April 13, 2023
Release the RFP	April 14, 2023
Bidders' Conference	May 11, 2023
Letter of Intent Due to the BSCC	May 15, 2023
Proposals Due to the BSCC	**July 7, 2023**
Proposal Rating Process and Development of Funding Recommendations	July-August 2023
BSCC Board Considers Funding Recommendations	September 14, 2023
Notices to Applicants	September 15, 2023
Grant Period Begins	**October 1, 2023**
Mandatory New Grantee Orientation	October 2023

PART II: PROPOSAL INSTRUCTIONS

This document/section contains the necessary information for completing the Organized Retail Theft Prevention Grant Program Application. The Application and all required attachments are provided on the BSCC website.

Proposal Narrative and Budget Sections

The five rating factors that will be addressed in the Proposal Narrative and the Proposal Budget sections, are shown below

	Rating Factor	Percent Value	Addressed In:
1	Project Need	20%	Proposal Narrative
2	Project Description	35%	
3	Project Organizational Capacity and Coordination	15%	
4	Project Evaluation and Monitoring	10%	
5	Project Budget	20%	Proposal Budget

Proposal Narrative Instructions

Applicants will complete the Proposal Narrative by accessing the BSCC-Submittable application portal and responding to a series of prompts. The Proposal Narrative must address the Project Need, Project Description, Project Organizational Capacity and Coordination, and Project Evaluation and Monitoring Rating Factors. Please do not include website links, charts, tables, or graphs when responding.

Each Rating Factor has a character limit as shown below:

	Rating Factor	Total Characters	Microsoft Word Equivalent*
1	Project Need	6,711	Up to 3 (Three) Pages
2	Project Description	11,185	Up to 5 (Five) Pages
3	Project Organizational Capacity and Coordination	4,474	Up to 2 (Two) Pages
4	Project Evaluation and Monitoring	4,474	Up to 2 (Two) Pages

**Assumes text is in a Microsoft Word document in Arial 12-point font with one-inch margins on all four sides and at 1.5-line spacing*.

Character Counter

The BSCC-Submittable application portal includes an automatically enabled character counter. This feature shows the number of characters used and the remaining number of characters before the limit is met. If the limit is exceeded, a red prompt will appear with the message "You have exceeded the character limit". Applicants are prohibited from submitting the Organized Retail Theft Prevention Grant Program Application until they comply with all character limit requirements.

Bibliography

Applicants ***may***, but are not required to, include a bibliography containing citations, using either the Modern Language Association (MLA) or American Psychological Association (APA) style in the "OPTIONAL Bibliography" field on the BSCC-Submittable application page. The bibliography may not exceed 2,218 total characters (includes punctuation, numbers, spaces, and any text). In Microsoft Word, this is approximately one (1) page in Arial 12-point font with one-inch margins on all four sides and at 1.5-line spacing.

Required Attachments

In addition to addressing the Proposal Narrative criteria, the following attachments must be completed and uploaded in the identified fields in the BSCC-Submittable application portal at the time of submission:

- Project Work Plan (Appendix B).
- Grantee Assurance for Non-Governmental Organizations (Appendix D).
- Local Impact Letter(s) *If Applicable* (Appendix E)
- Letter(s) of Commitment *If Applicable* (Appendix F)
- Certification of Compliance with BSCC Policies on Debarment, Fraud, Theft, and
- Embezzlement (Appendix G)
- Governing Board Resolution *Optional* (Appendix H)

Proposal Narrative Rating Factors

Section 1: Project Need (Percent Value – 20%)

Within this section, address the criteria that defines the Project Need Rating Factor (see table below) in a cohesive, comprehensive, and concise narrative format.

Project Need: The applicant described a need that is pertinent to the intent of the grant. The elements that comprise this Rating Factor are listed below. Addressing each element does not in itself merit a high rating; rather, although each element is to be addressed (when applicable), it is the quality of the response to each that will be evaluated. The response will be evaluated with a single rating based on a scale of 0-5.	
1.1	Describe the need(s) to be addressed, the process used to determine the need(s), and how the need is related to the intent of the grant program.
1.2	Identify the conditions or elements that contribute to the need (e.g., service gaps, geographic location, accessibility).

1.3	Use relevant local qualitative and/or quantitative data with citations to demonstrate the nature and scale of the specific theft problem (organized retail, motor vehicle, motor vehicle accessory, and/or cargo) and provide a compelling justification for grant funds.

Section 2: Project Description (Percent Value – 35%)
Within this section address the criteria that defines the Project Description Rating Factor (see table below) in a cohesive, comprehensive, and concise narrative format.

Project Description: The applicant provided a description of the project that is related to the identified need and the intent of the grant. The elements that comprise this Rating Factor are listed below. Addressing each element does not in itself merit a high rating; rather, although each element is to be addressed (when applicable), it is the quality of the response to each that will be evaluated. The response will be evaluated with a single rating based on a scale of 0-5.	
2.1	Describe the proposed project that will address the need(s) identified in the Project Need section. The description should include: • the proposed activities/services/interventions of the project including how they will be delivered and the length and duration. • the target area and/or population which will be the focus of the project, including how and why it was selected. • how the proposed activities/services/interventions will address the Project Need and the intent of the grant program. • plans to coordinate or collaborate with other entities, if any, such as public agencies (e.g., law enforcement, non-law enforcement, prosecutors' offices), community organizations, or retailers.
2.2	Describe the proposed project's goals, objectives, and impact that includes a relationship to the identified need(s) and intent of the grant program. • The completed Project Work Plan (Appendix B) is appropriate for the proposed project aligning with the identified need(s) and intent of the grant program. • The completed Project Work Plan identifies the top goals and objectives (see Appendix C for definitions) and how those will be achieved in terms of the activities, responsible staff/partner agencies, process and outcome measures, data sources, and start and end dates.
2.3	Describe the rationale for the proposed activities/services/interventions including research or other evidence indicating that the intended goals and objectives are likely to be achieved.
2.4	Describe existing or proposed policies to: • govern the use of surveillance technology (if applicable) including complying with applicable privacy laws/regulations and securing any data collected or stored.
2.5	Describe existing or proposed policies to: • limit racial bias.

Section 3: Project Organizational Capacity & Coordination (Percent Value – 15%)
Within this section, address the criteria that define the Project Organizational Capacity and Coordination Rating Factor (see table below) in a cohesive, comprehensive, and concise narrative format.

Project Organizational Capacity and Coordination: The applicant described their organization's ability to implement the proposed project. The elements that comprise this Rating Factor are listed below. Addressing each element does not in itself merit a high rating; rather, although each element is to be addressed (when applicable), it is the quality of the response to each that will be evaluated. The response will be evaluated with a single rating based on a scale of 0-5.	
3.1	Describe the applicant's ability to administer the proposed project. In the descriptions include: • the applicant's staffing required and available to operate the project including staff qualifications and training. • the extent to which existing staff resources will be utilized. • project management and oversight to ensure the proposed project is implemented as intended.
3.2	Describe any partner agency(ies) or coordination with other agencies necessary to implement the proposed project. If partners are to be selected after the grant is awarded, specify the process and criteria for selecting the partner agency(ies). The description of partners should include: • their involvement/role that is aligned with the proposed project. • their credentials, involved personnel, experience and capability to conduct the project, and the value the partners add to the proposed project. • the plan to coordinate with these partners. • key partners' letters of commitment provided as attachments (Attachment G).
3.3	Describe the timeline for the execution of contracts or memorandums of understanding with any partner agency(ies) and the implementation of involvement/role to provide services or activities such that they are in a reasonable timeframe to support the project. Include a description of the readiness to proceed, if funded.
3.4	Describe the management structure and decision-making process for the proposed project.
3.5	Describe the plans to sustain the proposed project after grant funds expire or why the proposed project is limited in term.

Section 4: Project Evaluation and Monitoring (Percent Value – 10%)
Within this section, address the criteria that define the Project Evaluation and Monitoring Rating Factor (see table below) in a cohesive, comprehensive, and concise narrative format.

Project Evaluation and Monitoring: The applicant described how it will monitor and evaluate the effectiveness of the proposed project. The elements that are to comprise this Rating Factor are listed below. Addressing each element does not itself merit a high rating; rather, although each element is to be addressed, it is the quality of the response to each that is to be evaluated. The response will be evaluated with a single rating based on a scale of 0-5.	
4.1	Describe the plan to determine the qualified internal staff and/or external partner or entity that will conduct the project evaluation and how monitoring activities will be incorporated in the various phases of the project (e.g., start-up, implementation, service delivery period).
4.2	Identify and define the process measures and outcome measures that are quantifiable and are in line with the intent of the proposed project and the objectives listed in the Work Plan.
4.3	Describe the preliminary plan for monitoring the project to ensure the project components are implemented as intended.
4.4	Describe the preliminary plan for collecting and evaluating data, including baseline data, related to the process measures and outcome measures identified in 4.2. Describe a plan for entering into data sharing agreements, if necessary.
4.5	Describe the research design or methodology that will allow for an assessment of whether the strategy implemented achieved the intended outcomes.

Proposal Budget Instructions

As part of the application process, applicants are required to complete and upload a Proposal Budget Table and Budget Narrative (Budget Attachment) in the budget section of the BSCC-Submittable application page. The Budget Attachment is provided on the BSCC website.

Applicants should be aware that budgets will be subject to review and approval by the BSCC staff to ensure all proposed costs listed within the budget narrative are allowable and eligible for reimbursement. Regardless of any ineligible costs that may need to be addressed post award, the starting budget for the reimbursement invoices and the total amount requested will be the figures used for the Standard Grant Agreement.

Applicants are solely responsible for the accuracy and completeness of the information entered in the Proposal Budget Table and Budget Narrative. Detailed instructions for completing the Budget Attachment are listed on the Instructions tab of the Excel workbook. All project costs must be directly related to the objectives and activities of the project. The Budget Table must cover the entire grant period.

For additional guidance related to grant budgets, refer to the BSCC Grant Administration Guide.

Proposal Budget Rating Factor

Section 5: Project Budget (Percent Value – 15%)

The following items are rated as part of this section and must be addressed by the applicant in the Budget Attachment.

Project Budget: The applicant provided a complete Budget Attachment (Budget Table and Budget Narrative) for the proposed project. The elements against which the Budget Attachment will be rated are listed below. Addressing each element does not in itself merit a high rating; rather, although each element is to be addressed (when applicable), it is the quality of the response to each that will be evaluated. The response will be evaluated with a single rating based on a scale of 0-5.	
5.1	Provide complete and detailed budget information in the Budget Attachment (Budget Table and Budget Narrative) that for each section: • includes a brief explanation justifying each expense. • ensures expenses are appropriate for the grant's intent, the project's goals, and planned activities.

PART III: APPENDIXES

Appendixes

This section includes the following appendixes:

- Appendix A: Senate Bill 154
- Appendix B: Project Work Plan
- Appendix C: Glossary of Terms
- Appendix D: Grantee Assurance for Non-Governmental Organizations
- Appendix E: Local Impact Letter(s)
- Appendix F: Letter(s) of Commitment
- Appendix G: Certification of Compliance with BSCC Policies on Debarment, Fraud, Theft, and Embezzlement
- Appendix H: Governing Board Resolution

5227-117-0001—For local assistance, Board of State and Community Corrections 85,000,000

Schedule:

	4945-Corrections Planning and Grant Programs	
(1)	.....	85,000,000

Provisions:

1. The amount appropriated in this item shall be for competitive grants for city police, county sheriffs' departments, and probation departments. These law enforcement agencies may apply individually or on behalf of a group of entities that includes other law enforcement agencies or non-law-enforcement entities, including, but not limited to, community-based organizations or prosecutors' offices.

2. Grant funds shall be used to support local law enforcement agencies in preventing and responding to organized retail theft, motor vehicle or motor vehicle accessory theft, or cargo theft. Permissible uses of grant funds include, but are not limited to, purchase of technology or other equipment to help deter strategies for preventing or responding to crime. These funds shall be used to supplement and not supplant existing funds for these activities.

3. All entities receiving grant funding shall be required to comply with all applicable privacy laws and regulations.

4. Grants shall be made on a competitive basis to localities that can demonstrate, using data, that organized retail theft, motor vehicle or motor vehicle accessory theft, or cargo theft pose a significant problem in their jurisdictions.

5. An applicant shall submit a proposal, in a form prescribed by the Board of State and Community Corrections, which shall include, but not be limited to, the following:

   (a) Data demonstrating the nature and scale of the specific crime problem, which the applicant proposes to address using grant funds.

(b) Clearly defined and measurable objectives for this grant.

(c) A description of how the applicant proposes to use the grant funds to achieve the stated objectives, including any plans to coordinate or collaborate with other entities such as public agencies, community organizations, or retailers.

(d) A discussion of research or other evidence indicating that the proposed activities would likely achieve the intended objectives.

(e) A discussion of how the applicant plans to sustain the proposed activities after grant funds expire or an explanation of why proposed activities are limited term in nature.

(f) A description of existing or proposed policies to limit racial bias in utilizing these funds.

(g) If proposing an investment in surveillance technologies, a description of existing or proposed policies to govern the use of those technologies, including how the applicant will comply with applicable privacy laws and secure any data collected or stored.

6. The Board of State and Community Corrections shall post to its public website all applications received.

7. In awarding grants, the Board of State and Community Corrections shall give preference to applicants whose grant proposals demonstrate the greatest need for additional resources and likelihood of success in reducing organized retail theft, motor vehicle or motor vehicle accessory theft, and cargo theft.

8. Each grantee shall report to the Board of State and Community Corrections, in a form and at intervals prescribed by the board, their progress in achieving the grant objectives.

9. The Board of State and Community Corrections shall, by no later than 90 days following the close of each grant cycle, prepare and submit a report to the Legislature in compliance with Section 9795 of the Government Code regarding the impact of the initiatives supported by the grant. This report, at minimum, shall include: (a) Grant recipients and the amount awarded to each; (b) How the funding was used; (c) What outcomes and objectives were achieved.

Upon order of the Director of Finance, up to 5 percent of the amount appropriated in Schedule (1) shall be transferred to Schedule (1) of Item 5227-001-0001 for costs to administer the grant program. Funds transferred pursuant to this provision are
10. available for encumbrance or expenditure until June 30, 2027.

Any unspent funds identified in Schedule (1) shall revert to the
11. General Fund as of June 30, 2027.

Appendix B: Project Work Plan

Applicants must complete a Project Work Plan. This Project Work Plan identifies measurable goals and objectives, process and outcome measures, activities and services, responsible parties for those activities and services, data sources and estimated timelines. Completed plans should (1) identify the project's top goals and objectives; (2) identify how the goal(s) will be achieved in terms of the activities, responsible staff/partners, and start and end dates, process and outcome measures; and (3) provide goals and objectives with a clear relationship to the need and intent of the grant. As this grant term is for three (3) years, the Project Work Plan must attempt to identify activities/services and estimate timelines for the entire grant term. A minimum of one goal and corresponding objectives, process measures, etc. must be identified.

Applicants must use the Project Work Plan provided below. You will be prompted to upload this document to the BSCC-Submittable Application.

<table>
<tr><td>(1) Goal:</td><td colspan="3">></td></tr>
<tr><td>Objectives (A., B., etc.)</td><td colspan="3">></td></tr>
<tr><td>Process Measures and Outcome Measures:</td><td colspan="3">></td></tr>
<tr><td colspan="2">Project activities that support the identified goal and objectives:</td><td>Responsible staff/partners</td><td colspan="2">Timeline</td></tr>
<tr><td></td><td></td><td></td><td>Start Date</td><td>End Date</td></tr>
<tr><td colspan="2">></td><td>></td><td>></td><td>></td></tr>
<tr><td colspan="5">List data and sources to be used to measure outcomes: ></td></tr>
</table>

(2) Goal:	>		
Objectives (A., B., etc.)	>		
Process Measures and Outcome Measures:	>		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
>	>	>	>
List data and sources to be used to measure outcomes: >			

(3) Goal:	>		
Objectives (A., B., etc.)	>		
Process Measures and Outcome Measures:	>		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
>	>	>	>
List data and sources to be used to measure outcomes: >			

Appendix C: Glossary of Terms

Case Management
A collaborative process which assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an individual's health needs.[3]

Community-Based Organization
For this RFP, a Community-Based Organization is an organization located in the State of California that has been determined by the IRS to have 501(c)(3) status (i.e., nonprofit).

Evaluations (Process and Outcomes)

Process Evaluation[4]
The purpose of the process evaluation is to assess how program activities are being carried out in accordance with goals and objectives. Process measures are designed to answer the question: "What is the program actually doing and is this what we planned it to do?"

Examples of process measures could include:

- Project staff have been recruited, hired, and trained according to the proposal.
- Activities/strategies have been implemented on time according to the proposal.
- Number of interagency agreements entered into by the program compared to the number planned.
- Number of trainings conducted.
- Number of neighborhood meetings conducted.

Outcome Evaluation[5]
The purpose of the outcome evaluation is to identify whether the program "worked" in terms of achieving its goals and objectives. Outcome measures are designed to answer the question: "What results did the program produce?"

Examples of outcome measures include:

- Results of pre/post surveys (e.g., changes in the reported confidence/trust in law enforcement among community members).
- Implementation of regular, ongoing community forums where community dialogue takes place.
- Changes in policies at the Lead Agency level to reflect procedural justice principles.

In an evidence-based practice approach, outcome evaluations must include not only the measures but also analysis of the extent to which the measured results can be attributed to the program rather than to coincidence or alternative explanations.

[3] Source: National Institute of Health

[4] Justice Research and Statistics Association, Juvenile Justice Evaluation Center. (2003, June). Juvenile Justice Program Evaluation: An overview (Second Edition) p. 7. Retrieved from http://www.jrsa.org/njjec/publications/program-evaluation.pdf

[5] Id at pp. 7-8.

Evidence-based / Promising Practices

Evidence-based practices are programs and strategies that have been found effective at improving outcomes, using rigorous scientific research methods. Programs and strategies may be evidence-based across all populations, or only for particular cultures and identities.

Promising practices are programs and strategies that have shown some positive results and potential for improving outcomes. They may have evidence from use in real-world settings, a strong theoretical framework, and/or expert opinion, but have not been fully replicated in scientific studies. Depending on the level of scientific evidence, these are sometimes referred to as “evidence-informed,” "research-supported," or “emerging” practices.

Financial Audit

A financial audit provides assurances that an organization’s financial statements are free of material misstatement based upon the application of generally accepted accounting principles.

Goals and Objectives

Goals and objectives are terms in common use, sometimes used interchangeably because both refer to the intended results of program activities. Goals are longer-term than objectives, more broadly stated and govern the specific objectives to which program activities are directed.

In proposals, goals are defined by broad statements of what the program intends to accomplish, representing the long-term intended outcome of the program.[6]

Examples of goal statements:[7]

- To reduce the number of serious and chronic juvenile offenders.
- To divert nonviolent juvenile offenders from state juvenile correctional institutions.
- To restore the losses suffered by the victims of crimes.

Objectives are defined by statements of specific, measurable aims of program activities.[8] Objectives detail the tasks that must be completed to achieve goals.[9] Descriptions of objectives in the proposals should include three elements:[10]

1. Direction – the expected change or accomplishment (e.g., improve, maintain);
2. Timeframe – when the objective will be achieved; and

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[6] Justice Research and Statistics Association, Juvenile Justice Evaluation Center. (2003, June). *Juvenile Justice Program Evaluation: An overview (Second Edition).* Retrieved from http://www.jrsa.org/njjec/publications/program-evaluation.pdf. *See also* New York State Division of Criminal Justice Services. *A Guide to Developing Goals and Objectives for Your Program.* Retrieved from .

[7] *Id. at p. 4.*

[8] National Center for Justice Planning. Overview of Strategic Planning. *Where Do We Want to Be? Goals and Objectives.* Retrieved from http://ncjp.org/strategic-planning/overview/where-do-we-want-be/goals-objectives.

[9] *Id.; see supra* fn 1.

[10] Justice Research and Statistics Association, Juvenile Justice Evaluation Center. (2003, June). *Juvenile Justice Program Evaluation: An overview (Second Edition)* p. 5. Retrieved from http://www.jrsa.org/njjec/publications/program-evaluation.pdf.

3. Target Population– who is affected by the objective.

Examples of program objectives:[11]

- By the end of the program, young, drug-addicted juveniles will recognize the long-term consequences of drug use.
    - To place eligible juveniles in an intensive supervision program within two weeks of adjudication to ensure offender accountability and community safety.
    - To ensure that juvenile offenders carry out all the terms of the mediation agreements they have worked out with their victims by program completion.

Qualitative Data

Data/information that is based on written or spoken narratives. The purpose of qualitative data/information is to explain and gain insight and understanding of events through collection of narrative data/information.

Quantitative Data

Data/information that is based on numbers and mathematical calculations. The purpose of quantitative data is to explain, predict, and/or control events through focused collection of numerical data.

[11] *Id.*

Appendix D: Grantee Assurance for Non-Governmental Organizations

The Organized Retail Theft Prevention Grant Program Request for Proposals (RFP) includes requirements that apply to non-governmental organizations (NGOs)[12] providing services with grant funds. Grantees are responsible for ensuring that all contracted third parties continually meet these requirements as a condition of receiving funds. The RFP describes these requirements as follows:

Any non-governmental organization that receives Organized Retail Theft Prevention Grant Program funds (as either a subgrantee or subcontractor) must:

- Have been duly organized, in existence, and in good standing for at least six (6) months prior to the effective date of its fiscal agreement with the BSCC or with the Organized Retail Theft Prevention Grant Program grantee;
    - Non-governmental entities that have recently reorganized or have merged with other qualified non-governmental entities that were in existence prior to the six (6) month date are also eligible, provided all necessary agreements have been executed and filed with the California Secretary of State prior to the start date of the grant agreement with the BSCC or the start date of the grantee subcontractor fiscal agreement;

- Be registered with the California Secretary of State's Office, if applicable;
- Have a valid Employer Identification Number (EIN) or Taxpayer ID (if sole proprietorship);
- Have a valid business license, if applicable;
- Have no outstanding civil judgments or liens;
- Have any other state or local licenses or certifications necessary to provide the services requested (e.g., facility licensing by the Department of Health Care Services), if applicable; and
- Have a physical address within California. (An agent for service of process with a California address is insufficient.)

Completing the NGO Assurance (Following Page)

1. Provide the name of the Applicant Agency (the Grantee),
2. List all contracted parties (if known),
3. Check Yes or No to indicate if each contracted part meets the requirements
4. Sign and Submit to the BSCC

NOTE: If the name of the contracted party is unknown or if there will be no contracted parties. Write N/A in the "Name of Contracted Party" field and sign the document.

[12] For the purposes of this RFP, NGOs include nonprofit and for-profit community-based organizations, faith-based organizations, evaluators (except government institutions such as universities), grant management companies, and any other non-governmental agency or individual.

Organized Retail Theft Prevention Grant Program Non-Governmental Organization Assurances			
Name of Applicant:			
Name of Contracted Party	**Address**	**Email / Phone**	**Meets All Requirements**
			Yes ☐ No ☐
			Yes ☐ No ☐
			Yes ☐ No ☐
			Yes ☐ No ☐

*Grantees are required to update this list and submit it to BSCC any time a new third-party contract is executed after the initial assurance date. Grantees shall retain (on-site) applicable source documentation for each contracted party that verifies compliance with the requirements listed in the RFP. The BSCC will not reimburse for costs incurred by any third party that does not meet the requirements listed above and for which the BSCC does not have a signed grantee assurance on file.

A signature below is an assurance that all requirements listed above have been met.

AUTHORIZED SIGNATURE This document must be signed by the person who is authorized to sign the Grant Agreement.			
NAME OF AUTHORIZED OFFICER	**TITLE**	**TELEPHONE NUMBER**	**EMAIL ADDRESS**
STREET ADDRESS	**CITY**	**STATE**	**ZIP CODE**
APPLICANT'S SIGNATURE (Blue Ink Only)			**DATE**

Appendix E: Local Impact Letter(s)

The Organized Retail Theft Prevention Grant Program encourages collaboration, communication, and innovation to combat organized retail theft. In supporting this approach, proposed projects may have impacts on retailers and local government agencies that prevent projects from operating as intended (e.g., increased law enforcement presence in retail spaces, increased referrals to the District Attorney's Office, overlapping or duplicative public awareness campaigns, etc.)

To acknowledge any anticipated impacts, each Lead Public Agency is required to:

- Identify each agency agency(ies) that reasonably could be expected to be impacted by this grant project;

- Submit a Letter of Agreement signed by both the Lead Public Agency and the impacted agency agency(ies) that includes the following:

    - The name of the Organized Retail Theft Prevention Grant Program project and a brief project description;
    - A description of how the Organized Retail Theft Prevention Grant Program project might impact retailers and local government agencies; and
    - An explanation of how the Lead Public Agency and the impacted agency(ies) will work together to address stated impacts.

Note: If the Lead Public Agency concludes that the Organized Retail Theft Prevention Grant Program project **will not** impact any other agency agency(ies), the Lead Public Agency must include a letter to that effect.

Appendix F: Letter(s) of Commitment

If the success of the applicant's proposed activity, strategy, or program relies on the participation of an outside agency or organization (i.e., an entity other than the applicant or LPA), the applicant must include a Letter of Commitment. Letter(s) of Commitment should reflect that the outside agency or organization is aware of the proposed project, is committed to ensuring the success of the project, their role, and agrees to participate.

[To be submitted on letterhead of the OUTSIDE ENTITY]

To: Board of State and Community Corrections
Re: The Organized Retail Theft Prevention Grant Program
Date: [must be within 3 months of proposal submission]

This letter is being submitted to document that [NAME OF THE OUTSIDE ENTITY] agrees to partner on the Organized Retail Theft Prevention Grant Program proposal being submitted by [NAME OF APPLICANT].

As a part of this grant, [NAME OF OUTSIDE ENTITY] agrees to [DESCRIBE THE NATURE OF THE PARTNERSHIP, I.E. WHAT THE OUTSIDE ENTITY IS AGREEING TO DO, ETC.].

Signed by,

Name, Title
[must be the Executive Officer, Department Head, or other Authorized Representative of the Outside Entity]

Appendix G: Certification of Compliance with BSCC Polices on Debarment, Fraud, Theft and Embezzlement

It is the policy of the BSCC to protect grant funds from unreasonable risks of fraudulent, criminal, or other improper use. As such, the Board will not enter into contracts or provide reimbursement to applicants that have been:

1. debarred by any federal, state, or local government entities during the period of debarment; or
2. convicted of fraud, theft, or embezzlement of federal, state, or local government grant funds for a period of three years following conviction.

Furthermore, the BSCC requires grant recipients to provide an assurance that there has been no applicable debarment, disqualification, suspension, or removal from a federal, state or local grant program on the part of the grantee at the time of application and that the grantee will immediately notify the BSCC should such debarment or conviction occur during the term of the Grant contract.

BSCC also requires that all grant recipients include, as a condition of award to a subgrantee or subcontractor, a requirement that the subgrantee or subcontractor will provide the same assurances to the grant recipient. If a grant recipient wishes to consider a subgrantee or subcontractor that has been debarred or convicted, the grant recipient must submit a written request for exception to the BSCC along with supporting documentation.

By checking the following boxes and signing below, applicant affirms that:

[ ] I/We are not currently debarred by any federal, state, or local entity from applying for or receiving federal, state, or local grant funds.

[ ] I/We have not been convicted of any crime involving theft, fraud, or embezzlement of federal, state, or local grant funds within the last three years. We will notify the BSCC should such debarment or conviction occur during the term of the Grant contract.

[ ] I/We will hold subgrantees and subcontractors to these same requirements.

A grantee may make a request in writing to the Executive Director of the BSCC for an exception to the debarment policy. Any determination made by the Executive Director shall be made in writing.

AUTHORIZED SIGNATURE **This document must be signed by the person who is authorized to sign the Grant Agreement.**			
NAME OF AUTHORIZED OFFICER	**TITLE**	**TELEPHONE NUMBER**	**EMAIL ADDRESS**
STREET ADDRESS	**CITY**	**STATE**	**ZIP CODE**
APPLICANT'S SIGNATURE (Blue Ink Only) X			**DATE**

Appendix H: Governing Board Resolution

Before grant funds can be reimbursed, a grantee must either (1) submit a resolution from its Governing Board that delegates authority to the individual authorized to execute the grant agreement or (2) provide sufficient documentation indicating that the prospective grantee has been vested with plenary authority to execute grant agreements (e.g., County Board of Supervisors delegating such authority to an Agency head).

Below is assurance language that, at a minimum, must be included in the resolution submitted to the Board of State and Community Corrections.

WHEREAS the ***(insert name of Local Government)*** desires to participate in the Organized Retail Theft Prevention Grant Program funded through the State Budget Act and administered by the Board of State and Community Corrections (hereafter referred to as the BSCC).

NOW, THEREFORE, BE IT RESOLVED that the ***(insert title of designated official)*** be authorized on behalf of the ***(insert name of Governing Board)*** to submit the grant proposal for this funding and sign the Grant Agreement with the BSCC, including any amendments thereof.

BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

BE IT FURTHER RESOLVED that the ***(insert name of Local Government)*** agrees to abide by the terms and conditions of the Grant Agreement as set forth by the BSCC.

Passed, approved, and adopted by the ***(insert name of Governing Board)*** in a meeting thereof held on ***(insert date)*** by the following:

Ayes:
Notes:
Absent:
Signature: _____ Date: _____

Typed Name and Title: _____

ATTEST: Signature: _____ Date: _____

Typed Name and Title: _____

STAFF REPORT

Item D. 6.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Matthew Farrell, Chief Building Official
SUBJECT	Adopt a resolution accepting a grant of up to $40,000 through the California Automated Permit Processing Program for implementation of an automated solar permitting program (SolarAPP+) and approving an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

SUMMARY AND RECOMMENDATION

Senate Bill 379 requires most California cities and counties to implement an automated solar permitting program. Senate Bill 129 appropriated funds for the California Automated Permit Processing Program (CalAPP) to provide grant funding to aid cities and counties with the cost for implementing an automated permitting platform. Staff recommends that the City Council, by resolution, authorize acceptance of up to $40,000 in CalAPP grant funds and amend the 2022-2024 Biennial Budget and Capital Improvement Plan.

BACKGROUND

The California Energy Commission emphasizes that meeting California's clean energy goals requires new renewable energy and storage resources, including residential solar and storage projects. Existing law, under Government Code section 65850.5, requires that California cities and counties approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit, subject to specified exceptions. Local jurisdictions must also develop a streamlined permitting process for installing small residential rooftop solar energy systems. Senate Bill 379 (Wiener) was signed into law in 2022 and is intended to increase access and adoption of residential solar and energy storage projects by supporting instantaneous plan review practices and creating consistent processes across the State.

SB 379 specifically requires cities and counties of a certain size to implement an online, automated permitting platform. The platform must verify code compliance and issue permits in real time or allow local jurisdictions to issue permits in real time for a residential solar energy system, and a residential energy storage system paired with a solar energy system. The City of Newark is subject to these requirements and must complete implementation by September 30, 2024.

California Senate Bill 129 appropriated $20 Million for the California Automated Permit Processing Program (CalAPP) to provide grant funding to aid cities and counties with

the cost for implementing an automated permitting platform. This funding can be used to offset personnel costs and any equipment utilized to implement the platform. Funds can also be used for up to three years of maintenance and subscription costs for permit tracking software in support of the adopted permitting platform. Based on its population, the City of Newark is eligible for $40,000 in grant funding. SolarAPP+ is a commonly used platform by other jurisdictions to meet the requirements of SB 379.

DISCUSSION/ANALYSIS

Building Inspection Division staff have evaluated the options for an automated permit processing platform and have found no equivalent option other than SolarAPP+ that Newark could implement that would provide the cursory review of permit documentation necessary to satisfy SB 379 requirements. While Newark's current software and future portal for permit tracking may be able to issue permits immediately as the law requires, there is no plan review process that could occur in real time based on the permit documentation submitted. Without the plan review capabilities of SolarAPP+, an unnecessary added burden and time constraint for field inspections of solar projects would be created, resulting in increased costs to contractors and homeowners as well as additional staff time on each project. Staff reviewed and evaluated SolarAPP+ and it can be programmed to follow local ordinances and amendments to the code for plan reviews, thus saving time for staff, contractors and the community once implemented.

Implementation time should take approximately 20 staff hours from various members of the Information Technology, Finance, and Building Inspection Departments to set up and implement the platform. The total time for implementation should be approximately two months with at least one month for testing before the entire program is rolled out to the public. Staff recommends utilizing grant funds for eligible and reimburseable costs. The California Automated Permit Processing Program (CalAPP) was created to provide grant funding to local jurisdictions. The City of Newark qualifies for a CalAPP grant of up to $40,000 for implementation of a selected automated permit processing program to meet State requirements.

FISCAL IMPACT

By accepting this grant the City Council will need to amend the 2022-2024 Biennial Budget and Capital Improvement Plan increasing State Grant revenues (account 4792) by $40,000 to the Miscellaneous State Grant Fund (Fund 492). Year-end transfers will be made out of Fund 492 to reimburse various funds for previously budgeted eligible expenditures.

REVIEW AND APPROVAL

Prepared by - Matthew Farrell, Chief Building Official
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE ACCEPTANCE THE CALIFORNIA AUTOMATED PERMIT PROCESSING PROGRAM GRANT FUND AND AMENDING THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR 2024

WHEREAS, pursuant to Senate Bill 379, the City is required to implement an automated permit processing program for the expeditious review and issuance of permits for residential solar energy systems and residential solar energy storage systems; and

WHEREAS, the California Automated Permit Processing Program (CalAPP) was created to aid jurisdictions with grand funding in adopting and implementing the required automated permit processing program; and

WHEREAS, based on staff review of available automated permit processing programs, SolarAPP+ is the only viable option for use by the City of Newark Building Inspection Division; and

WHEREAS, the City qualifies for a grant funding through CalAPP in the amount of up to $40,000 to implement SolarAPP+; and

WHEREAS, the City will submit for reimbursement of qualified expenditures for said grant funds.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby authorize the acceptance of CalAPP grant funding of up to $40,000 for implementation of SolarAPP+.

BE IT FURTHER RESOLVED that the City Council of the City of Newark approves an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 as follows:

Increase: 492.60.062.620.4792	Misc. State Grant	$40,000
Increase: 492.00.000.000.9999	Transfers Out	$40,000

STAFF REPORT

Item D. 7.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Art Interiano, Deputy Community Development Director
SUBJECT	Adopt a resolution authorizing the City Manager to execute a three-year cooperation agreement for fiscal years 2024-2026 with Alameda County for participation in the Alameda County Urban County for the Community Development Block Grant (CDBG) Program

SUMMARY AND RECOMMENDATION

The City is currently part of the Urban County, a group of cities within Alameda County that have a population under 50,000 persons. As part of the Urban County, the city receives annual grant funding, which provides for community projects. Every three years, the federal government requires that each Urban County member sign a 3-year agreement with Alameda County.

Staff recommends that the City Council by resolution, authorize the City Manager to execute a three-year cooperation agreement with Alameda County for participation in the Alameda County Urban County Community Development Grant (CDBG) Program.

BACKGROUND

In 2020, the City Council agreed to participate with the jurisdictions of Albany, Dublin, Emeryville, Piedmont, and unincorporated areas of Alameda County, in the Alameda County Urban County (Urban County) program for fiscal years 2021-2023 in order to qualify for annual funding under the United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program. Most jurisdictions within the Urban County program have a population of less than 50,000 persons, but together have a collective population greater than 200,000 persons (the City of Dublin's population exceeds 50,000 people, but elects to remain in the Urban County). The Urban County program provides smaller jurisdictions with the opportunity to participate in CDBG programs. The Urban County program is administered by Alameda County. The current three-year agreement expires at the end of Fiscal Year 2023.

DISCUSSION/ANALYSIS

In order to continue as a member of the Urban County, the City of Newark and Alameda County need to execute a new three-year cooperative agreement for fiscal years 2024-2026. This agreement generally provides that the City and County will work together to undertake community renewal and housing assistance activities, that the City will receive a share of Urban County CDBG funds each year, that both the City and the County will follow the rules established by HUD, and that the County will administer the program for the City. A copy of the three-year agreement between Newark and Alameda County is attached. There are no significant changes in terms between the current and proposed agreements. As part of the agreement, Newark may not withdraw from the Urban County during the three-year period.

If the result from Census 2030 indicates that Newark's population exceeds 50,000 persons, the City would likely not participate in the Urban County any longer and instead apply to become a CDBG entitlement city with the ability to manage its own CDBG policies, programs, and projects.

FISCAL IMPACT

There is no fiscal impact with this item.

REVIEW AND APPROVAL

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

Attachments

CDBG 3 Year Cooperation Agreement Resolution

CDBG 3 Year Agreement v2

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CONTINUED PARTICIPATION IN THE ALAMEDA COUNTY URBAN COUNTY FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND AUTHORIZING EXECUTION OF THE COOPERATION AGREEMENT BETWEEN THE CITY OF NEWARK AND COUNTY OF ALAMEDA REGARDING PARTICIPATION IN THE ALAMEDA COUNTY URBAN COUNTY FOR COMMUNITY BLOCK GRANT FUNDS

WHEREAS, the Congress of the United States has enacted the Housing and Community Development Act of 1974 and Federal regulations have been adopted pursuant thereto, hereinafter called the "Act"; and

WHEREAS, Title I of the Act consolidates previously separate grant programs for open space, public facility loans, water and sewer grants, urban renewal, model cities, rehabilitation loans, and affordable housing into a program called the Community Development Block Grant ("CDBG") program; and

WHEREAS, Title I makes available entitlement grants to cities whose 2020 Census population exceeds 50,000 persons and to counties that qualify as an urban county; and

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

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

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

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

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

WHEREAS, the Department of Housing and Urban Development ("HUD") has made a determination that the County of Alameda has the essential powers to operate as an urban county; and

WHEREAS, four cities (Albany, Emeryville, Newark and Piedmont) in Alameda County have a 2020 Census population of less than 50,000 and desire to participate in the Alameda County Urban County; and one city has a population over 50,000 (Dublin) and desires to participate in the Alameda County Urban County; and

WHEREAS, the five participating cities combined with the unincorporated portions of the County of Alameda to form a combined 2020 Census population of 200,000 or more persons, thereby qualifying as an urban county, and becoming eligible for CDBG funds; and

WHEREAS, pursuant to HUD requirements, these same five cities must execute cooperation agreements with the County of Alameda, wherein the parties agree to participate in the Urban County for the duration of the three-year funding cycle.

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

SECTION 1. The City Council of the City of Newark hereby authorizes the continued participation of the City of Newark in the Alameda County Urban County.

SECTION 2. The City Council of the City of Newark hereby authorizes the City Manager to execute a cooperation agreement with Alameda County in order to continue the City's participation in the Urban County.

SECTION 3. This resolution shall take effect immediately upon its adoption.

AGREEMENT

This Agreement is made and entered into this 1st day of July, 2023 by and between the CITY OF NEWARK, hereinafter called "CITY" and the COUNTY OF ALAMEDA, hereinafter called "COUNTY", regarding their cooperation with respect to Community Development Block Grant funding.

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

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

WHEREAS, Title I makes available entitlement grants to:

(1) cities whose 2020 Census population exceeds 50,000 persons; and
(2) counties which qualify as an urban county; and

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

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

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

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

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

WHEREAS, four cities (Albany, Emeryville, Newark and Piedmont) in Alameda County have a 2020 Census population of less than 50,000 and desire to participate in the Alameda County Urban County; and one city has a population over 50,000 (Dublin) and desires to participate in the Alameda County Urban County; and

WHEREAS, the participating cities, combined with the unincorporated portions of the County of Alameda, form a combined 2012 Census population of 200,000 or more persons, thereby qualifying as an urban county, and becoming eligible for an entitlement of Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) funds; and

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

WHEREAS, the COUNTY and CITY cannot withdraw from the cooperative agreement while the Program Year 2024-2026 Agreement remains in effect.

THEREFORE, it is agreed that:

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

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

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

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

5. CITY and COUNTY will cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing, hereinafter called "PROGRAM", to be carried out with annual Community Development Block Grant and HOME Investment Partnership funds, hereinafter called "CDBG/HOME FUNDS", from Federal fiscal years 2024, 2025 and 2026 appropriations and from any program income generated from the expenditure of such funds. Community renewal and lower income housing assistance activities shall be those designated or referred to within Title I of the ACT and Title II of the Cranston-Gonzalez National Affordable Housing Act and the regulations issued pursuant thereto.

6. To carry out community renewal and lower income housing activities, COUNTY shall distribute to CITY a portion of the CDBG funds received under the ACT from Federal fiscal years 2024, 2025 and 2026 appropriations. The funds distributed to CITY shall be determined in accordance with such needs, objectives, or strategies, as COUNTY shall decide. In preparing the needs, objectives or strategies, COUNTY shall consult with CITY before making its determinations. The distribution of HOME funds to the Urban County is based on the review and

recommendations of proposals received in response to an annual RFP.

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

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

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

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

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

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

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

CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a use which does not qualify under the CDBG regulations. Any program income generated from the disposition or transfer of property prior to or subsequent to the close-out, change of status or termination of the cooperation agreement between COUNTY and CITY shall be paid to COUNTY.

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

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

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

15. This Agreement shall go into effect immediately upon the signature of both parties and shall continue in full force and effect until the CDBG/HOME/ESG Funds and program income received with respect to activities carried out during the three-year qualification period (Federal fiscal years 2024, 2025 and 2026) are expended and the funded activities completed. CITY will be included in the urban county for the entire three years period funded by CDBG/HOME/ESG Funds from Federal fiscal years 2024, 2025 and 2026. Appropriations may not be withdrawn from the urban county during this agreement period. During the three year qualification period, Federal fiscal years 2024, 2025 and 2026, CITY and any other included unit of general local government shall not withdraw from nor be removed from the Urban County and cannot terminate or withdraw from the cooperation agreement.

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

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

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

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

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

CITY OF NEWARK

_____
David Benoun, City Manager

DATE:_____

ATTEST:_____
City Clerk

DATE:_____

APPROVED AS TO FORM:

_____
City Attorney

DATE:_____

COUNTY OF ALAMEDA

_____
President, Board of Supervisors

DATE:_____

ATTEST:_____
Clerk, Board of Supervisors

DATE:_____

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

DocuSigned by:
By: Kathleen J. Hall
DA808277C6F24CB...
Kathleen J. Hall, Deputy County Counsel

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

STAFF REPORT

Item D. 8.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Tonya Connolly, Maintenance Superintendent
SUBJECT	Adopt a resolution authorizing the City Manager to execute a Contractual Equipment and Services Agreement with Owen Equipment for the purchase of a Vactor catch basin cleaner, authorization for outfitting by Classic Graphics and amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

SUMMARY AND RECOMMENDATION

The Maintenance Division of the Public Works Department has identified a need to replace existing catch basin cleaning equipment. The existing catch basin cleaner is approximately twenty years old and at the end of its useful life. The Maintenance Division has researched and selected a 2100i Vactor catch basin cleaner as a recommended suitable replacement unit. An amendment to Fiscal Year 2024 Equipment Replacement budget would be necessary for this purchase.

Staff recommends that the City Council authorize the City Manager to execute a Contractual Equipment and Services Agreement with Owen Equipment for the purchase of the 2100i Vactor catch basin cleaner through Sourcewell Contract No. 101221 and authorize outfitting of the equipment by Classic Graphics. Staff further recommends an amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024.

BACKGROUND

The City of Newark Maintenance Division is in need of replacement of the existing catch basin cleaning equipment. The current unit is more than 20 years old, requires significant ongoing maintenance that reduces efficiency within the Division, and has reached the end of its useful life. The City of Newark has more than 1,700 catch basins that require heavy cleaning, some twice per year or more, by the Maintenance Division and other resources to remove debris, sediments, and blockages from pipes and infrastructure. Catch basins and storm sewer systems are crucial in managing stormwater and preventing pollution.

Vactor catch basin cleaners provide versatility and can be effectively utilized for various tasks. Catch basin cleaners excel in potholing operations, allowing for safe soil excavation and the location of underground utilities without causing damage. Additionally, catch basin cleaners play a vital role in stormwater management by ensuring catch basins are clear and functioning properly, thereby helping to prevent flooding. Catch basin cleaners are well-suited for industrial cleaning tasks, efficiently

removing sludge and other contaminants. By utilizing catch basin cleaners, the need for manual entry into confined spaces is significantly reduced, minimizing workers' exposure to hazardous materials. This improvement in worker safety leads to a substantial decrease in the risks associated with accidents and injuries.

An intergovernmental procurement process (also known as "piggybacking") is an alternative option to Newark's formal bidding process. By piggybacking onto another agency's contract, the City would save the cost and time associated with an additional formal bid process but be able to be assured of competitive set prices established by another agency's formal bidding process.

DISCUSSION/ANALYSIS

The Maintenance Division has researched and selected a 2100i Vactor catch basin cleaner as a recommended suitable replacement unit. This unit provides all of the necessary capabilities required by the Division. The unit is equipped with a 12-yard debris box and can hold up to 1,300 gallons of water. Sourcewell received bids for sewer vacuum trucks (storm/sewer trucks), hydro-excavation, and municipal pumping equipment. Vactor was selected by Sourcewell and was issued Contract No. 1011221. Vactor was selected because it met the specifications issued by Sourcewell and submitted the lowest bid. Owen Equipment is the local distributor of Vactor catch basin units.

Utilizing Sourcewell, the City of Elk Grove, California, entered into a procurement contract with Owen Equipment for the purchase of a combination single engine sewer cleaner with positive displacement vacuum system mounted on a heavy-duty truck chassis. The competitive process used by the City of Elk Grove has been reviewed by the City of Newark Public Works Department and satisfies Newark's requirements for the proposed equipment replacement purchase.

Based on the City of Elk Grove contract with Owen Equipment, the purchase cost would be $671,000 for a Vactor catch basin cleaner. The cost does not include outfitting which is estimated not to exceed $10,000. The outfitting cost is based on specialized vendor quotes for the installations of lights, cone holders, cargo boxes, and logos.

FISCAL IMPACT

The proposed purchase requires an amendment to the 2022-20224 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to allocate funds from unallocated equipment replacement (701.3000) to the Fiscal Year 2024 Equipment Replacement Program (701.87.701.800.8050) in the amount of $681,000 for the purchase and outfitting of a replacement catch basin cleaner.

REVIEW AND APPROVAL

Prepared by - Tonya Connolly, Maintenance Superintendent
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution

Contractural Services Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACTUAL EQUIPMENT AND SERVICES AGREEMENT WITH OWEN EQUIPMENT FOR THE PURCHASE OF A VACTOR CATCH BASIN CLEANER, AUTHORIZATION FOR OUTFITTING BY CLASSIC GRAPHICS, AND AMENDING THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR 2024

WHEREAS, the Maintenance Division of the Public Works Department has identified a need for replacement of the existing catch basin cleaning equipment which has reached the end of its useful life; and

WHEREAS, the 2100i Vactor catch basin cleaner would satisfy the Maintenance Division needs for this replacement in Fiscal Year 2024 through the Equipment Replacement Program; and

WHEREAS, Sourcewell issued a contract for the 2100i Vactor catch basin cleaner and Owen Equipment is the local distributor; and

WHEREAS, the City of Newark would be participating in an intergovernmental procurement process (also known as “piggybacking”) with Owen Equipment as the holder of the City of Elk Grove procurement contract to purchase a Vactor catch basin cleaner at a cost of $671,000; and

WHEREAS, the proposed Vactor catch basin cleaner would require equipment outfitting based on quotes from Classic Graphics, not to exceed $10,000, not to exceed a combined total cost of $681,000; and

WHEREAS, a budget amendment is necessary to fund the replacement of this equipment in Fiscal Year 2024 through the Equipment Replacement Program.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby authorize the purchase of a 2100i Vactor from Owen Equipment in the amount not to exceed $671,000, as replacement catch basin cleaner for the Maintenance Division of the Public Works Department and outfitting by Classic Graphics for a total amount not to exceed $681,000.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby authorize the City Manager to execute a Contractual Equipment and Service Agreement with Owen Equipment for the purchase of the 2100i Vactor from Owen Equipment in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby approve an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to appropriate an additional $681,000 for this purchase using existing unallocated equipment replacement program funds as follows:

	Account	Description	Amount
From:	701.3000	Unallocated Fund Balance	$681,000
To:	701.87.701.800.8050	Equipment Replacement Program	$681,000

CONTRACTUAL EQUIPMENT AND SERVICES AGREEMENT

This Contractual Equipment and Service Agreement (hereinafter "Agreement") is made and entered into this day of , 2023 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and OWEN EQUIPMENT SALES, a CALIFORNIA CORPORATION, dba OWEN EQUIPMENT ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to provide a combination single engine sewer cleaner with positive displacement vacuum system mounted on a heavy-duty truck chassis (the "Equipment") to City as described in Exhibit "A" attached hereto and incorporated herein.

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

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

.

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

A. "Not to Exceed" Compensation. City shall compensate Consultant for the Equipment provided by Consultant hereunder in an amount set forth in Exhibit "B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for the Equipment provided pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of six hundred seventy thousand seven hundred fifty-nine and 59/100 Dollars ($670,759.59) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

B. Method of Billing.

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

Invoices shall be sent to:

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

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

C. Payment. Upon receipt of an invoice, City shall make payments to Consultant at such other times as may be specified in Exhibit "B", for the Equipment, which is delivered in accordance with this Agreement to the satisfaction of City.

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

5. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

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

6. RESERVED

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

12. RESERVED.

13. RESERVED.

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

A. Verification of Coverage.

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

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

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

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

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

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

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

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

C. Minimum Limits of Insurance.

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

Consultant shall maintain limits no less than:

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

D. <u>Claims Made Policies</u>.

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

E. <u>Wasting Policies</u>.

No policy required by this paragraph 14 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

F. <u>Remedies</u>.

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

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

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

3. Terminate this Agreement.

G. Acceptability of Insurers.

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

H. Other Insurance Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as

an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

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

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

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

18. TERM/TERMINATION.

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

B. Notwithstanding the provisions of paragraph 18 Section A above, City may terminate this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses

incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

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

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

OWEN EQUIPMENT	**CITY OF NEWARK**
JEFFREY GREENLEE	TONYA CONNOLLY
Consultant	**Administrator**
Address: Owen Equipment	City of Newark
Attn: Jeffrey Greenlee	Attn: Tonya Connolly
1085 Horizon Drive	37101 Newark Boulevard
Fairfield, CA	Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
David J. Benoun, City Manager

Date _____

Owen Equipment Sales
a California corporation

By _____
Consultant

Date _____

_____
Printed Name

Attest:

_____
Sheila Harrington, City Clerk

Date _____

Approved as to form:

_____
Kristopher J. Kokotaylo, City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Consultant shall deliver a Vactor 2100i combination single engine sewer cleaner with positive displacement vacuum system mounted on a heavy-duty truck chassis at a mutually agreed upon date with City and no later than 60 days following execution of the contract.

Pricing includes a 60-month manufacturer extended warranty.

Reference is made to Sourcewell “Solicitation Number: RFP #101221 Contract” attached hereto and incorporated herein by reference.

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Sourcewell

Solicitation Number: RFP #101221

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Sewer Equipment Co. of America, 1590 Dutch Rd., Dixon, IL 61021 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

A. EFFECTIVE DATE. This Contract is effective upon the date of the final signature below.

B. EXPIRATION DATE AND EXTENSION. This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.

C. SURVIVAL OF TERMS. Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

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Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. WARRANTY. Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. DEALERS, DISTRIBUTORS, AND/OR RESELLERS. Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

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returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

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- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

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contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

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by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. ASSIGNMENT. Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. WAIVER. Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

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E. CONTRACT COMPLETE. This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
   a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use thetrademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
   b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense*. The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

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resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.

b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

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14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending*. Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

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The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*
Workers' Compensation: As required by any applicable law or regulation.
Employer's Liability Insurance: must be provided in amounts not less than listed below:
Minimum limits:
$500,000 each accident for bodily injury by accident
$500,000 policy limit for bodily injury by disease
$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.
Minimum Limits:
$1,000,000 each occurrence Bodily Injury and Property Damage
$1,000,000 Personal and Advertising Injury
$2,000,000 aggregate for Products-Completed operations
$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

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no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:
$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:
$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:
$2,000,000 per occurrence
$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

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primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to "federal" should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier's Equipment, Products, or Services with United States federal funds.

A. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

B. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148). When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

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C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of $150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

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of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

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and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

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T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 11/23/2021 | 8:44 PM CST

Sewer Equipment Co. of America

DocuSigned by:
By: Shawn Bondele
B5011C400B714B6...
Shawn Bondele
Title: Inside Sales Manager
Date: 11/23/2021 | 4:13 PM EST

Approved:

DocuSigned by:
By: Chad Coauette
7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
Date: 11/24/2021 | 6:48 PM CST

RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies

Vendor Details

Company Name:	Sewer Equipment Co. of America
Does your company conduct business under any other name? If yes, please state:	IL
Address:	1590 Dutch Road DIXON, IL 61021
Contact:	Shawn Bondele
Email:	shawnbondele@sewerequipment.com
Phone:	815-835-5623
Fax:	815-284-0452
HST#:	36-2786536

Submission Details

Created On:	Wednesday August 25, 2021 07:50:30
Submitted On:	Monday October 11, 2021 15:11:12
Submitted By:	Shawn Bondele
Email:	shawnbondele@sewerequipment.com
Transaction #:	44e1e7e4-e719-4802-a155-e76c8332dafc
Submitter's IP Address:	98.142.194.242

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Sewer Equipment Co. of America	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Rock Rentals	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Sewer Equipment	*
4	Proposer Physical Address:	1590 Dutch Rd., Dixon, IL 61021	*
5	Proposer website address (or addresses):	www.sewerequipment.com, www.rock-rental.com, www.sewershop.com	*
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566	*
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566	*
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Tom Hochmuth Regional Sales Manager 1590 Dutch Rd. Dixon, IL 61021 tomhochmuth@sewerequipment.com 815-342-1700 Vanessa Gomez Inside Sales Coordinator 1590 Dutch Rd. Dixon, IL 61021 vanessagomez@sewerequipment.com 815-835-5566	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	"Best Product, Best Local Support" is a promise to our customers and is also a tagline that acts as a guiding principle to us each day. We have long been known for robust and innovative products that focus on simplicity, an increasingly rare characteristic in our marketplace. Sewer Equipment is also unique among manufacturers for our breadth of product, which ultimately allows our salespeople and distributors to sell in a consultative fashion. No other manufacture provides full size combination (jet/vacuum) trucks, mini combo trucks, water recycling combo trucks, truck and trailer jets both large and small, rodders, easement machines, and accessories for sewer cleaning applications as well as purpose built hydro excavation and air excavation trucks of all sizes. Our 76-year history has been one of growth and meaningful innovation. In 1941, our founder, H.T. O'Brien, developed the idea of using a rotating, spring tipped rod for cleaning drains in buildings, and a company was born. Throughout the 1940's and into the 1960's, O'Brien Manufacturing refined and expanded this principle to include trailer mounted rodders for cleaning mainline sewer pipes – these rodders were the predecessors of today's sewer jetters. The late 1960's saw the advent of modern-day sewer jet trucks and water powered rotating root cutters by O'Brien. O'Brien Manufacturing was sold in the early 70's and Sewer Equipment Company of America was opened by Jim O'Brien, son of the founder. The company grew from accessory sales to the manufacture of rodders, bucket machines, vacuum trailers, and truck and trailer jetters. In the mid 2000's we began manufacturing an extensive line of hydro excavating trucks and trailers. In 2012, the company was moved from a 37,000 sq/ft manufacturing facility in Chadwick Il to a 122,000 sq/ft plant in Dixon IL to accommodate our growth. This move allowed us to begin producing the 900-ECO combination sewer cleaner 2015. In the 6 years since its release, the 900-ECO has achieved approximately a 13% share of this hotly contested segment, measured in annual new truck sales in the US. In the last 4 years, we have also released the 400-ECO mini combo truck, the Genesis water recycling combo, and the AX-4000 air excavator truck. May of 2021 marked the completion of our 9000th piece of "big equipment" in company history.	*
10	What are your company's expectations in the event of an award?	We would immediately schedule a video conference meeting with all distributor sales personnel, reiterating the terms of the contract and calling attention to any changes. This would be followed up with in person reviews as well as e-mail / social media blasts to dealers and end users. We would remain the sole source of responsibility for this contract and would handle all order entry and reporting tasks required by the contract as we currently do.	*
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Sewer Equipment has a consistent track record of growth and profitability. The company's past performance assures ample resources to enhance our product offerings for the markets we serve. Sewer Equipment maintains insurance coverage that is customary for the business being conducted. (Attachment – 11-2020 Sewer Equipment Co……., 11 – Huntington National Bank……., 11 – 2021-2022 Sewer Equipment COI)	*
12	What is your US market share for the solutions that you are proposing?	Our US Market Share data listed here for combination trucks, truck jets, and hydro excavation trucks is based on data reporting through the American Association of Equipment Manufacturers. Combination Sewer Cleaners (2018) 6.4% (2019) 7.1% (2020) 14% (2021y.t.d.) 13.3% Truck Jets (2018) 58.5% (2019) 8% (2020) 44.6% (2021y.t.d.) 31.7% Hydro-Excavation Trucks (2018) 5.9% (2019) 9.3% (2020) 6.9% (2021y.t.d.) 8.1%	*
13	What is your Canadian market share for the solutions that you are proposing?	Our Canadian Market Share data listed here for combination trucks, truck jets, and hydro-excavation trucks is based on data reporting through the American Association of Equipment Manufacturers. Combination Sewer Cleaners (2018) 1.7% (2019) 2.0% (2020) 7.7% (2021y.t.d.)7.5% Truck Jets (2018) 66.7% (2019) 42.9% (2020) 75% (2021y.t.d.) 75% Hydro-Excavation Trucks (2018) 2.1% (2019) 2.0% (2020) 0% (2021y.t.d.) 7.8%	*
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	Since its formation, Sewer Equipment has never petitioned for bankruptcy protection.	*
15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	As a manufacturer, our primary means of going to market is via exclusive distributors that are typically responsible for covering the municipal entities in an entire state/states, multiple provinces, or multiple countries. We have distributors in 46 States and 2 Providences in Canada, as well as 5 overseas countries. The only exception is in some states/provinces that are in a transitional phase. Distributors act on our behalf as local sales, service, training, and warranty providers. These distributor sales and service people are 3rd party employees and are looked after by regional sales managers from Sewer Equipment. Distributor service personnel work closely with, and have direct access to Sewer Equipment's warranty department, technical service department and engineering group.	*
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	As a United States based company, we are an Illinois corporation registered with the Illinois Secretary of State (File No. 50370119). Our Federal Employer Identification Number is 36-2786536. Our Illinois Certificate of Resale Number is 0252-2705. As a manufacturing making mobile products operating on US highways, we have two dealer licenses. DL1582 for trucks and DLT1419 for trailers. Each of our Dealers also hold Dealer Licenses in their respective territories. Where required, Sewer Equipment is licensed as a Manufacturer or Motor Vehicle Converter including Iowa Manufacturer License No. M241, Texas Motor Vehicle Converter License No. 105517, Louisiana Motor Vehicle Converter License No. CV-2021-00122, Washington Vehicle Manufacturer License No. 08152 and Montana New Motor Vehicle Manufacturer License No. 139. Sewer Equipment is also a member of the National Association of Trailer Manufacturers. This assures our trailers are manufactured in accordance with all DOT and NATM guidelines.	*
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Sewer Equipment has not within the ten-year period preceding this bid been debarred or suspended from any public transactions (Federal, State, or local).	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
18	Describe any relevant industry awards or recognition that your company has received in the past five years	Sewer Equipment was awarded patent number "US 9,863,135 B2" for our Hydro-Drive system on January 9th, 2018. This Hydro-Drive System is the heart of our 900-ECO Combination Sewer Cleaner and has been a major contributor to the continued growth and success of our company. In the July 2021 issue of THE MUNICIPAL, Sewer Equipment was featured in an article "Moving Beyond Transactional Relationships Toward Partnerships." referencing a sale to King County, WA, where they utilized the Sourcewell Contract for the purchase and National Cooperative Lease for the financing. Sewer Equipment's products are in focus on almost a monthly basis in Industry Trade Publications such as CLEANER, DIG DIFFERENT, and MUNICIPAL WATER & SEWER.	*
19	What percentage of your sales are to the governmental sector in the past three years	(2018) 47%, (2019) 52%, (2020) 53%, (2021) 54%	*
20	What percentage of your sales are to the education sector in the past three years	(2018) .032%, (2019) .058%, (2020) 0%, (2021) 0%	*
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	The figures below do not include state and other local contracts that are manages by our distributors. These are only contract held directly by Sewer Equipment. HGAC (2018) $361,491.00, (2019) $496,502.00, (2020) $0.00, (2021) $0.00, State of Ohio (2018) $66,914.00, (2019) $337,639.00, (2020) $569,970.00, (2021) $248,523.00 Florida Sheriffs (2018) $0.00, (2019) $0.00, (2020) $0.00, (2021) $87,886.00 BuyBoard (2018) $0.00, (2019) $0.00, (2020) $0.00 (2021) $52,325.00	*
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Sewer Equipment partners with Fedharmony on a GSA contract. We also directly hold a DLA contract. GSA (2018) $0.00, (2019) $250,619.00, (2020) $263,271.00, (2021) $58,479.00 DLA (2018) $0.00, (2019) $256,309.83, (2020) $274,847.00, (2021) $0.00	*

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Reno, NV	Zac Haffner	775-399-8692	*
City of Salem, OR	Jerry Smith	503-385-7560	*
City of Atlanta, GA	Robert Horton	404-982-1426	*

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City of Atlanta, GA	Government	Georgia - GA	Combination Sewer Cleaners	8 - 900-ECO's	$2,171,740.00	*
City of Reno, NV	Government	Nevada - NV	Combination Sewer Cleaners, Truck Jets, Easement Machines	3 - 800-HPRs, 3 - 900-ECO's, 1 - JAJ-600WH	$1,141,776.00	*
Snohomish County	Government	Washington - WA	Combination Sewer Cleaners	3 - 900-ECO's	$812,988.00	*
City of Salem, OR	Government	Oregon - OR	Combination Sewer Cleaners	3 - 900-ECO's	$755,912.00	*
City of Hamilton, ON	Government	ON - Ontario	Hydro Excavators	2 - Ramvac HX-12's	$705,804.00	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
25	Sales force.	We directly employ a national sales manager as well as an eastern, central, and western regional sales manager that are responsible for our distributor network. We employ 3 inside salespeople as well as 7 direct salespeople that serve markets that are not fully covered by distribution (primarily contractors, but also some federal agencies and education to a very small degree). Three full time demonstration specialists work with our regional sales managers and distributor salespeople to allow our customers to "try it before they buy it", which is a very important aspect of our sales program.	*

26	Dealer network or other distribution methods.	In total, our distributor network employs approximately 140 salespeople. As a premium specialty product, our distributors are quite focused on the Sewer Equipment line, typically spending 50% or more of their efforts on our offerings. A new focus moving forward will be an intensive product and presentation technique training (SEAL - Sewer Equipment Advanced Learning) program for our distributors, with the goal being the most educated and knowledgeable sales staff in the industry. This has already begun with a dealer "walkaround" event (live product presentation), in which dealer salespeople presented several products to their peers and factory personnel and were graded for certification purposes. This program will be expanded with more events and more content in the coming years.	*
27	Service force.	(See attachment: 27 Service Distributor Map – US) As the Sewer Equipment distributor network evolves, our service presence has improved in recent years. With more professional organizations in our ranks, our number of service techs at the dealer in the US and Canada is approximately 170. Each of our distributors is required to have at least two technicians certified at Sewer University, a multi-day class that is regularly held at our Dixon IL headquarters. 99% of our customer's service needs are accommodated at the distributor level. Sewer Equipment also employs 3 mobile service technicians equipped with service trucks that fill in any gaps in service coverage and cover special projects. A relatively unique offering for customers in remote regions is our willingness to provide warranty coverage via a 3rd party repair shop of their choice or to reimburse the customer to perform simple warranty repairs themselves. This is very popular among customers in the rural western US, and is largely made possible by our simple products and factory tech support.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	As in the past, Sewer Equipment distributors will provide Sourcewell quotations to customers and will accept purchase orders from customers following Sourcewell guidelines as called out in our Quick start guide for distributors which will be updated (Attachment - 28 Quick Start Guide for dealers- Sourcewell INTERNAL - rev6 4-6-2020). Upon securing the order from the end user, the distributor will in turn place their order with Sewer Equipment and must include a copy of their customer's purchase order complete with Sourcewell discount information, customer Sourcewell number, and our Sourcewell contract number. Said in a simpler way, customers will order from their authorized distributor, and the distributor will order from Sewer Equipment as they normally would, with the exception that Sourcewell quote and order protocols will be followed.	*
29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	The first and likely most important aspect of our service program is building equipment that can be worked on by the customer or a local shop. Because Sewer Equipment has consciously avoided the use of computers, circuit boards, and CANbus communication protocols in our products, a mechanic with traditional skills and a knowledge of 12-volt wiring systems can often help themselves. If the customer does not possess the skills or cannot resolve the issue on their own, they should make a call to their local distributor to schedule a service visit, or to our corporate service technicians for assistance via the phone. Our corporate, in-house customer service department is comprised of both parts sales specialists and technical support specialists that provide toll-free service and tech support 24-7 & 365 days a year to end users and distributor service groups. Depending upon the issue, many can be handled over the phone with minor adjustments to either the operator's use of the equipment or to the machine itself. Our support specialists have extensive experience in troubleshooting issues and offering solutions. If repair service and parts are required, our specialists will work with the customer and/or dealer to most quickly and easily remedy the situation. To assist in this process, each unit we build is assigned a 4 digit serial number that allows us to retrieve electronic copies of every document related to the system from the sales order to product manuals that contain as built wiring diagrams and hydraulic schematics. We stock an extensive inventory of repair parts and accessories to give expedited service to our customers. Due to our stock levels and standardization on most buy out components, we have a track record of consistently shipping 95+% parts the same day ordered. For those remaining parts, we go to our vendor suppliers for support to meet our customer and dealer network needs. In regard to response time, most customers can expect a personal visit from a dealer technician within 24 hours with some exceptions due to geographic challenges. As detailed above, technical phone support is available all day, every day.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	All personnel, physical assets. and procedures are already in place to provide our products and product support nationwide.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	We are prepared and have already utilized the Sourcewell contract in Canada for a substantial transaction with Hamilton, Ontario (2 Hydro-Excavator trucks)	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Hawaii is the only geography not covered by an exclusive distributor, but we do utilize a non-exclusive reseller to facilitate service issues and the few sales that we see there.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Although we are willing and able to serve all sectors, 98-99% of our customers fall in the government segment with some tribal entities and an occasional school district or university mixed in.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	We do not have any restrictions in regards to the contract for the States of Alaska and Hawaii.	*

Table 7: Marketing Plan

Line Item	Question	Response *	
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	• Product Literature: We display the Sourcewell contract awarded logo on our product line cards, product catalogs, and our website. See supporting document "Sewer Equipment Co. of America Full Product Line Catalog". • Website: We will highlight this in our website blog content when awarded and highlight on our social platforms. • Magazines: Collaborate with Industry Partners and Trade Publications advertise and write articles highlighting the benefits of utilizing the Sourcewell Contract. • Training on Finance Options: Promote the use of the Contract and Finance Options during our yearly Dealer Meetings. • Main Phone Line: Our on-hold message for our main Sewer Equipment phone line includes a narrative describing the contract and benefits to our customers. • Tradeshows: We display Sourcewell flags/banners at the major industry shows and our distribution (dealer) partners do as well at dozens of local shows each year. • Field: Our three regional sales managers, national sales manager, and demonstration specialists promote the contract at in person customer visits and demonstrations. Trailing has also been provided to our distribution (dealer) partners on how to also promote the contract in the field	*
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Our marketing platforms include: our websites (Sewer Equipment and Rock Rental), ad campaigns through Google AdWords, LinkedIn ads, and Facebook ads, social media platforms such as LinkedIn, Facebook, and Twitter, advertising and editorial content with trade magazines, and email campaigns to established dealer networks and customers.	*
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	We feel that Sourcewell provides the medium and Sewer Equipment supplies the product, both supplying prospects. Sourcewell's marketing efforts are important to expose municipalities to the contract and the accepted option as an alternative to the traditional bid process. Sewer Equipment's responsibility is to market our product to prospects and our distribution network. Integrate Into Sales Process: • We will continue with our existing plan which is mentioned in number 35 above. In addition to what is mentioned we have additional plans already in place that we will continue with that include: o WWETT show, Indianapolis, February 2022: announce renewal of contract at annual dealer meeting. o Each year we present the top 3 Sourcewell dealer salespersons with monetary awards covered by Sewer Equipment. o Our secured dealer portal website includes: all Sourcewell pricing, Sourcewell quick start guide which outlines all pertinent details of our contract. o Internal quarterly sales meeting includes update on sales success regarding the contract. o When a new dealer is brought on, we allocate for 1 hour of Sourcewell training.	*
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	We do not have an e-procurement system in place at this time.	*

Table 8: Value-Added Attributes

Line Item	Question	Response *	
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Operational training is standard and provided free of charge by our distributors at time of delivery of new machines. Because a large percentage of our customers are repeat buyers, we choose to offer additional on-site operator training by a factory representative on an optional basis for those that feel they need it. Price is $1,839.00 for the first day and $1,370.00 for each subsequent day, including all expenses such as transportation. Model specific maintenance training is optional, customizable, and available on demand. This covers daily, weekly, monthly, and annual maintenance requirements as well as basic and model specific troubleshooting. This is typically 2 days at our plant and is $943 per person. Meals and lodging are included in the price and customer is responsible for transportation.	*
40	Describe any technological advances that your proposed products or services offer.	Our primary "advancement" revolves around the principle of keeping our systems simple. Particularly in the combination truck, hydro excavator, and full-size truck jet market, nearly every manufacturer has moved to microprocessor-controlled modules that incorporate touch screens and complex digital user interfaces. We have retained the use of traditional 12-volt control systems. This makes our trucks easier and safer to run, easier to maintain without special training and tools (increasing up-time) and eliminates the obsolescence and fragility of high-tech components. We are in the process of manufacturing the world's only battery powered rodder for the City of Seattle sewer collections department. The Genesis Recycling Combination truck is an exclusive partnership with Cappellotto of Italy that allows us to offer their world leading technology of this product in North America with the sales efforts and support of our nationwide dealer network. Our patented Hydro Drive system utilized on our 900-ECO drives our blower and water pump in a very unique but surprisingly simple manner that offers a host of benefits. Eliminating the transfer case present in most other designs removes a potential maintenance headache, allows our truck to work in neutral offering unmatched operator safety and ease of setup, and consumes less horsepower, thus cutting fuel consumption and emissions. The 800-HPRTV Series IV was recently refined and is the most user friendly and productive TV/Jet combination systems in the truck and trailer market, allowing customers to TV and clean sewer lines simultaneously.	*

41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Company 2020 solar panel project. Through the Illinois Adjustable Block Program Sewer Equipment's 706.86 kW solar system is generating 11,871 REC's (Renewable Energy Credits). (attachment – 41 Sewer Equipment Solar Renewable… and attachment - 41 Illinois Adjustable….), Sewer Equipment participated in ComEd's Smart Inverter rebate program which incentivizes non-residential customers to make renewable energy investments. (attachment – 41 Smart Inverter….) To date, Sewer Equipment's solar charging system has saved CO2 emissions of 895,396 lbs. (attachment 41 Solar Edge summary.) Battery powered forklifts and material handling devices utilize solar charging Adoption of low VOC paints has decreased overall VOC generation despite a 10-fold increase in production in the last 10 years. Installation of a water recirculation system for jetter testing, saving hundreds of thousands of gallons per year. Recycling Program Utilization of reusable, steel transport skids for our locally sourced large components eliminates the need for one-use wood and plastic skids. Recycling of wood and cardboard shipping components Plant-wide paper and plastic recycling program Products The Genesis recycler combo truck can clean sewers all day without using a drop of fresh water. It processes the debris and water that is vacuumed during the operating process, using the reclaimed water for jetting. Our 900-ECO truck, 800HPR-ECO truck and 747-ECO trailer operating system allows the engine to operate at 30-50% lower speed while in the work mode, offering reductions in fuel use, emissions, and ambient noise. Our rodders are the only commonly accepted waterless sewer cleaning tools, making them popular in arid regions where water conservation is of importance. Thousands of gallons of water are saved daily versus traditional sewer jet-vac technology. Although traditionally gas powered, we have now developed a battery powered rodder. Biodegradable hydraulic fluid is offered as an option in all our systems. We have manufactured several CNG powered jet trucks for the Southern California Market	*
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Sewer Equipment has not received any third-party ECO ratings specifically. However, a patent has been granted by the US Patent office for our HydroDrive system described above, as used on our 900-ECO. This system does provide fuel saving vs traditional drive systems. (Attachment 42 HydroDrive…)	*
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	We continue to receive the EDGE credit from the State of Illinois. This credit is based on the number of jobs created and retained. (Attachment 43 Edge Credit……)	*
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	One of the most unique attributes of our offering is our unprecedented breadth of product. No other manufacturer in our marketplace offers everything from small jetters used in the plumbing segment to full size combo trucks, and everything in between. This means that our distributors cans be consultants starting with assessing a customer's needs and then supplying the proper product. This also makes us one of the only suppliers of smaller products in the sewer industry that has a strong nationwide sales and service network.	*

Table 9A: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Sewer Equipment's standard warranty policy covers all items manufactured by Sewer Equipment except for wear items. Many major components are covered by their respective manufactures warranty policy. (Attachment 45 Warranty Policy……)	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Sewer Equipment's standard warranty policy covers 12 months or use or 2000 hours. The 2000 hours limit covers typical usage by all Municipalities.	*
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Sewer Equipment provides up to 3 hours of travel time for warranty reimbursement. Our Dealers pick up travel time in addition to the 3 hours as needed. Our Municipal customers do not have to pay for travel time regardless of where they are located.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Sewer Equipment has dealers that cover 46 of States in the U.S. In Canada we have dealers currently covering 4 Providences. Our dealers cover service in these areas. For customer in other states or providences in Canada we have two options for service. First Sewer Equipment employs direct field service personnel that we can send directly to the customers locations. We also work with third party service centers across North America that will do warranty work on Sewer Equipment products. Regardless of the customers location, we have service handled.	*
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Sewer Equipment assist in processing warranty claims for all purchased items covered by their respective manufacturer's warranties. For most items we handle these claims directly with the manufacturer for a seamless claim by the end user. This would be similar to claims on Sewer manufactured items. The only exception is auxiliary engines. Engine warranty claims and repairs are handled by the respective manufacturers service centers around the country. Sewer Equipment does assist with communication between the end user and the service center.	*
50	What are your proposed exchange and return programs and policies?	If the customer decides to return a purchased item such as a spare part, Sewer Equipment charges a 25% re-stocking fee. The customer will also be responsible for shipping charges. This policy does not apply to new custom-built equipment sold through our dealer network. Any potential return for new equipment would be negotiated with the selling dealer.	*
51	Describe any service contract options for the items included in your proposal.	Sewer Equipment's dealer network offers service packages for customers. These packages are priced by our dealers. For regions not supported by our dealer network, Sewer Equipment offers quarterly maintenance packages with work performed by our own Field Service Personnel. Pricing is on a case-by-case basis based on expectations of the customer.	*

Table 9B: Performance Standards or Guarantees

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
52	Describe any performance standards or guarantees that apply to your services	Sewer Equipment does not have any performance guarantees that apply to service. We do offer a 27/7 phone support for all service-related issues. For urgent parts needs, we typically ship 90% of orders within 24 hours.	*
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	We do not have service performance standards currently but are looking to implement a program in 2022.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
54	Describe your payment terms and accepted payment methods?	Sewer Equipment's payment terms for all municipal and educational Customers is Net 30. Our dealers would also utilize Net 30-day terms to their customers.	*
55	Describe any leasing or financing options available for use by educational or governmental entities.	Sewer Equipment utilizes and recommends NCL Government Capital for leasing options to our Municipal Customers. This has proved very useful for long term leasing arrangements. For short term rental needs, we offer rentals through our subsidiary Rock Rentals. Many of our dealers also partner with us in offering short term equipment rentals.	*
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Sewer Equipment and our dealers utilize our standard Sourcewell Price sheets for quoting to our customers. When a customer submits a purchase order to one of our dealers, the dealer submits a copy of the customer purchase order along with the worksheet used for quotation to us. We utilize this information to establish the Sourcewell Contract fee. All other related transaction documents are handled between our dealers and customers. See copies of our worksheets uploaded in the pricing section.	*
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Sewer Equipment does not accept P-Card for payments currently.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Sewer Equipment utilizes a straightforward discount off list pricing model for all our new equipment sales. This also applies to all spare parts and accessories. Pricing for all our new equipment models has been uploaded and is included with this submittal. We do not utilize SKUs for our equipment. All worksheets are identified by their model name. Pricing for all parts and accessories is not included with this submittal as the number of items is quite large. MSRP pricing for most items can be found at www.sewershop.com.	*
59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The Sourcewell Contract discount for all new equipment is 3% off MSRP. The discount for parts and accessories is 5% off MSRP. The discount for rentals is 3% off published rates. The buyout price for rentals if applicable is priced at 3% off MSRP. These discounts are minimums, and our dealers may provide additional discounts.	*
60	Describe any quantity or volume discounts or rebate programs that you offer.	Sewer Equipment does not have a standard volume discount pricing structure. However, us and our dealers will offer volume discounts as necessary on a case by case basis. When offered, these discounts are noted on the quote to be above and beyond the standard Sourcewell discount.	*
61	Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.	Sewer Equipment and/or our dealers will provide non-standard items to be mounted on our equipment at request of our customers. These items are quoted on a case-by-case basis and are considered part of our product. These non-standard items are subject to the Sourcewell discount. Sewer Equipment and/or our dealers will also supply chassis for our truck mounted models. These chassis are currently being quoted at cost on a case by case basis due to pricing influx in the market. We consider these items to be “pass-thru” items and are not subject to Sourcewell discounts or fee reporting.	*
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Items that can be included on a quotation to a customer but are not on our pricing worksheet or discussed in the above sections include the following. Dealer supplied freight, training, and pre-delivery inspections. These items are not subject to Sourcewell Discount or fee reporting.	*
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Sewer Equipment charges freight from our Dixon, IL location to our Dealers location. We charge freight on a per mile bases. Our dealers may impose an additional charge for freight from their location to the customers location depending on location. That is a separate charge as listed in question 62.	*
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	For freight charges to customers located outside of the continental United States or Canada, we will with our freight broker to establish the lowest price options for our customers. Our customers are also welcomed to take on the freight responsibility themselves.	*
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	We do not currently offer any unique freight programs other that what is listed above.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Sewer Equipment has always offered a discount from list price on the Sourcewell Contract.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	Our Sourcewell pricing worksheets are accessible for download on our dealer website. This assures that our dealer sales staff have access to the correct price pages. These contract specific price sheets have the 3% minimum discount already listed to prevent error. Sewer Equipment audits every incoming order to determine if our Dealers have sold it via the Sourcewell Contract. If it was determined it was a Sourcewell sale, we verify all contract pricing via our worksheet and the customer purchase order. Every customer purchase order utilizing the Sourcewell contract must list their Sourcewell membership number and Sewer Equipment's contract number. Upon confirming the order is purchased via the contract, we document every order on an Excel spreadsheet. This spreadsheet tracks contract sell price, contract fee, and so on. Our Accounting Department audits this spreadsheet on every order that is completed before shipping. We also identify the use of the contract on our order tracking database for an easy to access record of all Sourcewell orders. For fee reporting and remittance we have a dedicated person in our Accounting Department that audits the Sourcewell Orders spreadsheet and reports sales on a quarterly basis. Fees are paid based on this quarterly reporting.	*
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	We continually monitor contract usage against overall sales volumes through our Dealerships. We track and award the highest grossing dealer salesperson that utilizes the Sourcewell Contract on a yearly basis during our dealer awards ceremony. It should be noted that the Sourcwell Contract is the only contract where we offer this award. We also compare the Sourcewell contract against competing national contracts and dealer held state contracts. These comparisons help us to put emphasis on training dealer sales staff.	*
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Sewer Equipment will pay an administrative fee to Sourcewell based on 1% of the Sourcewell sell price to the customer. This 1% fee is paid on our equipment, spare parts, and accessories. We do not pay the administrative fee on chassis which are considered a pass thru with our units. We will also pay the 1% administrative fee on all rental billings limited to 18 months and to buyouts of rentals based on the negotiated buyout price. The fees are calculated and paid on a quarterly basis.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *	
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Sewer Equipment is offering an extensive range of equipment that all fall into the Sewer Vacuum, & Hydro-Excavation Category on this proposal. Our list of offered equipment is as follows…. • Our models 400-ECO & 900-ECO Combination Sewer Cleaners • Our Genesis Recycler Sewer Cleaner • Our Mongoose Series of Truck and Trailer Jetters • Our 545 & 747 Series of Truck and Trailer Jetters • Our 800 Series Truck Jetters • Our Ramvac Series Hydro Excavation Trucks • Or Ramvac Series Air Excavation Trucks. • Our JAJ Series of Easement Machines for Sewer Cleaning • Our 444, 866 & 877 Rodders for Sewer Cleaning • Spare parts and Accessories for above listed equipment. • Our Rental Program of above equipment.	*
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	All our equipment falls under the primary category on the proposal.	*

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
72	Sewer vacuums or combination sewer cleaners	(•) Yes ( ) No	See Equipment List	*
73	Hydro or air excavation equipment	(•) Yes ( ) No	See Equipment List	*
74	Jetters and rodders	(•) Yes ( ) No	See Equipment List	*
75	Dewatering, mud, trash, and centrifugal pumps	( ) Yes (•) No	No items specifically in this category, but our Geneisis Recycler unit does de-water before dumping.	*
76	Pumps used in lift stations, sewage treatment, water treatment, or water collection facilities	( ) Yes (•) No	No items specifically in this category, but our 900-ECO with optional trash pump can be used as an emergency pump system.	*
77	Accessories, supplies and replacement or wear parts related to the offerings above.	(•) Yes ( ) No		

Table 15: Industry Specific Questions

Line Item	Question	Response *	
78	Describe any product or equipment features that improve operator safety.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required which has the potential to pop into gear and drive away. All of our ECO Series equipment operators at a reduced RPM for lowered noise for the operator. Our standard wireless remote has an e-stop safety check built in.	*
79	Describe any product or equipment innovations that increase uptime and operator productivity.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required. The operator simply puts the truck in neutral, sets the parking brake, gets out of the truck, and turns on one switch to activate the unit. Then they can vacuum and/or jet within seconds. We do not utilize any completed computers or touch screens that prevent the operator from using while wearing gloves. Our dig-deep boom available on the 900-ECO and our HX12 series allows for increase vacuum depth without the need for as many vacuum tube additions.	

Table 16: Exceptions to Terms, Conditions, or Specifications Form

Line Item 80. **NOTICE**: To identify any exception, or to request any modification, to the Sourcewell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcewell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.

2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.

3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.

4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as “Marketing Plan.”

- Pricing - Price Sheets.zip - Monday October 11, 2021 13:50:43
- Financial Strength and Stability - Financials.zip - Monday October 11, 2021 13:51:14
- Marketing Plan/Samples - Marketing Documents.zip - Monday October 11, 2021 13:52:29
- WMBE/MBE/SBE or Related Certificates - 43 Edge Credit Cert of Verification.pdf - Monday October 11, 2021 13:53:20
- Warranty Information - 45 WARRANTY POLICY AND PROCEDURE.docx - Monday October 11, 2021 13:52:48
- Standard Transaction Document Samples - Sourewell Order Transaction Document.pdf - Monday October 11, 2021 13:57:20
- Upload Additional Document - Additional Documents.zip - Monday October 11, 2021 13:54:30

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.

2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.

3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.

4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.

5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.

6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.

7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.

8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.

9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.

11. Proposer its employees, agents, and subcontractors are not:

    1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: https://www.treasury.gov/ofac/downloads/sdnlist.pdf;

    2. Included on the government-wide exclusions lists in the United States System for Award Management found at: https://sam.gov/SAM/; or

    3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☑ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Shawn Bondele, Inside Sales Manager, Sewer Equipment Co. of America

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

○ **Yes** ◉ **No**

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "**I have reviewed this addendum"** below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_3_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu September 30 2021 03:29 PM	☑	2
Addendum_2_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Fri September 10 2021 02:40 PM	☑	2
Addendum_1_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu August 26 2021 05:40 PM	☑	1

EXHIBIT B

PAYMENT

A one-time payment of $670,759.59 will be due thirty (30) days after receipt of equipment specified in Exhibit A.

STAFF REPORT

Item D. 9.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Michael Carmen, Assistant Engineer
SUBJECT	Approve the plans and specifications and adopt a resolution accepting the bid and awarding the contract for the Base Bid and Additive Alternate Bid No. 1 to VSS International, Inc. for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 and amending the 2022-2024 Biennial Budget and Capital Improvement Plan; Exempt from CEQA review per CEQA Guidelines Section 153013

SUMMARY AND RECOMMENDATION

Bids for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 were opened on May 23, 2023. The low monetary bidder, VSS International, Inc. provided a responsive bid, is experienced in this type of project, and is a responsible contractor. Staff recommends that the City Council, by motion, approve the plans and specifications and, by resolution, accept the bid and award the contract for the Base Bid and Additive Alternative Bid No. 1 to VSS International, Inc., in the amount of $1,716,000 for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 and amend the 2022-2024 Biennial Budget and Capital Improvement Plan. Staff also recommends including an additional $184,000 in construction contingency, bringing the recommended allocation for the project to $1,900,000.

BACKGROUND

FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 combines asphalt rubberized cape seal and slurry seal projects to encourage better unit prices. The application of asphalt rubberized cape seal and slurry seal are considered preventative maintenance treatments for roadway pavement which involve the application of sealant materials and are designed to extend pavement life. Asphalt rubberized cape seal consists of a rubberized chip seal topped with traditional slurry seal. To produce a rubberized chip seal, waste tires are ground into crumb rubber granules and mixed with asphalt cement to create an asphalt rubber binder. The asphalt rubber binder is used as the initial layer of oil in which aggregate chips are embedded to provide greater resistance to cracking, oxidation, and aging than traditional chip seals. Slurry seal consists of a thin overcoat inclusive of water, asphalt emulsion, aggregate, and additives designed to protect the underlying pavement structure and provide a new driving surface. Rubberized cape seal extends pavement life an additional eight to twelve years and slurry seal extends pavement life an additional five to seven years before a mill and fill, overlay, or full reconstruction are required. Rubberized cape seal and slurry seal are less intensive than a typical pavement reconstruction, but more cost-effective, which allows for a greater number of

streets to be treated. The quick application and dry time of cape seal and slurry seal also minimize impacts to local traffic.

On October 14, 2021, the City Council adopted a resolution authorizing staff to submit an application for the Rubberized Pavement Grant Program administered by the California Department of Resources Recycling and Recovery (CalRecycle). In May 2022, CalRecycle awarded the City a grant for up to $75,000 based on a reimbursement rate of $1 per square yard of rubberized cape seal applied. The proposed 79,355 square yards of asphalt rubber cape seal to be applied with this project will result in the City receiving $75,000 in grant reimbursement and diverts approximately 5,000 tires from entering local landfills.

The combined project scope of work includes approximately 79,355 square yards of asphalt rubber cape seal, 310,665 square feet of type II polymer modified asphalt emulsion slurry seal, and patch paving of streets that will receive the asphalt rubber cape seal.

The proposed slurry seal treatment of Newark Boulevard between Thornton Avenue and Central Avenue also provides the opportunity to upgrade the existing Class II bike lanes to Class IV separated bike lanes in both directions as identified in the City's Pedestrian and Bicycle Master Plan. Class IV separated bikeways differ from standard bicycle lanes in that they provide a horizontal separation between the bike lane and adjacent traffic lane while also introducing a vertical separation element to further minimize interactions between bicyclists and vehicles. Safety improvements would also be installed at various transition and conflict zones by incorporating high visibility "green" pavement markings per the latest guidelines and recommendations developed by Caltrans, the National Association of City Transportation Officials (NACTO) and the Federal Highway Administration (FHWA).

The project also includes one Additive Alternate Bid Item which would include black-colored aggregate instead of the more typical grey-colored aggregate in the slurry seal mixture. Use of black-colored aggregate allows the slurry seal to maintain a darker appearance for a longer period, resulting in a better color-contrast and improved visibility of pavement striping and markings on the roadways.

Streets that will receive asphalt rubberized cape seal with FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 include:

Street	Cape Seal Limits
Alpine Street	Mowry Avenue – Benecia Avenue
Arden Street	Thornton Avenue – Plummer Avenue
Benicia Avenue	Alpine Street – Ebbetts Street
Birch Street	North of Thornton Avenue – End
Blackwood Drive	Dupont Avenue – Darvon Street

Cabernet Avenue	Haley Street – Orleans Drive
Castillon Drive	Tourraine Drive – Brittany Avenue
Cinnabar Court	Birch Street – End
Ebbetts Street	Benecia Avenue – Truckee Court
Elmwood Avenue	Darvon Avenue – Charles Street
Fair Avenue	Mayhews Landing Road – Hafner Street
Fair Avenue	Newark Boulevard – Mayhews Landing Road
Fair Court	Fair Court – End
Flintwood Drive	Dupont Avenue – End
Greenpoint Court	Greenpoint Street – End
Greenpoint Street	Civic Terrace Avenue – Greenpoint Court
Jacaranda Court	Jacaranda Drive – End
Jacaranda Drive	Smith Avenue – Birch Street
Lakewood Court	Lakewood Drive – End
Lakewood Drive	Blackwood Drive – Lakewood Court
Levi Street	Benecia Avenue – Truckee Court
Montcalm Avenue	Park End – Cherry Street
Montcalm Avenue	Cherry Street – La Salle Drive
Plummer Avenue	Cherry Street – End
Quartz Place	Levi Street – Northeast End
Rosewood Drive	Dalewood Drive – Ruschin Drive
San Antonio Street	Milani Avenue – San Antonio Way
San Antonio Way	San Antonio Street – Cedar Boulevard
St. Isabel Avenue	Cedar Boulevard – End
St. Mary Street	Milani Avenue to St. Mark Avenue
Truckee Court	Ebbetts Street - End

Streets that will receive a slurry seal with FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 include:

Street	Slurry Seal Limits
Acorn Place	Mandarin Avenue – End
Aleppo Drive	Enterprise Drive – Mandarin Avenue

Galletta Drive	Plummer Avenue – Plummer Avenue
Mandarin Avenue	Aleppo Drive – Aleppo Drive
Guava Place	Guava Drive – End
Newark Boulevard	Thornton Avenue – Central Avenue

DISCUSSION/ANALYSIS

Bids for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 were opened on May 23, 2023. The City received a total of four bids as follows:

Bidder	Base Bid	Base Bid Plus Additive Alternate Bid No.1
VSS International, Inc.	$1,716,000.00	$1,716,000.00
DooLittle Construction, LLC	*$1,709,470.40	$1,719,719.00
American Pavement Systems	$1,775,748.10	$1,796,245.30
Pavement Coatings Co.	$1,905,998.85	$1,936,744.65
Engineer's Estimate	$1,395,763.30	$1,436,757.70

*Mathematical Error-Corrected

After an analysis of the bids received, staff concluded that the high bid prices were most likely the result of the competitive bidding climate and heightened material, oil, and construction costs, in addition to the high demand for asphalt repairs such as patch paving due to the recent heavy storms experienced in California this past winter. As stated in the Project Specifications, determination of the low monetary bidder was based on the Base Bid plus Additive Alternative Bid No. 1. The lowest monetary bidder, VSS International, Inc., submitted a responsive bid and is experienced in this type of project. Based on the bid submitted by VSS International, Inc., staff recommends the addition of Additive Alternate Bid No. 1 (Substitution of Black Aggregate) to the construction contract. As detailed below, there are sufficient funds for this project to include the recommended Additive Alternate Bid No. 1.

FISCAL IMPACT

In addition to the $1,716,000 contract amount, staff recommends including an additional $184,000 in construction contingency, equivalent to approximately ten percent (10%) of the contract amount, to account for material testing and other unanticipated construction costs. The added contingency would bring the recommended allocation for the project to $1,900,000. $75,000 of the total allocation would be reimbursed to the City by the Rubberized Pavement Grant Program administered by the California Department of Resources Recycling and Recovery (CalRecycle).

The 2022-2024 Biennial Budget and Capital Improvement Plan includes funding in the amount of $500,000 for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project 1301 using Highway Users Tax Account funds. Further, staff recommends that the City Council approve an amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan to reallocate funds from previously approved projects as follows:

Description		Expenditure	Amount
To:	Gas Tax – HUTA	Fund 201.90.091.910.6221.CIP001301	$1,400,000
Fr:	Gas Tax – HUTA	Fund 201.90.091.910.6221.CIP001238	$ 319,370
	Gas Tax – HUTA	Fund 201.90.091.910.6221.CIP001300	$1,080,630

With this reallocation, the 2022-2024 Biennial Budget and Capital Improvement Plan will include sufficient funding for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project 1301 using Highway Users Tax Account (Gas Tax) funds.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The repair and maintenance of existing facilities is categorically exempt under the California Environmental Quality Act (CEQA) section 15301 (Existing Facilities).

REVIEW AND APPROVAL

Prepared by – Michael Carmen, Assistant 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 – Lenka Hovorka, Assistant City Manager

Attachments

Resolution

Public Works Contract Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACCEPTING THE BID AND AWARDING THE CONTRACT FOR THE BASE BID AND ADDITIVE ALTERNATE BID NO. 1 TO VSS INTERNATIONAL, INC. FOR THE FY 2022-2023 RUBBERIZED CAPE SEAL AND SLURRY SEAL PROGRAM, PROJECT NO. 1301 AND AMENDMENT OF THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, the Public Works Department invited sealed bids for the construction of public improvements for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301 (the "Project"); and

WHEREAS, the City has, upon due notice, received a total of four bids for the Project that were reviewed by staff for responsiveness and responsibility; and

WHEREAS, as stated in the Project Specifications, determination of the low monetary bidder was based on the Base Bid plus Additive Alternate Bid No. 1; and

WHEREAS, VSS International, Inc. was determined to be the lowest responsible bidder with a Base Bid plus Additive Alternate Bid No. 1 of $1,716,000; and

WHEREAS, staff also recommends allocating an additional $184,000 in construction contingency, which would bring the total allocation for Project No. 1301 to $1,900,000.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby find that VSS International, Inc. is the lowest responsive and responsible bidder for FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301, in the City of Newark.

BE IT FURTHER RESOLVED that the City Council does hereby accept said bid of said company and does hereby authorize the City Manager of the City of Newark to execute an agreement with said company, in a form approved by the City Attorney, for the construction of FY 2022-2023 Rubberized Cape Seal and Slurry Seal Program, Project No. 1301, according to the plans, specifications, and terms of said bid for the Base Bid plus Additive Alternate Bid No. 1 in an amount not to exceed $1,716,000.

BE IT FURTHER RESOLVED that the City Council does hereby approve a construction contingency in the amount of $184,000, resulting in a total allocation of $1,900,000 for the Project, with funding through Highway Users Tax Account funds and grant funds received from the Rubberized Pavement Grant Program administered by the California Department of Resources and Recycling and Recovery (CalRecycle).

BE IT FURTHER RESOLVED that the City Council does hereby approve an amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan to reallocate funds from previously approved projects as follows:

	Description	Expenditure	Amount
To:	Gas Tax – HUTA	Fund 201.90.091.910.6221.CIP001301	$1,400,000
Fr:	Gas Tax – HUTA	Fund 201.90.091.910.6221.CIP001238	$319,370
	Gas Tax – HUTA	Fund 201.90.091.910.6221.CIP001300	$1,080,630

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager, or their designee, to execute any change orders necessary to account for material testing and other unanticipated construction costs within the total allocation for the Project.

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

AGREEMENT (PUBLIC WORKS CONTRACT)

THIS AGREEMENT, made and entered into this ___ day, of _____, 2023, and between the CITY OF NEWARK, a municipal corporation and the General Law Class, State of California, hereinafter called the "CITY" and _____, a _____, hereinafter called the "CONTRACTOR":

WITNESSETH:

That the City and Contractor for the consideration, hereinafter named, agree as follows:

1. That complete Contract includes all of the Contract Documents as if set forth in full herein, to wit: the Notice to Contractors; the Proposal to the City of Newark; the Accepted Bid (Unit Price Schedule); the Bidder's Statement of Subcontractors'; the Performance Bond; the Payment Bond; the Plans and Specifications; this Agreement; and all Addenda setting forth any modifications or interpretations of any of said Documents.

2. The Contractor will furnish all materials except as otherwise provided in the Specifications and on the Plans and will perform all the work necessary to construct and complete in a good workmanlike and substantial manner, and to the satisfaction of the Engineer, public improvements in accordance with that certain document headed:

FY 2022-2023 RUBBERIZED CAPE SEAL AND SLURRY SEAL PROGRAM, PROJECT 1301

and the Standard Specifications and Plans of the Department of Transportation, State of California, dated May 2006.

All of the above work is on City property, and under the direction of the Engineer or other official designated by the City to supervise said work, all as provided in and subject to the Contract Documents.

2. The Contractor shall comply with all applicable local, state, and federal regulations.

3. The Contractor shall maintain a valid Class A, Class C-12 or Class C-32 California Contractor License throughout the performance of work under this contract.

4. The Contractor shall submit a receipt copy or other evidence showing payment of the current City of Newark Business License fee.

5. The Contractor shall provide a Certificate of Insurance to show proof of Comprehensive General Liability Insurance of (minimum) $1,000,000 combined single limit per occurrence for bodily injury, personal injury, and bodily damage; and Workers Compensation and Employers Liability Insurance as required by the Labor Code of the State of California.

6. As of July 1, 2014, all contractors bidding on this project are required to register with the Department of Industrial Relations (DIR) and to pay the required annual fee. Under California Labor Code section 1771.1, as amended by SB 854, unless registered with the DIR, a contractor may not bid, nor be listed as a subcontractor, for any bid proposal

Approval of the insurance contracts does not relieve the Contractor or subcontractors from liability under this paragraph, including but not limited to the duty to indemnify City set forth herein. By execution of this Contract Contractor acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration.

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

CITY OF NEWARK
a Municipal Corporation

By_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

FOR THE CONTRACTOR:

_____

_____

By_____

STAFF REPORT

Item D. 10.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Roya Gonzalez, Administrative Analyst
SUBJECT	Adopt a resolution approving the second amendment to the Contractual Services Agreement with Orion Security and amend the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

SUMMARY AND RECOMMENDATION

As City staff continue to work on implementing long-term security solutions at City Hall, the temporary security guard services currently in place are recommended to remain for an extended period of time. Staff recommends that City Council authorize the City Manager to amend the existing Contractual Services Agreement with Orion Security to increase the not-to-exceed amount by $55,000 for a total not-to-exceed amount of $132,999 and amend the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to appropriate $55,000 from the general fund for this agreement.

BACKGROUND

In early 2022, staff engaged consultants to conduct security assessments of each of the City facilities to assess the need for enhanced security such as interior and exterior cameras, panic buttons, and additional key card and other controlled entrance measures. To provide interim security at City Hall, the City entered into an agreement with Orion Security on July 13, 2022 in an amount not to exceed $49,999. Because the long-term security measures were more complex than originally expected, the first amendment to the contract was approved on January 12, 2023, to increase the not-to-exceed amount by $28,000 for a total not-to-exceed amount of $77,999 which would fund security guard services through the end of June 2023.

DISCUSSION/ANALYSIS

The long-term security measures have continued to grow in complexity and have taken longer than expected. Fortunately, the City retained the services of Client First to complete the design and prepare the documents necessary to solicit bids for the installation of the long-term security measures. The design documents are expected to be completed by the end of summer 2023. Once the design is complete the City will solicit bids for the implementation of the long-term security solutions. The bid process and implementation is anticipated to take approximately six months to complete. While staff continue to work on executing the final security measures, funding is needed to keep security guard services at City Hall in place through March 2024.

FISCAL IMPACT

Staff requests authorization to amend the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to appropriate $55,000 from the general fund for this agreement.

REVIEW AND APPROVAL

Prepared by - Roya Gonzalez, Administative Analyst
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

713_Reso_Orion_amendment2
Amendment No. 2
Contractual Service Agreement
Amendment No. 1

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 2 TO THE CONTRACTUAL SERVICES AGREEMENT WITH ORION SECURITY TO PROVIDE SPECIALIZED PROFESSIONAL SERVICES (TEMPORARY SECURITY GUARD SERVICES) AND APPROVING AN AMENDMENT TO THE 2022-2024 BIENNENIAL BUDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, on July 13, 2022 the City entered into a Contractual Services Agreement C22041 (the "Agreement") with Orion Security (the "Consultant") to provide specialized professional services (temporary security guard services); and

WHEREAS, on January 12, 2023 City Council authorized the first amendment of the Agreement increasing the total not-to-exceed amount by $28,000 for a total not-to-exceed amount of $77,999;

WHEREAS, the City finds that the scope of services described in the Agreement continue to be necessary; and

WHEREAS, staff has identified the need to amend the Agreement to increase the not-to-exceed amount; and

WHEREAS, Section 27, Modifications, 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 amend the Agreement, Section 3. A to increase the "Not to Exceed" Compensation amount; and

WHEREAS, an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 will be necessary to appropriate funds for this Agreement.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute Amendment No. 2 to the Contractual Services Agreement with Orion Security to increase the not-to-exceed amount by $55,000 for a total not-to-exceed amount of $132,999, in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Council does hereby authorize an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 by appropriating $55,000 as follows:

TO: 110.20.020.200.6221	CMO Contractual Services	$55,000
FR: 110.3000	Unappropriated Fund Balance	$55,000

SECOND AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND ORION SECURITY

This Second Amendment to Contractual Services Agreement C22041 between the City of Newark, a municipal corporation, ("City") and Orion Security, a Type "C" Corporation ("Consultant") (sometimes referred to as "Parties") dated July 13, 2022 (the "Agreement"), is entered into as of _____, 2023 for the provision of specialized professional services (security guard services).

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of specialized professional services (security guard services); and

WHEREAS, Section 27, Modifications, 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 amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount; 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 not to exceed compensation by $55,000, for a total not to exceed amount of $132,999 (from a previous not to exceed amount of $77,999.).

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

City of Newark

_____

David J. Benoun
City Manager

Dated: _____

Consultant

_____

Authorized Representative
Stantec Consulting Services, Inc.

Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

C22041

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 13TH day of JULY, 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and ORION SECURITY, a C-Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: SPECIALIZED PROFESSIONAL SERVICES.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. **COMPENSATION.**

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of $49,999 and No/100 Dollars ($49,999.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

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

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

Invoices shall be sent to:

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

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

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

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

4. **ADDITIONAL SERVICES.** In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written task order approved in advance of the performance thereof. Such task order shall include

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

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

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

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

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

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

12. **RESERVED.**

13. **RESERVED.**

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

A. Verification of Coverage.

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

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

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

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

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

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

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

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

C. Minimum Limits of Insurance.

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

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

For all "claims made" coverage, in the event that Consultant changes insurance carriers Consultant shall purchase "tail" coverage or otherwise provide for continuous

coverage covering the Term of this Agreement and not less than five (5) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Consultant changes to a new carrier.

F. Wasting Policies.

No policy required by this paragraph 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

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

I. Other Insurance Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. TERM/TERMINATION.

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

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

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by **GINA ANDERSON CHIEF OF POLICY** of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

Orion Security
JOSEPH BABA, PRESIDENT
Consultant

Address: Orion Security
675 E. Gish Road
San Jose, CA 95112

CITY OF NEWARK
GINA ANDERSON, CHIEF
Administrator

City of Newark
Attn: Captain Jonathan Arguello
37077 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 7-13-22

ORION SECURITY,
a C-Corporation

By Yooshieh Gahramani
Consultant

Date 7-12-2022

Yooshieh Gahramani
Printed Name

Attest:
Sheila Harrington
City Clerk

Date 7/14/2022

Approved as to form:

K Kolat
City Attorney

Date 7/13/22

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A

PAYMENT

EXHIBIT A

QUALIFICATIONS

3393490.1

June 29th, 2022

Upgrade to Dependability

Attention

Joshua Horst
Newark Police Department

Address

Newark City Council
37101 Newark Blvd.,
Newark, CA 94560

Proposal For



RFP Date:
Tuesday June 28th, 2022

Submitted By

Laura Tafoya
Security Consultant
Cell: (408) 771-1352
Phone: (408) 287-4411
Laura@OrionSecurity.com

INDEX

Cost of Service..... Page 1
Mission Statement..... Page 2
Company History..... Page 3
Executive Team..... Page 4
Management..... Page 5
Organizational Structure..... Page 6
Stationary..... Page 7
Parking Enforcement..... Page 8
Technology..... Page 9
Technology Reports..... Page 10
Dispatch..... Page 11
Recruitment..... Page 12
Drug Testing..... Page 13
Hiring Process..... Page 14
Orientation and Training..... Page 15
Quality Control Measures..... Page 16
Community..... Page 17
Private Patrol Operator License..... Page 18
Sample Reports..... Page 19
References..... Page 20

June 29th, 2022

Upgrade to Dependability

COST OF SERVICE – Unarmed Patrol

Designed to be straight forward with no hidden costs.

Cost for Year 2022 - 24/HR PAID OFFICER

Type of Coverage: One (1) unarmed, uniformed officer to patrol the property on foot to deter criminal activity ie. thefts, assault, burglary, robberies, and other unwanted transient activities. Daily shift reports with pictures to be sent via email. Special Incident Reports are created for important observations. Officer will assist in the enforcement of property policies.

SUN	MON	TUES	WEDS	THUR	FRI	SAT
	✓	✓	✓	✓	✓	
	7:30a-3:30p	7:30a-3:30p	7:30a-3:30p	7:30a-3:30p	7:30a-3:30p (bi-weekly)	

=

Total Weekly Billable Hours
Approx. 36

Unarmed- Uniformed Security Officer

Officer's Minimum Hourly Pay Rate	$24.00/hour
Hourly Bill Rate	$36.10//hour
Holiday & Overtime Hourly Bill Rate	$54.15/hour
Special Request Officer- Less Than 24 Hours Notice	$54.15/hour

Features

Assigned Account Manager	$0.00/included
Online Web portal	$0.00/included
Digital Reports	$0.00/included
GPS Tracking	$0.00/included
Monthly Cost Samsung S10 Smart Phone (1)	$0.00/included
Security Signs	$0.00/included
Security Refrigerator Magnets	$0.00/included
24 Hour Dispatch Center	$0.00/included
Web Parking Software	$0.00/included
Marked Security Vehicle with amber lights(Optional)	$1,000.00/ Mo
Marked Security Golf Cart with amber lights(Optional)	$400.00/Mo

Total Cost

Weekly	$1,299.60
Monthly	$5,631.60
Yearly	$67,759.70

- *Quote includes the cost of all materials, uniforms, training, account setup, supervision, taxes, insurance, fuel, maintenance, workers compensation, etc.*
- *Total 'Monthly' cost is an estimation based on the average 4.33 weeks in a month. Total 'Yearly' cost is based on the average 52.143 weeks per year.*

June 29th, 2022

Upgrade to Dependability

VISION & VALUES

Quality Service and state of the art technology

Mission Statement



The fundamental mission for Orion Security is to protect the lives and property of the customers we serve in a manner consistent with the highest ideals within our industry, and to take advantage of those scientific advancements which will help us succeed in that endeavor. We dedicate ourselves to providing unsurpassed, personalized, quality security services. Whether your security concerns are large or small, we provide customized solutions to suit your needs in all situations.

Orion Security has committed it's energies to a policy of teamwork, reciprocal understanding, and growth of long-term business relationships with our customers and employees.
We look forward to the future with great confidence in seeking to win over new clients, while continuing to thank our current customers for their support.

In order to fulfill part of it's mission, Orion Security has assigned specially qualified managerial personnel to keep abreast technological developments within the industry. They are empowered to adapt those technologies they find to be useful, and which will advance our goals. Additionally, we have implemented a policy of measured, steady growth, which enables us to meet projected demand without ever degrading the quality of our service.

We endeavor to be the preferred security provider for all whom we serve and pledge to conduct our business with uncompromising honesty, wisdom, discretion and sound judgment. This commitment extends to customers, employees, vendors, communities, and industries with which we do business.

Company History

COMPANY HISTORY

Orion Security has been serving the Bay Area since 1980

Most companies rent their office space, Orion owns their building. This allows the company to park it's fleet of vehicles on site.



Orion Security was founded by Yosh Gahranmani in 1980 at 357 Town & Country Village in San Jose. Yosh had one goal in mind; to make a profitable business with best, in class, customer service. With only one employee, the company opened its doors as a provider of professional security services. In response to the growing demand for professional physical security service, Orion has grown into a full service organization providing loss-prevention, property protection, access control, revenue collection, executive protection, crisis intervention, patrol services, and other protective services to both private and government agencies. Orion handles accounts ranging in size from small businesses to large companies. Today the company has over 300 employees and is one of the largest security patrol services in the Bay Area.

ASIS INTERNATIONAL
Advancing Security Worldwide™

CALSAGA™
CALIFORNIA ASSOCIAITON OF LICENSED SECURITY AGENCIES, GUARD AND ASSOCIATES

BUREAU OF SECURITY AND INVESTIGATIVE SERVICES
BSIS
PROTECTING CALIFORNIA CONSUMERS
DEPARTMENT OF CONSUMER AFFAIRS

Owner and CEO

OWNER / CEO

After over 36 years, Yosh is still directly involved in business he created.



Yosh Gahranmani, CEO of Orion Security

Yosh Gahramani arrived in the San Francisco Bay in 1972 with only fifty dollars to his name. Yosh lived with a relative while working in construction for a few years, then as a security officer for an additional 5 years, before deciding to go into business for himself. With only one employee and one radio, Orion Security was formed.

Orion Security quickly grew by word of mouth, with the exceptional work that was performed by the owner and his new employees. Within 3 years Yosh had built his company up to over 100 happy clients and the largest locally owned security company in the Bay Area.

Today Yosh owns several successful companies such as Fantastic Bay Builders, Yosh Landscaping Services, and Paramount Investigations. Orion Security is lead by the example of the entrepreneurial CEO, with his incredible work ethic and infectiously positive attitude.

Executive Team

Team Leaders

Meet the Team!



Shortly after graduating in 1994 Joseph started his first job as a production worker. Within his first year of employment, Joseph was promoted to a supervisor position. After 2 years of lead, Joseph started working as a manager. Joseph exceled in client relations and Customer Service. With over 20 years of management and customer relations, Joseph is responsible for the company's growth and overall customer satisfaction. **Education & Experience:** High School Diploma, 2 years at Ohlone College, bachelor in Business from California State East Bay, 1 year with Pacific Fire Department, & a Licensed Security Officer.

Joseph Baba, Director of Business Development

Lita started with Orion Security in 1996 after getting her certification as a Medical Transcriber. At the time Orion was still a small company. Now 24 years later Lita has become the owner's right hand, and is the go to person for any employee needs. Not only does Lita handle all of Human Resources, but she is cross trained in almost every position within the company. She can and happily helps out any department when she is needed.



Lita Ortega, Controller



Margarita has been with Orion Security since 1992 when she was recruited after receiving her degree in Office Automation to work as an administrative assistant. Since then, Margarita has become Orion's Chief Accounting Officer. All payroll and invoicing is done through Margarita. She is easily the favorite person among all employees.

Margarita Camacho, Chief Accounting Officer

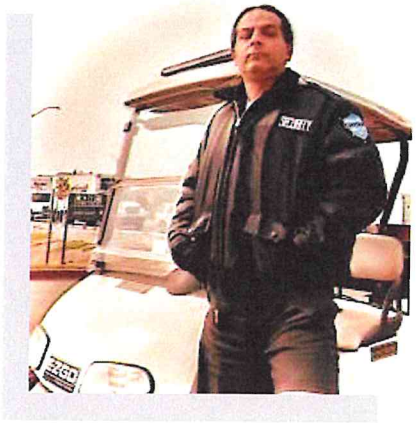
June 29th, 2022

Upgrade to Dependability

Account Management Team

Team Leaders
Meet the Account Management Team!

Ramtin has been working within the security industry for over 11 years; he has been working with Orion since 2019. Ramtin knows that security is about adding value and an increased sense of safety. Ramtin excels in his ability to accurately assess property issues then consult on the security needs for those properties. Ramtin is well know and respected by the Orion team and his clients.



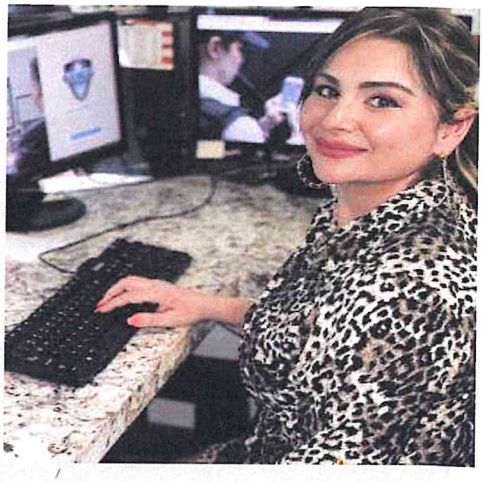
Ramtin Patehvir,
- Security Consultant & Account Manager



Laura started with Orion Security as a dispatcher. She quickly learned the operations of dispatch and staffing. She now works in the account management team along side Joseph and Teresa. Laura specializes in client relationship management, technical writing, and account management. She has proved to be an asset to our team. We value her hard work and positive attitude!
AAT- Psychology Degree from De Anza College

Laura Tafoya,
Security Consultant & Account Manager

Teresa Started her career in Security as an alarm operator in 2010, She quickly worked her way up to a Grave shift supervisor over seeing a team of 10 dispatchers and also assisting with client relations. Teresa joined Orion security in 2019 as a Office Assistant later joining the sales team to assist with consulting and account management.



Teresa Maestas,
Client Relationship Manager & Security Consultant

Team Leaders

Office Management

Office Staff



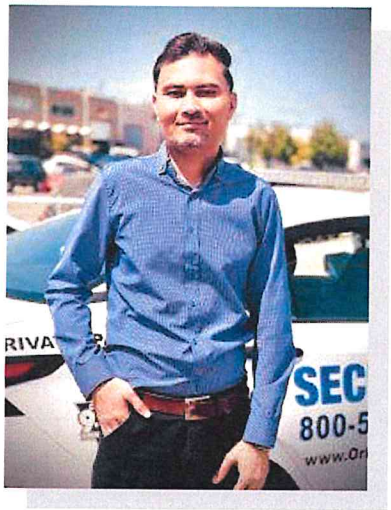
In 2001, Shannon Box was hired by Orion Security as a receptionist. Shannon proved to be a great asset to the company by helping out with just about every aspect of the business. She now specializes in the operations of the company, including oversight of dispatch and patrol operations. As the Operations Manager, Shannon is also in charge of the staffing, scheduling, security training, and post orders for sites.

Shanon Box, Operations Manager

Over 20 years of combined experience in military, law enforcement, security, investigations, Counter Intelligence operations, Anti and Counter Terrorism. A highlighted veteran of the U.S. ARMY who trained and managed combat teams during Desert Shield and Desert Storm Wars. Tom Trained and supervised SWAT Operations. In addition he managed international black marketing investigations in Europe and South Korea. **Certifications:** Anti Terrorism Spec (CMAS), SWAT training SRT, Military Police Investigator, Specialized Technology Degree, Police Academy Graduate of The University of Oklahoma.



Tom O'Donnell, Watch Commander



Atilla Aochqon has 3 years of patrol management experience with Orion. He also holds an extensive security and protection background. Before coming to work at Orion he worked with the US Military for a total of 12 years in Afghanistan. He treats all people with respect and dignity. Experience: Family Health International (FHI-360)/University of Massachusetts(Umass)/United States Agency for International Development(USAID)/ Afghanistan, Development Alternatives Incorporated(DAI/USAID). Education: Bachelor of Science, Engineering.

Atilla Aochqon, Patrol Manager

June 29th, 2022

Upgrade to Dependability

Supervisory Staff Highlights

Team Leaders

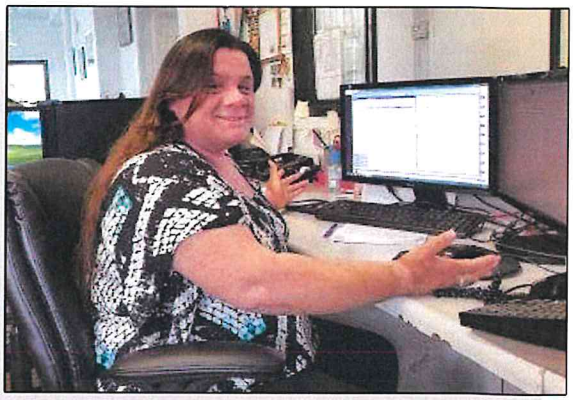
Supervisor and Patrol Management



Meron has been with Orion Security since 2015. He started his career with Orion as a patrol driver. He proved to be a reliable, dedicated individual, and has since been promoted to supervisor. Meron supervises and trains the patrol drivers. Works shifts when there is a call off, and assists in anyway he can to provide the best quality security to our clients.

Meron Mekonen, Supervisor

Andrea started with Orion Security in 2010 as a part-time dispatcher working weekends. Andrea eventually moved to working full-time. Andrea quickly became adept at filling open shifts, call offs, and answering inbound calls. Besides focusing on every component of staffing, dispatch is the first point of contact at Orion and the person charged with monitoring TrackTik for incidents, or call for service request.



Andrea Camrago, Dispatch Manager



Fatema has been with Orion Security since 2020. She started with Orion as a flex officer/dispatcher. She consistently showed that she was willing to work any post, and with a smile. Fatema has been cross trained on all stationary accounts, covers shifts, trains, and supervises.

Fatema Faramarz, Field Supervisor

June 29th, 2022

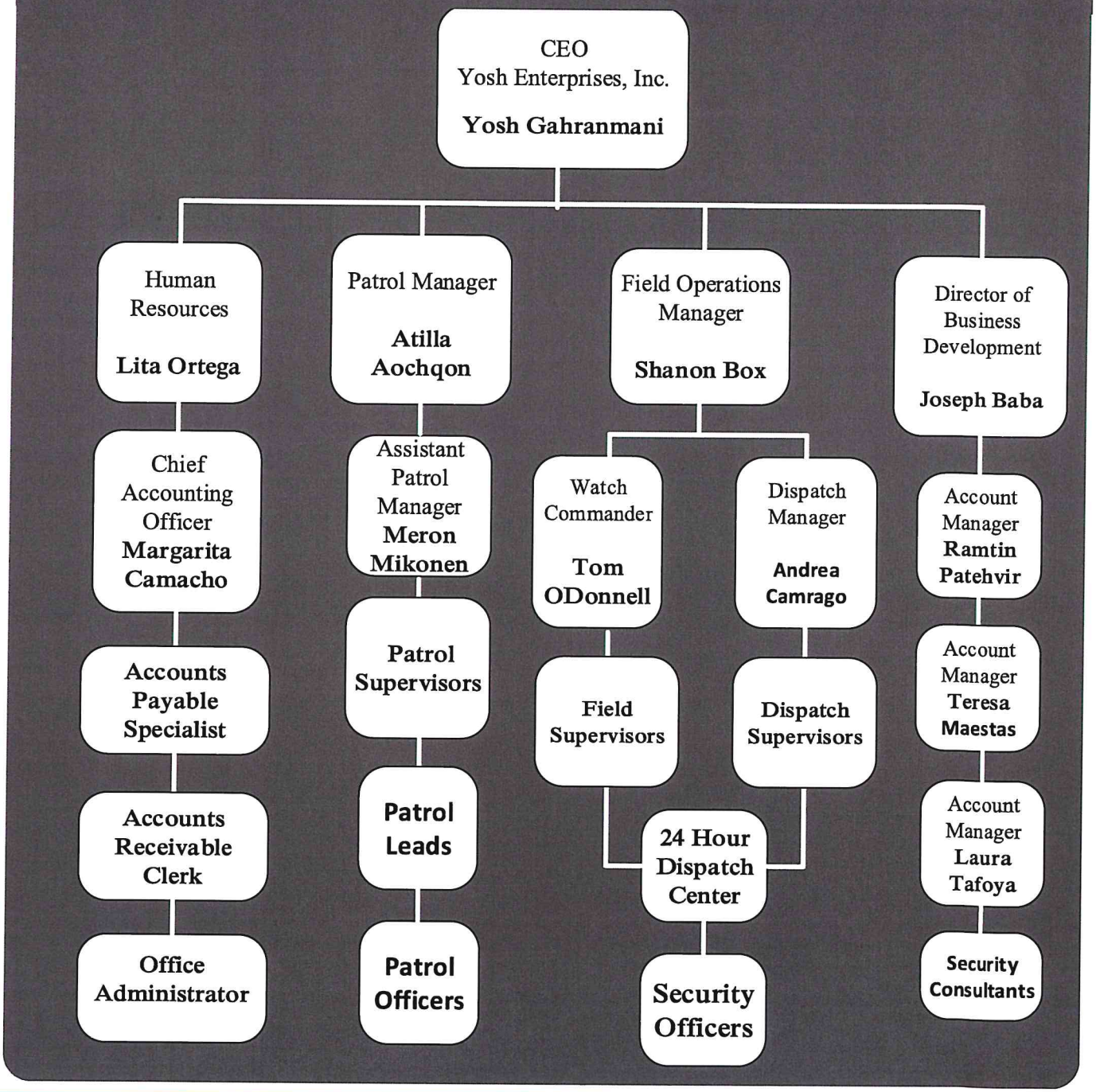
Upgrade to Dependability

Organizational Structure

ORGANIZATIONAL STRUCTURE

Forty years later, Yosh Gahranmani is still directly involved in the business

ORGANIZATIONAL STRUCTURE CHART



Stationary

STATIONARY OFFICERS

Professionalism and Customer service are our highest priority.

Construction

Orion handles some of the largest and most high profile construction sites in Northern California. We currently provide security services to WebCor Builders on the new R&D office for Samsung, in downtown San Jose. Always safe; always professional.



Orion is currently securing Webcor Builders, who are constructing the new Samsung R & D building in downtown San Jose, CA.

Shopping Centers

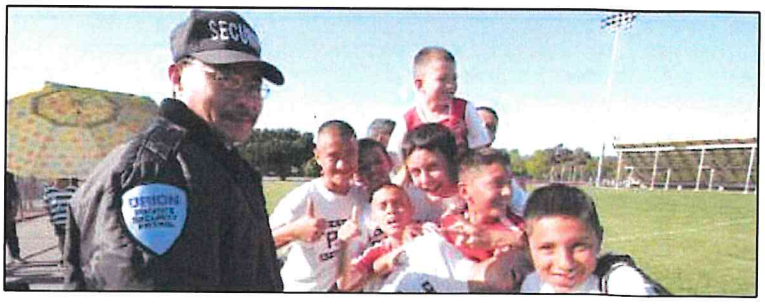
Increased crime in shopping areas has lead to new tactics for Police and Security Officers. Vehicle break ins are at an all time high across the Bay Area. With state of the art accountability software, we keep our officers alert and moving. Along with vehicle patrols from our large mobile patrol service, we lock down our shopping centers from the would be criminals.



Check points that must be scanned, are placed at key locations throughout the parking lot. This ensures our officers are moving and keeping vehicles safe.

Schools

Professionalism and customer service are our top priorities whether we are dealing with children or the elderly. We are in the customer service industry and every officer is trained to understand this. It is also important that our officers are dressed to impress. Clean pressed uniforms with proper tailoring is standard for all of our officers.



Professionalism and respect is given to everyone, big or small.

Parking Encorcement

PARKING ENFORCEMENT

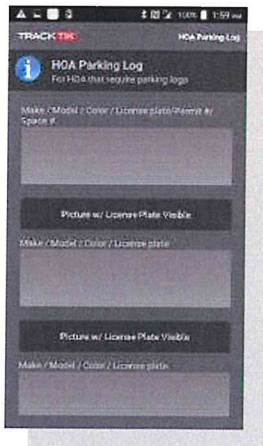
Let our officers take some stress off.

You give us your parking policies, and we will enforce them for you ! This takes innumerable amounts of stress off of our clients shoulders. Instead of calling you, they call our 24 hour dispatch! Residents or employees, utilizing our parking services, may call dispatch to let us know that there is a car in their spot or a car parked illegally. We will dispatch the task to the officers phone, and they will respond once they arrive on site.

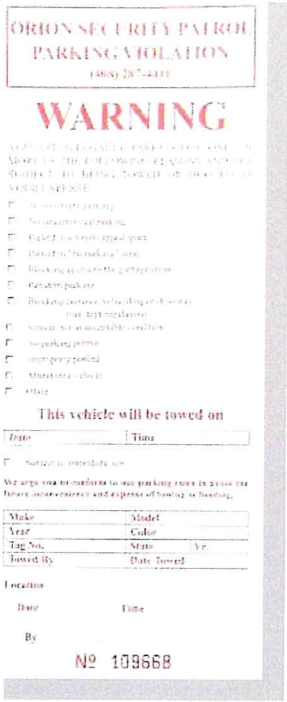


Orion Security officers will document, take pictures, and sign for the tows of any illegally parked vehicle.





Tracktik Parking Software is easy to use and will meet any of your parking enforcement needs. Security officers access the program through their smart phones. Officers can add parking violations, and see prior parking violations. Clients may request a toe or 'do not toe' by calling or emailing our 24 hour dispatch.



Clients are able to dictate procedures. We can issue a warning citation, or tow immediately, when a car is found breaking property policies. Orion officers will request and sign for a tow of any vehicle blocking fire lanes.

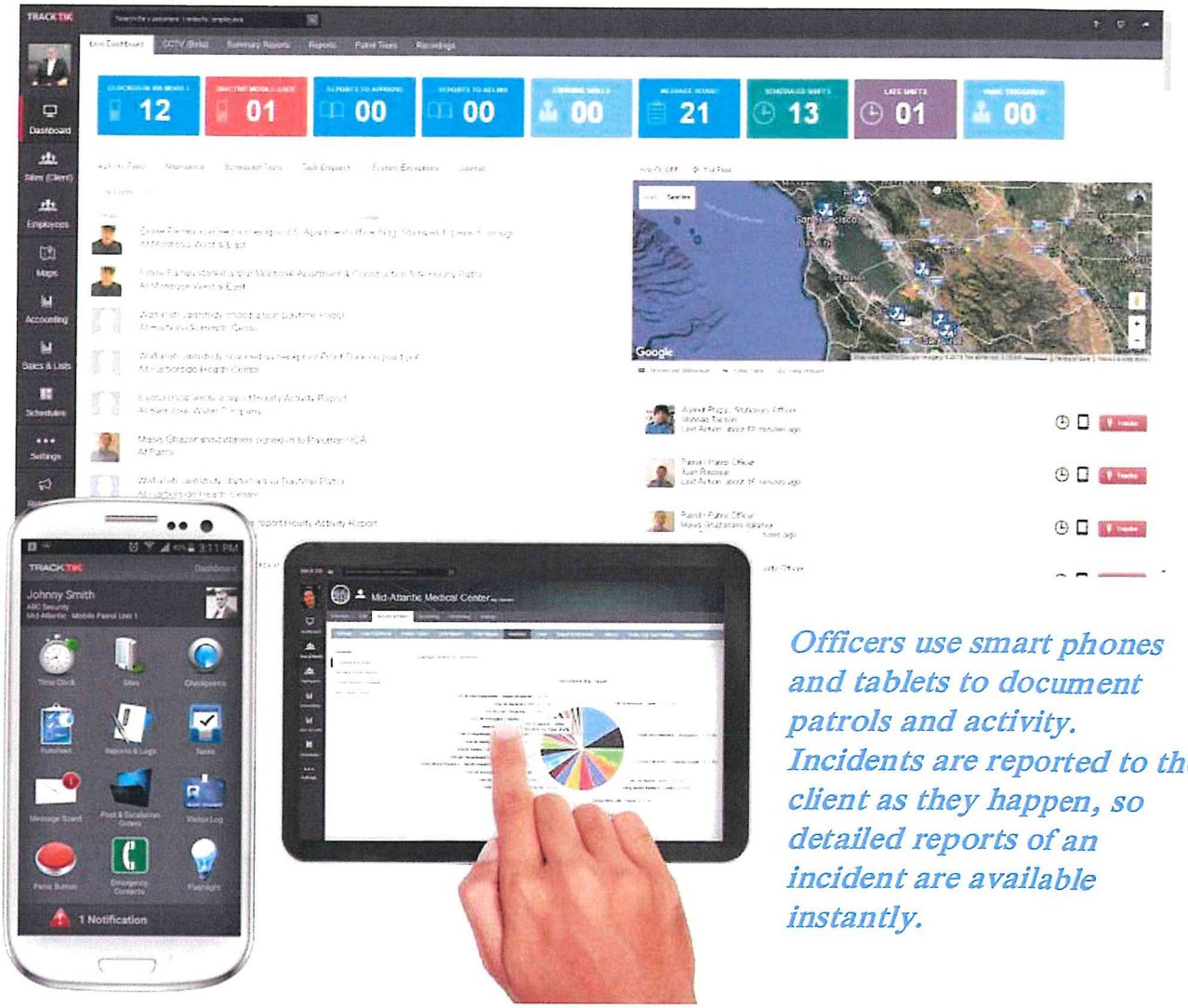
Technology

TRACKTIK DASHBOARD

Easy to navigate dashboard application

TRACKTIK

Historically, it has been challenging to ensure accountability in the security industry. Those days are over! You will never again have to wonder if your property is getting it's patrol services. With TrackTik, dispatchers are able to monitor our officers in real time. If a patrol is missed or completed incorrectly, our dispatch center will be alerted immediately. New tasks can be given to our 24 hour dispatch at any time, and the officers will receive the task on their smartphone.



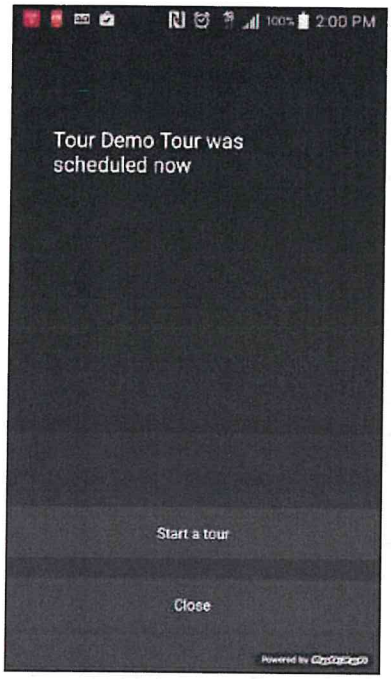
Officers use smart phones and tablets to document patrols and activity. Incidents are reported to the client as they happen, so detailed reports of an incident are available instantly.

TRACKTIK GUARD MANAGEMENT SOFTWARE

Real time guard tracking and paperless reporting available from any android device.

Technology

TRACKTIK

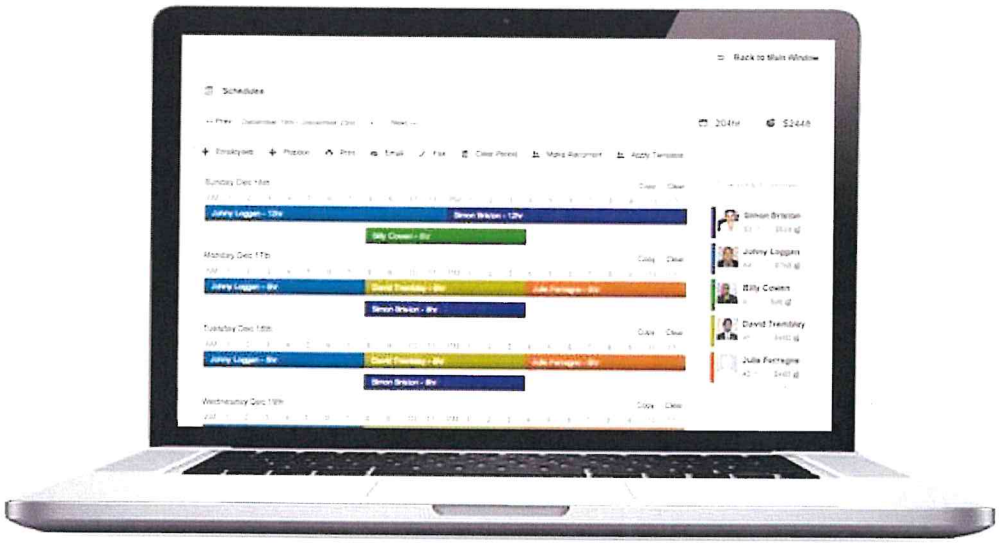


— *Officers are alerted to start a scheduled tour of the property.*



— *Once the tour is started, the officer can scan checkpoints by using the "NFC" (Near Field Communication) feature.*

TrackTik also keeps track of officer's attendance. If an officer arrives late or leaves early, we will know.



The tour on the mobile device keeps track of which checkpoints are scanned and which checkpoints still need to be scanned.



Reports

TRACKTIK REPORTING

Incident Reports are populated in real time and are emailed instantly to the Clients Inbox.

We have to try and forget about the old ways of security reporting. Property managers don't want to read generic reports stating "all clear", they want to know where the problems are so they can be addressed.

Tracktik makes this possible. The powerful data capturing, and organization of TrackTik reporting, is matched by its easy to customize interface. The easy-to-use, drag-and-drop interface allows officers to build reports on a Smartphone. With your own Tracktik login, you are able to see what the guard sees from their phone.



"The interface on both the field device and PC is logical and simple to use, even for the technically challenged."

TrackTik reporting is built to facilitate your unique incident report needs. By requiring Officers to add real-time photos into their reports, you are guaranteed to see that the officer is performing.





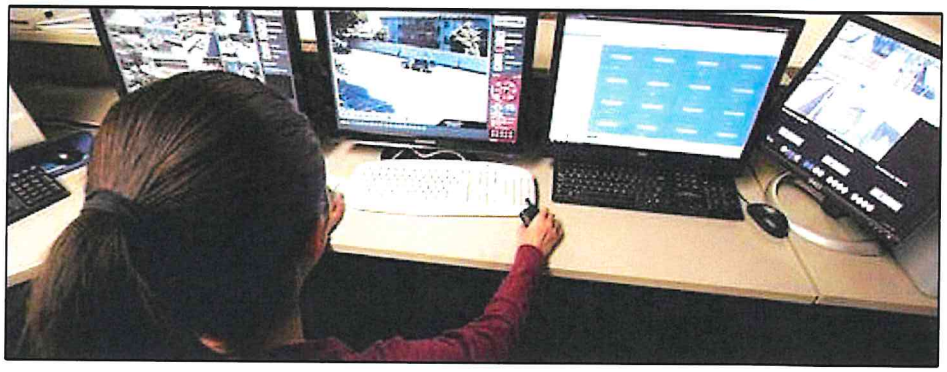
No longer do our clients have to worry if their properties are being checked, and patrols being made. TrackTik reports allow the client to be in the loop on all things that happen during the Officers shift. Clients can use Tracktik interface to review reports in live time, or get the reports emailed to them directly.

Dispatch

24-HOUR LIVE DISPATCH CENTER

Callers will always speak directly with an Orion Security employee

Dispatch is a crucial part of the team. State of the art equipment and software are required in order to manage all 300+ officers each night.



Most companies will claim to have a dispatch center but actually have one of two things; a paid answering service or an officer in the field with a cell phone. Orion has fully trained dispatchers on staff 24 hours per day. This ensures calls will be answered in a timely manner and always handled by an Orion employee.

When a call is answered, the dispatcher will gather the following information:

- Name of Property
- Name of Caller
- Address or Unit Number
- Details of Incident
- Contact Information
- Follow Up Requested

Dispatch oversees the entire operation 24 hours a day. All calls and incidents are streamlined through our dispatch center for record keeping and efficiency. Every officer in the field, is monitored in real time and given instructions from dispatch. Dispatch monitors the following:

- Officer Attendance
- Movement of Officers
- Incidents
- Video Surveillance
- Fire & Burglary Alarms
- Parking Violations





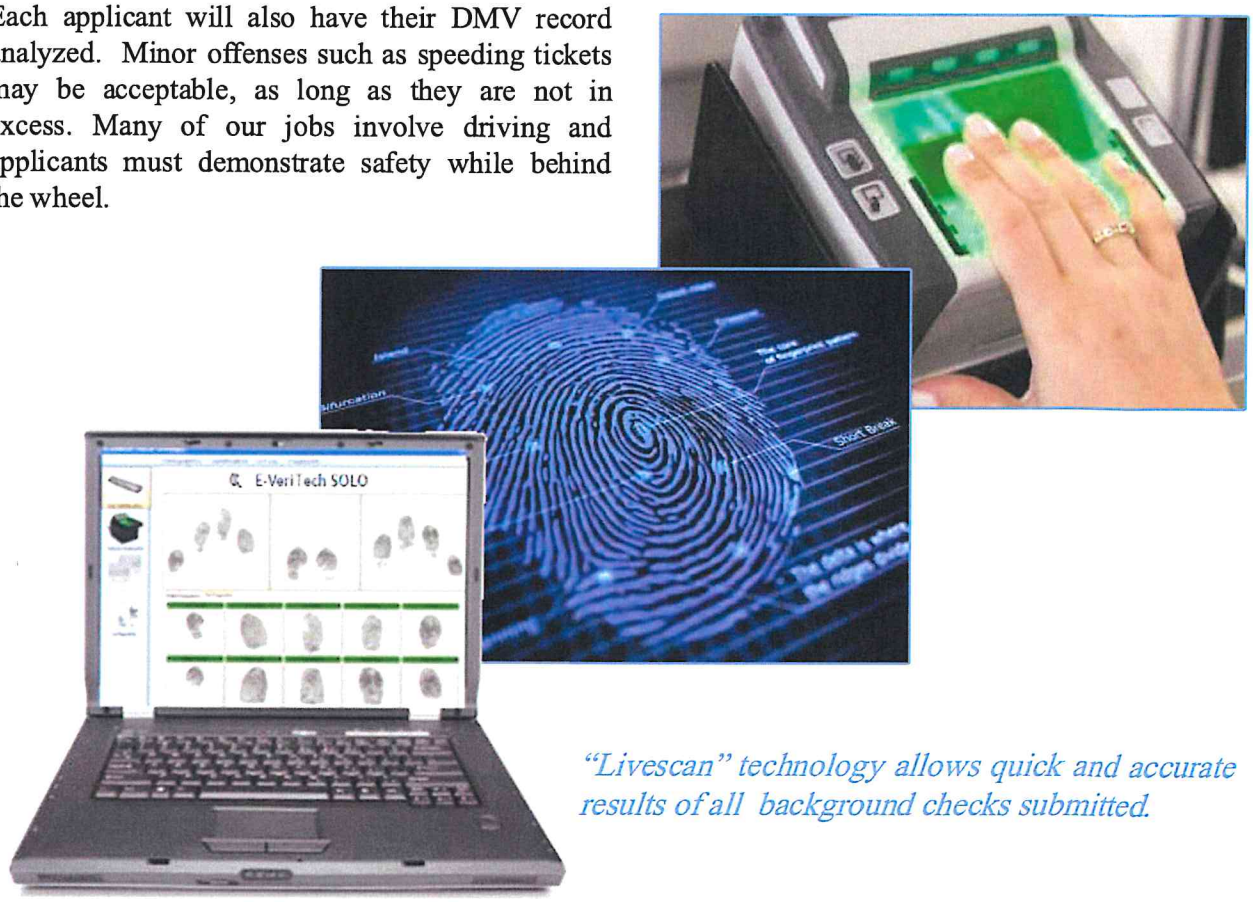
BACKGROUND CHECKS

All applicants are background checked via fingerprints sent to the U.S. Department of Justice and FBI.

Pre employment Screening

All applicants must pass a background check prior to employment. Potential employees have their fingerprints taken, which are then sent to the U.S. Department of Justice and the FBI. Applicants will not be considered for employment if the screening shows any felony or misdemeanor convictions.

Each applicant will also have their DMV record analyzed. Minor offenses such as speeding tickets may be acceptable, as long as they are not in excess. Many of our jobs involve driving and applicants must demonstrate safety while behind the wheel.



"Livescan" technology allows quick and accurate results of all background checks submitted.

Today's technology has made fingerprinting easy, clean, accurate and fast. It no longer requires messy ink used on the fingers. The fingerprints are now taken digitally by pressing down on the glass scanner of a "Livescan" machine. These scanning machines accept the swipe of a Drivers License, which will auto populate all the personal information into the program. The program requires that all 10 fingers are accurately logged into the system, before they can be submitted. As soon as the scan is complete, the fingerprints are instantly sent off to the federal agencies for processing.

Pre Employment Screening

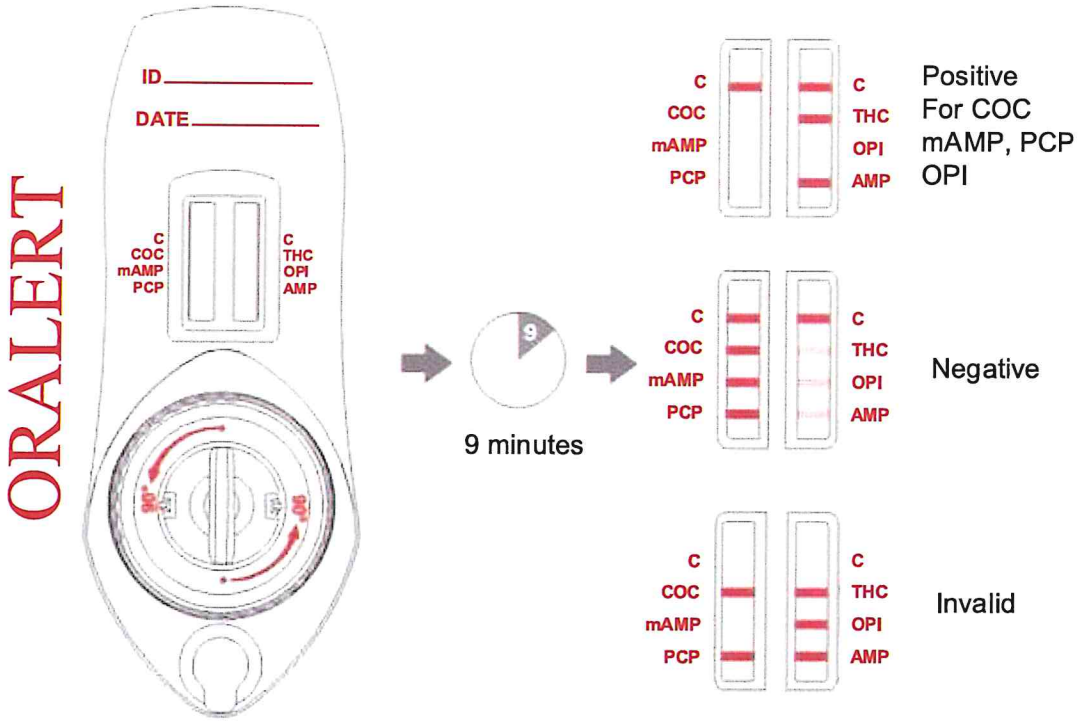
DRUG TESTING

Orion Security is a drug free workplace. All applicants are tested prior to employment, along with the random quality assurance mandated tests.

Drug testing has become cheap and easy to do onsite. There is no excuse for not checking an applicant for illegal substance use. Donors simply keep the sponge between the tongue and the cheek for 3 minutes. Within 9 minutes of placing the stick into the chamber, we know if the applicant uses illicit substances. If any illegal drugs are found in the test, the applicant will be denied employment.



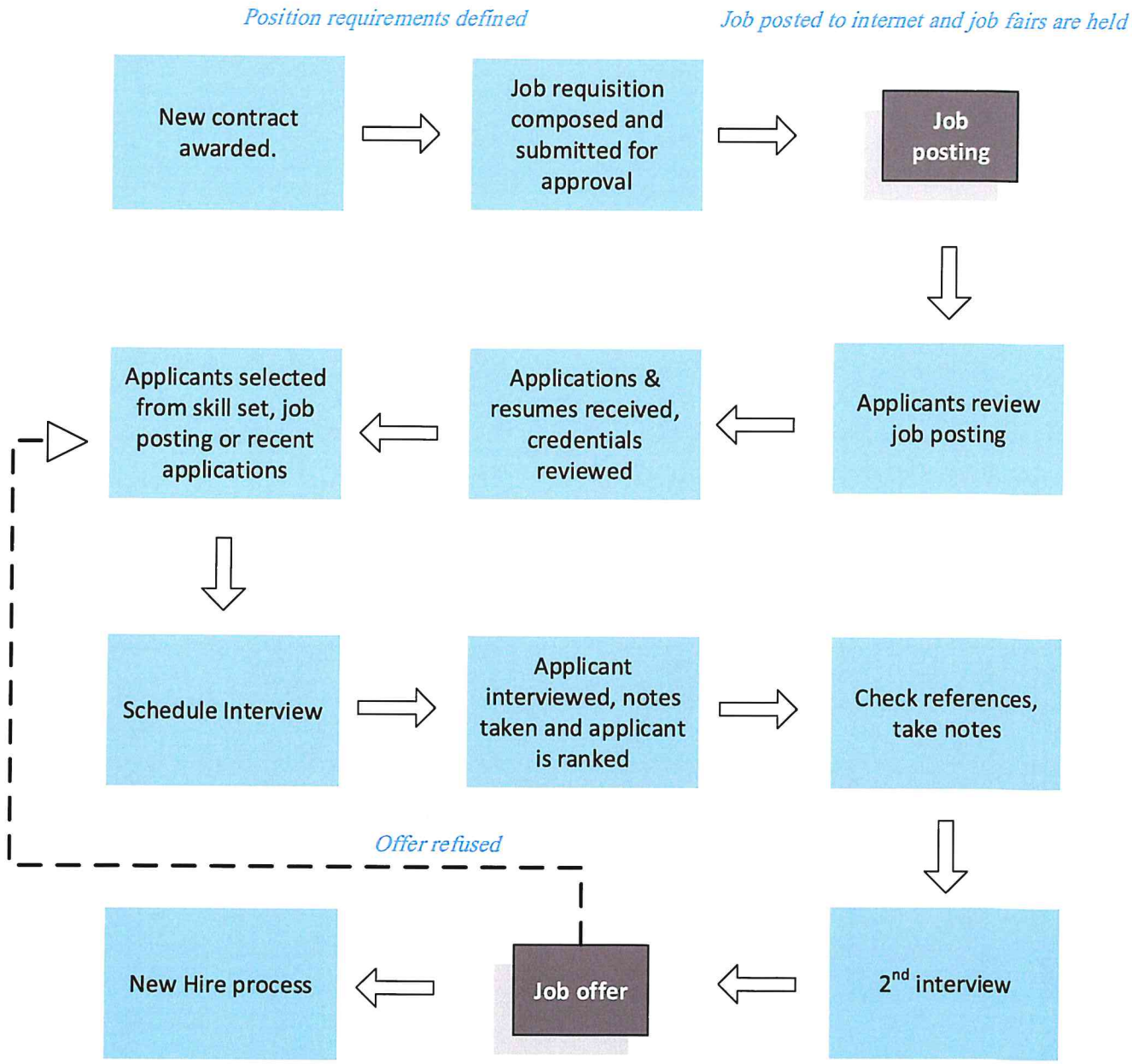
Drug tests will be administered if there is an accident or reasonable cause. For quality assurance, random drugs tests may also be given.



Hiring Process

HIRING

Hiring the right person for the job, is one of our most important services



ORIENTATION

Orientation sets the tone for all new hires. Employees are taught Orion's expectations.

Orientation and Training

The first thing Orion Security officers are taught, is that perception is everything. From the shoes all the way up to the hat, the officers must look professional at all times. Our officers in uniform should be alert while on duty, and professional at all times.

Orientation is where the new hires learn the fundamentals of security work. Whether the individual has a life long history in security or is brand new to the industry, everyone receives " Level 1" officer training. This program runs 4 hours long

Level 1 officer training includes the following

- Report Writing 101
- Incident Report Requirements
- Powers To Arrest
- Public Relations
- Observations & Details
- Effective Communication
- Liability 101
- Post Orders & Assignments
- Company Policies
- Officer Safety



Continuing education

Orion Security provides at least 4 hours of additional training to its employees annually. Annual training can include any of the following:

- CPR
- Fire Safety Course
- School Security Guard Training
- Evacuation Procedures
- Preserving the Incident Scene
- Weapons of Mass Destruction (WMD) & Terrorism Awareness
- Crowd Control



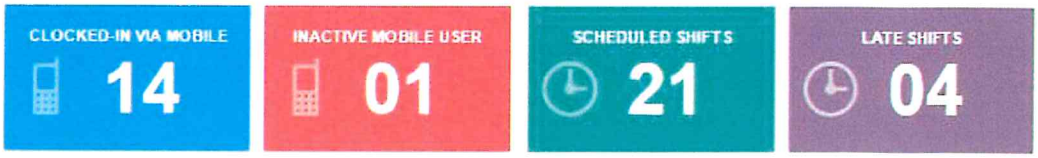
Ongoing training is a key element that most security companies do not provide. Keeping our officers educated helps provide a higher quality service for our clients and keeps the turnover ratio low. The cost is minimal considering the benefits for everyone.

QUALITY ASSURANCE

Real time tracking combined with on site "post checks" is how we ensure quality.

Quality Control Measures

Accountability



With the TrackTik software Orion has implemented, we are now able to have a higher level of accountability. With real-time reporting, GPS monitoring, and live dashboard updates, Orion is able to ensure our officers are where they should be, when they should be. As mentioned before, officers are time stamped when the arrive on site and each report requires live photo's to ensure that the guard actually checked all sensitive areas/items. Our clients also get these reports instantly in email form no matter what time of day/night an incident occurs insuring complete accountability.

Post Checks

Unfortunately there are no programs that can check the appearance or attitude of an officer. This is why "post checks" must be completed by our supervisors. Often we rely on our patrol service to check on our officers in the field. Upon arrival our patrol officer will check the overall appearance of the officer. The supervisor will be looking for stains, rips, or poorly fitting clothing. Next the supervisor will ask the officer to explain his duties and show the status of the daily activity report (DAR). Before leaving, the patrol supervisor will ask to see the officer's guard card. This will ensure the officer guarding you property is licensed and fit for duty.

Undercover Post Checks

Post checking an officer who is unaware of the evaluation, is the best way to see what kind of quality service the client is receiving.

The most effective post check, is one where the officer does not know they are being evaluated. Orion conducts random undercover post checks on its employees. This is where a manager will pose as a trespasser or illegally parked citizen somewhere on the property. The goal is to simply apply pressure to an officer or situation and observe how it is handled. After the test is over, the officer will be advised of the experiment and then review their performance. Typically our officers pass with no problems, but sometimes simple corrections are needed.



Community

COMMUNITY INVOLVEMENT

Orion Security has been serving the Bay Area since 1980

Orion Security does not just look at each bid as a business contract. For 36 years Orion has treated each client as a "Partner," and has made a point of involving themselves in their clients lives. At Orion, we are trusted with our clients physical safety, homes, places of work, and financial assets. It is only natural that a personal relationship forms. As part of the South Bay Area community, Orion does its part to demonstrate public responsibilities. With a shifting focus towards technology, the amount of paper usage is limited by automating all Officer Reporting. This transition away from paper documentation has made things more client friendly. Orion is working to become a "Green" company.



Orion Security goes beyond just protecting client's assets, they also attend community events, such as Neighborhood Watch meetings and or Night Outs.

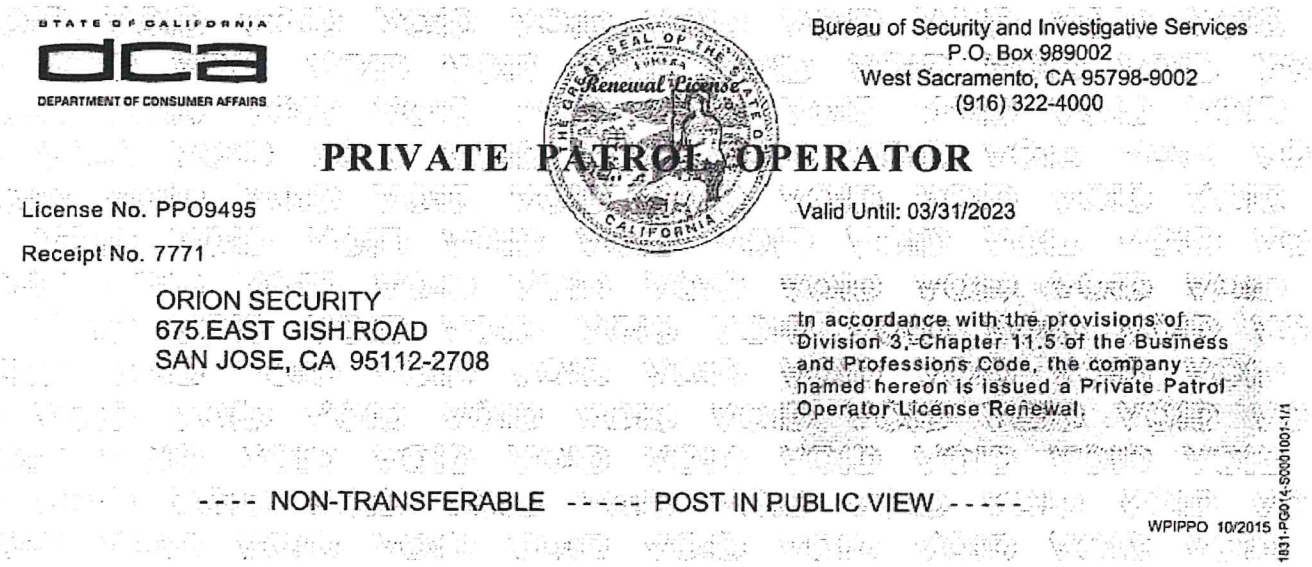


An example of Orions community involvement was The Annual Resident Appreciation BBQ for Lakeview Apartments in Fremont. This is one example of community interaction by Orion. The picnic took place Sunday July 19th, 2016. Orion Security met with building residents and socialized. Orion also donated various gift cards and Starbucks cups. There was a band that played music and raffled prizes to winners.

PPO

PRIVATE PATROL OPERATOR LICENSE (PPO)

Never do business with a security company that cannot provide a PPO for you.



STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

Bureau of Security and Investigative Services
P.O. Box 989002
West Sacramento, CA 95798-9002
(916) 322-4000

Renewal License

PRIVATE PATROL OPERATOR

License No. PPO9495
Valid Until: 03/31/2023

Receipt No. 7771

ORION SECURITY
675 EAST GISH ROAD
SAN JOSE, CA 95112-2708

In accordance with the provisions of Division 3, Chapter 11.5 of the Business and Professions Code, the company named hereon is issued a Private Patrol Operator License Renewal.

---- NON-TRANSFERABLE ----- POST IN PUBLIC VIEW -----

WPIPPO 10/2015

1831-PG014-S0001001-1/1

A Private Patrol Operator licencse (PPO), acts as a business license for anyone who owns a company in the private security sector and has a patrol service.

The following are the requirements for a PPO

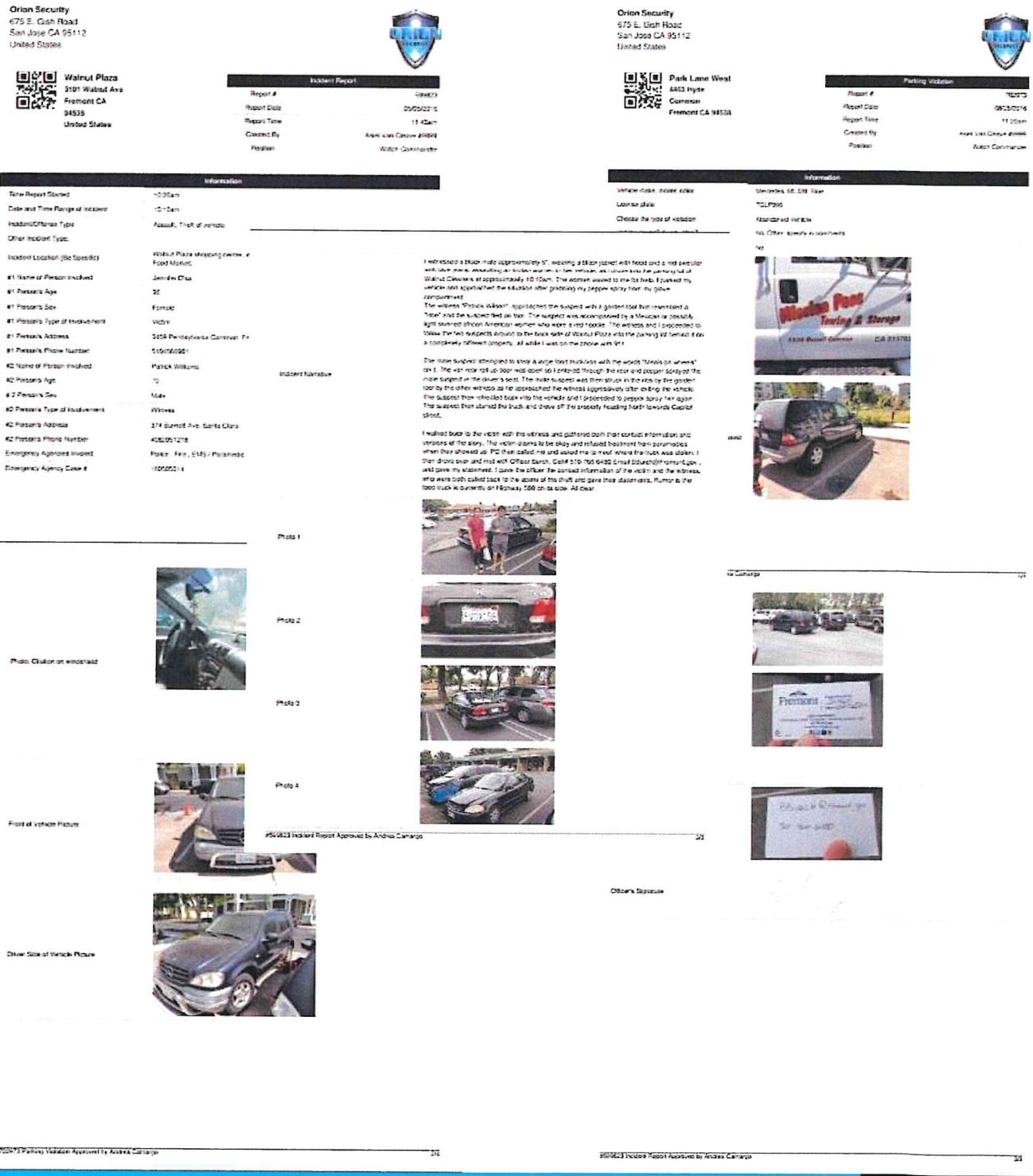
- Be at least 18 years old
- Must have at least one year of paid experience totaling not less than 2,000 hours as a security officer
- Pass a written examination
- Undergo a criminal history review by the Department of Justice and the FBI

A PPO license needs to be renewed every 2 years and is non transferrable.

Sample Reports

DIGITALLY CREATED PDF REPORTS

Creating clear and professional reports



Orion Security
675 E. Gish Road
San Jose CA 95112
United States

Walnut Plaza
3101 Walnut Ave
Fremont CA
94538
United States

Incident Report

Information

Orion Security
675 E. Gish Road
San Jose CA 95112
United States

Park Lane West
6483 Hyde
Common
Fremont CA 94538

Parking Violation

Information

Photo 1

Photo 2

Photo 3

Photo 4

Photo: Citation on windshield

Front of Vehicle Picture

Driver Side of Vehicle Picture

June 29th, 2022

ORION SECURITY

Upgrade to Dependability

References

Here are some of the management companies we are currently contracted with.

RENAULT & HANDLEY

SAND HILL PROPERTY COMPANY

DKD Associates, Inc. PROPERTY MANAGEMENT

Santa Clara County Office of Education

WEST COAST

CUSHMAN & WAKEFIELD

PACTRUST Pacific Realty Associates, L.P.

CBRE Property Management

FIRST COMMERCIAL REAL ESTATE

COMPASS

FPI MANAGEMENT

WOODMONT

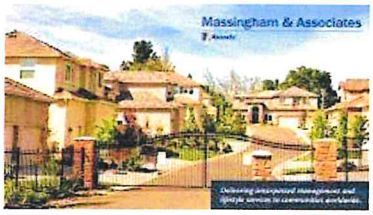
BAY AREA PROPERTY SERVICES

MARCH DEVELOPMENT COMPANY

THE JOHN STEWART COMPANY

CHARITIES HOUSING

MBHM



ORCHARD COMMERCIAL

DAVISPARTNERS

The Helsing Group, Inc.

WOODSTOCK DEVELOPMENT

COMMON INTEREST MANAGEMENT SERVICES

Serving Homeowner Associations Since 1990

HOA Management Solutions Inc

BORELLI INVESTMENT COMPANY

WILLIS

STOER CONSTRUCTION

MVLA HIGH SCHOOL DISTRICT

CMHC SCHL

PROPERTY PRO Real Estate (pvt.) Ltd.

Newmark Knight Frank

ALHOUSE DEATON

GREYSTAR

Redefining Excellence in Apartment Living.

FABS Group Inc.

MNM PROPERTY MANAGEMENT

KT MANAGEMENT



JLL

YOSHENT-01 SBORRELL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/6/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 HUB International Insurance Services Inc. 548 W Cromwell Avenue Suite 101 Fresno, CA 93711	CONTACT NAME: Lisa Glynn PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: lisa.glynn@hubinternational.com
INSURED Yosh Enterprises is DBA Orion Security, Paramount Investigations 675 E. Gish Rd San Jose, CA 95112	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Philadelphia Indemnity Insurance Company — 18058 INSURER B : Hartford Underwriters Insurance Company — 30104 INSURER C : Hiscox Insurance Company — 10200 INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X Errors & Omissions GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	X		PHPK2400044	4/6/2022	4/6/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY			PHPK2400044	4/6/2022	4/6/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000			PHUB810003	4/6/2022	4/6/2023	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	16WEQY5B8G	11/6/2021	11/6/2022	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
C	Crime			UC24448935.22	4/6/2022	4/6/2023	Employee Dishonesty	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate Holder/ Additional Insured: City, its officers, officials, directors, employees and volunteers
Endorsements attached: PI-GLD-SG-1013, PI-SG-010-0209, WC04036

CERTIFICATE HOLDER

City of Newark
Attn: Risk Manager
37101 Newark Boulevard
Newark, CA 94560

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY DELUXE ENDORSEMENT: SECURITY SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for these extensions are provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

Coverage Applicable	Limit of Insurance	Page #
Damage to Premises Rented to You	$1,000,000	2
Watercraft	Used in Security Services only	2
Medical Payments	$20,000	2
Medical Payments – Extended Reporting Period	3 years	2
Supplementary Payments – Bail Bonds	$2,500	3
Supplementary Payments – Loss of Earnings	$500 per day	3
Employee Indemnification Defense Coverage for Employees	$15,000	3
Additional Insured – Broadened Named Insured	Included	3
Additional Insured – Managers and Supervisors	Included	3
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	3
Additional Insured – Lessors of Leased Equipment – Automatic Status When Required in Lease Agreement With You	Included	4
Additional Insured – Grantors of Permits	Included	4
Additional Insured – Blanket Additional Insureds by Contract	Included	4
Limited Rental Lease Agreement Contractual Liability	$50,000	5
Transfer of Rights of Recovery Against Others To Us	Clarification	5
Duties in the Event of Occurrence, Offense, Claim or Suit	Included	5
Unintentional Failure to Disclose Hazards	Included	6
Liberalization	Included	6
Bodily Injury – Mental Anguish	Included	6
Assault and Battery Coverage with Extended Property Damage	Included	6
Errors and Omissions Coverage	Included	7
Incidental Medical Malpractice	Included	9

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A. Damage to Premises Rented to You

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word fire is changed to fire, lightning, explosion, smoke, or leakage from automatic fire protective systems where it appears in:

   a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**;

   b. **SECTION III – LIMITS OF INSURANCE**, Paragraph **6.**; and

   c. **SECTION V – DEFINITIONS**, Paragraph **9.a.**

2. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the words fire insurance are changed to insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems where it appears in **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Subsection **4. Other Insurance**, Paragraph **b. Excess Insurance**.

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

   a. $1,000,000; or

   b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

   This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

B. Watercraft

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection **2. Exclusions,** Paragraph **g. Aircraft, Auto Or Watercraft** does not apply to security services performed on or about watercraft.

C. Medical Payments – Limit Increased, Extended Reporting Period

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III – LIMITS OF INSURANCE** to the greater of:

   a. $20,000; or

   b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

2. Under **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, Subsection **1. Insuring Agreement**, Paragraph a., Item (b) is amended to read:

   provided that:

   (b) The expenses are incurred and reported to us within three years of the date of the accident; and

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D. Supplementary Payments

In the **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** provision, Items **1.b.** and **1.d.** are amended as follows:

1. The limit for the cost of bail bonds is changed from $250 to $2,500; and

2. The limit for loss of earnings is changed from $250 a day to $500 a day.

E. Employee Indemnification Defense Coverage

In the **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** provision, the following is added:

We will pay, on your behalf, defense costs incurred by an "employee" in a criminal proceeding.

The most we will pay for any "employee" who is alleged to be directly involved in a criminal proceeding is $15,000 regardless of the numbers of "employees," claims or "suits" brought or persons or organizations making claims or bringing "suits."

F. Who is an Insured

SECTION II – WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this Coverage Part, Paragraph **3.a.** is changed to read:

   a. Coverage under this provision is afforded until the end of the policy period;

2. Each of the following is also an insured:

   a. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

   b. **Managers and Supervisors** – If you are an organization other than a partnership or joint venture, your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors.

   c. **Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

      This insurance does not apply to:

      (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

      (2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.

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d. Lessors of Leased Equipment – Automatic Status When Required in Lease Agreement With You – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

e. Grantors of Permits – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:

(a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;

(b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators covered by this insurance.

f. Blanket Additional Insureds by Contract – Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

(1) "Bodily injury," "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

(2) "Bodily injury" or "property damage" occurring after:

(a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

G. Limited Rental Lease Agreement Contractual Liability

The following is added to **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**, Paragraph **b. Contractual Liability**:

(3) Based on the named insured's request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to $50,000.

This coverage extension only applies to rental lease agreements. This coverage is excess over any renter's liability insurance of the client.

H. Transfer of Rights of Recovery Against Others To Us

As a clarification, the following is added to **SECTION IV – COMMERCIAL GENERAL LIABLITY CONDITIONS**, Paragraph **8. Transfer of Rights of Recovery Against Others To Us**:

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

I. Duties in the Event of Occurrence, Offense, Claim or Suit

1. When you report an "occurrence" (coverage for which is provided by this policy) to your compensation insurance carrier, and this "occurrence" later develops into a liability claim, failure to report such "occurrence" to us at the time of such "occurrence" shall not be deemed in violation of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **2. Duties in the Event of Occurrence, Offense, Claim or Suit**.

   This is upon the distinct understanding and agreement however, that you, the insured, as soon as made aware that this particular "occurrence" is a liability case, rather than a compensation case shall give us notification immediately.

2. The requirement in Condition **2.a.** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** that you must see to it that we are notified as soon as practicable of an "occurrence" or an offense, applies only when the "occurrence" or offense is known to:

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a. You, if you are an individual;

b. A partner, if you are a partnership; or

c. An "executive officer" or insurance manager, if you are a corporation.

3. The requirement in Condition **2.b.** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** that you must see to it that we receive notice of a claim or "suit" as soon as practicable will not be considered breached unless the breach occurs after such claim or "suit" is known to:

a. You, if you are an individual;

b. A partner, if you are a partnership; or

c. An "executive officer" or insurance manager, if you are a corporation.

J. Unintentional Failure To Disclose Hazards

It is agreed that, based on our reliance upon your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

K. Liberalization

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

L. Bodily Injury – Mental Anguish

SECTION V – DEFINITIONS, Paragraph **3.** is changed to read:

"Bodily injury":

a. Means bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and

b. Except for mental anguish, includes death resulting from the foregoing (Item **a.** above) at any time.

M. Assault and Battery with Extended Property Damage

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection **2. Exclusions**, Paragraph **a.** is deleted in its entirety and replaced by the following:

a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to:

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(1) "Bodily injury" or "property damage" resulting from the use of physical force to protect persons or property; or

(2) Allegations of vicarious liability on the part of a Named Insured arising solely from the acts of your "employees." However, acts of your "employees" shall not include theft.

N. Errors and Omissions Coverage

1. **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is amended by adding the following:

   ERRORS AND OMISSIONS

   This insurance applies to negligent acts, errors or omissions committed by you relating to your services described in the Declarations.

2. **SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY** is amended by adding the following:

   ERRORS AND OMISSIONS

   The insurance that applies to "personal injury" includes negligent acts, errors or omissions committed by you relating to your services described in the Declarations.

3. **SECTION I – COVERAGES** is amended by adding the following:

   COVERAGE D – ERRORS AND OMISSIONS LIABILITY

   a. Insuring Agreement

   (1) We will pay those sums that the insured becomes legally obligated to pay as damages because of errors or omissions committed by you relating to your services described in the Declarations. However, we will have no duty to defend the insured against any "suit" seeking damages for errors or omissions committed by the insured to which the insurance does not apply. We will have the right and duty to defend any "suit" seeking those damages. We may, at our discretion, investigate any claim or "suit" that may result. But:

   (a) The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE**; and

   (b) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A**, **B**, or **D**, or medical expenses under Coverage **C**.

   No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS – COVERAGES A, B, AND D**.

   (2) This insurance applies only if the error or omission occurs during the policy period.

   b. Exclusions

   This insurance does not apply to:

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(1) "Bodily injury" or "property damage";

(2) "Personal and advertising injury";

(3) Intentional injury, nor injury arising out of willful violation of a penal statute or ordinance, committed by or with the knowledge or consent of the insured;

(4) Any claim seeking relief or redress in any form other than monetary damages;

(5) Any claim arising out of any insured's activities, or as a fiduciary, under the Employment Retirement Income Security Act of 1974, any amendments or any regulation or order issued thereto;

(6) Any claim arising from warranties or guarantees made by any insured;

(7) Liability assumed by the insured under any contract or agreement. This exclusion does not apply to liability for damages:

(a) That the insured would have in the absence of the contract or agreement; or

(b) Assumed in a contract or agreement that is an insured contract;

(8) Liability arising from any fraudulent, dishonest, or criminal act of any insured;

(9) Liability arising from a claim made by a parent or subsidiary organization of the insured or another subsidiary organization of such parent or other subsidiary, nor any officer, director or "employee" of any of the above; and

(10) Any claim alleging, arising out of, resulting from, based upon or in consequence of, directly or indirectly, any employment practices or any discrimination against any person or entity on any basis; additionally, any actual or alleged violation of the Fair Labor Standards Act or any similar law or regulation applicable to the payment of wages or overtime.

(11) Liability arising directly or indirectly out of any action, error or omission that violates or is alleged to violate:

(a) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(b) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(c) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

(d) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

c. SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended to read **SUPPLEMENTARY PAYMENTS – COVERAGES A, B, AND D**

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d. **SECTION III – LIMITS OF INSURANCE** is amended as follows:

(1) Item **2.** is replaced by the following:

2. The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage **C**;

b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";

c. Damages under Coverage **B**; and

d. Damages under Coverage **D**.

(2) Item **5.** is replaced by the following:

5. Subject to **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under Coverage **A**; and

b. Medical expenses under Coverage **C**,

because of all "bodily injury" and "property damage" arising out of any one "occurrence"; and

c. Damages under Coverage **D**.

e. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph **4. Other Insurance** is amended as follows:

(1) The first paragraph is replaced by the following:

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A**, **B**, or **D** of this Coverage Part, our obligations are limited as follows:

(2) Paragraph **b. Excess Insurance**, Item **(2)** is replaced by the following:

When this insurance is excess, we will have no duty under Coverages **A**, **B**, or **D** to defend the insured against any claim or "suit" if any other insurer has a duty to defend the insured against that claim or "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

O. Incidental Medical Malpractice

We will pay for injury arising out of the rendering of or failure to render the following treatment or services by an "employee" for an accident occurring during the policy period:

1. First aid treatment including cardiopulmonary resuscitation (CPR); and

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2. Medical, surgical, dental, x-ray, or nursing service or treatment, or the furnishing of food or beverages in connection therewith; and the furnishing or dispensing of drugs, or medical, dental, or surgical supplies or appliances.

However, this coverage does not apply to any insured or to any entity engaged in the business or occupation of providing the services or treatments described in **1.** and **2.** above.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY INSURANCE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Client(s)	Type of Service
Where required by written contract	Any/All Services

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Item **4. Other Insurance b. Excess Insurance** is deleted as respects:

1. Any contract for security or investigative operations; or

2. Operations from the type of service listed for the client shown in the endorsement **SCHEDULE**.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

Policy Number: 16 WE QY5B8G **Endorsement Number:**
Effective Date: 11/06/21 Effective hour is the same as stated on the Information Page of the policy.
Named Insured and Address: YOSH ENTERPRISES INC
675 E GISH RD
SAN JOSE CA 95112

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization	Job Description
Any person or organization for whom you are required by written contract or agreement to obtain this waiver of rights from us	

Countersigned by _____
Authorized Representative

RESOLUTION NO. 11,457

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE CONTRACTUAL SERVICES AGREEMENT WITH ORION SECURITY TO PROVIDE SPECIALIZED PROFESSIONAL SERVICES (TEMPORARY SECURITY GUARD SERVICES) AND APPROVING AN AMENDMENT TO THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, on July 13, 2022 the City entered into a Contractual Services Agreement C22041 (the "Agreement") with Orion Security (the "Consultant") to provide specialized professional services (temporary security guard services); and

WHEREAS, the City finds that the scope of services described in the Agreement continue to be necessary; and

WHEREAS, staff has identified the need to amend the Agreement to increase the not-to-exceed amount; and

WHEREAS, an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for fiscal year 2022-2023 will be necessary to appropriate funds for this Agreement.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute Amendment No. 1 to the Contractual Services Agreement with Orion Security to increase the not-to-exceed amount by $28,000 for a total not-to-exceed amount of $77,999, in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Council does herby authorize an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for fiscal year 2022-2023 by appropriating $77,999 as follows:

FROM:

Description	Account	Amount
General Fund Balance	110.3000	$77,999

TO:

Description	Account	Amount
CMO Contractual Services	110.20.020.200.6221	$77,999

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on January 12, 2023, by Council Member Bucci who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES:	Council Members Bucci, Freitas, Jorgens, Vice Mayor Collazo, and Mayor Hannon
NOES:	None
ABSENT:	None
SECONDED:	Vice Mayor Collazo

APPROVED:

s/MICHAEL K. HANNON
Mayor

ATTEST:

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
City Attorney

STAFF REPORT

Item D. 11.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Tonya Connolly, Maintenance Superintendent
SUBJECT	Adopt a resolution authorizing the City Manager to enter into a Contractual Services Agreement with Cintas Corporation for uniform rental and laundry services

SUMMARY AND RECOMMENDATION

The City of Newark regularly utilizes outside firms to provide rental and cleaning of uniforms for Maintenance Division personnel, towels for the Service Center Equipment Shop, towels for the Silliman Activity and Family Aquatic Center, floor mats for six City facilities and related services. The current uniform rental and laundry services agreement expires June 30, 2023.

Staff recommends that the City Council authorize the City Manager to enter into a Contractual Services Agreement with Cintas Corporation for uniform rental and laundry services beginning Fiscal Year 2024.

BACKGROUND

The 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 includes funding for the ongoing rental and cleaning of uniforms for Maintenance Division personnel, towels for the Service Center Equipment Shop, towels for the Silliman Activity and Family Aquatic Center, floor mats for six City facilities and related services. A uniform rental and laundry program offers numerous benefits: it enhances employee satisfaction, projects a professional image, promotes safety and cleanliness, and contributes to environmental sustainability by reducing the need for purchasing new uniforms and promoting reuse through regular cleaning and maintenance. Standardized uniforms enhance public perception and allows the public and colleagues to easily recognize authorized personnel. By opting for a rental program instead of purchasing uniforms, towels, and floor mats, the initial investment is more manageable, reducing costs substantially. Uniform and laundry services providers assume responsibility for regular uniform cleaning, maintenance, repairs and replacement.

DISCUSSION/ANALYSIS

The City of Newark regularly utilizes outside firms to provide uniform rental and laundry services and a new services contract is needed beginning Fiscal Year 2024. The Maintenance Division of the Public Works Department prepared and released a competitive Request for Proposals (RFP) in accordance with the City's Purchasing Rules and Regulations. The RFP specified that selection would be made based upon

the proposed cost for services, experience of staff and maintenance team, proposed methodology, quality control program, proficiency with billing practices, financial stability of company, quality and completeness of proposals, and other factors.

Staff received three (3) proposals on or before February 28, 2023, from the following businesses:

Aramark Uniform Services
Cintas Corporation
Mission Linen Supply

Cintas Corporation provided the lowest cost, most comprehensive proposal for the requested services, supplemented by a detailed presentation that satisfied the stated selection criteria. Cintas Corporation has successfully provided services of a similar nature to other public entities including AC Transit, County of Santa Clara, Silicon Valley Power, and Valley Transit Authority. Based on staff's analysis, Cintas Corporation would provide the best overall value to the City for uniform rental and laundry services. Cintas has a Uniform Advantage Program which would allow staffing to refresh uniforms on a more frequent basis. Staff is therefore recommending the selection of Cintas Corporation to provide uniform rental and laundry services for Fiscal Years 2024, 2025 and 2026.

The Contractual Services Agreement would begin July 1, 2023, and expire on June 30, 2026, with options for renewal of up to two (2) additional one (1) year terms upon mutual consent of the City and Cintas Corporation as authorized by the City Manager, subject to available funding levels to be approved by the City Council. Under the terms of the agreement, Cintas Corporation would provide the requested services in the amount not to exceed $129,000 for Fiscal Years 2024, 2025, and 2026. Should the City and Cintas agree to an extension of the agreement, the not-to-exceed amounts for Fiscal Years 2027 and 2028 would be $46,000 and $48,000, respectively, for a total not-to-exceed amount of $223,000.

FISCAL IMPACT

There is no fiscal impact associated with this action, as the 2022-2024 Biennial Budget and Capital Improvement Plan, for Fiscal Year 2024, includes sufficient funding for uniform rentals and laundry services under the proposed agreement. Future years' funding will be included in future Biennial Budget and Capital Improvement Plans when presented to City Council for approval.

REVIEW AND APPROVAL

Prepared by - Tonya Connolly, Maintenance Superintendent
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution
Contractual Services Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACTUAL SERVICES AGREEMENT WITH CINTAS CORPORATION IN AN AMOUNT NOT TO EXCEED $129,000 TOTAL FOR AN INTIAL TERM OF THREE (3) YEARS WITH AN OPTION TO EXTEND FOR TWO (2) ADDIITONAL ONE (1) YEAR PERIODS FOR AN INCREASED TOTAL AMOUNT NOT TO EXCEED $223,000

WHEREAS, the City prepared and released Requests for Proposals (RFP) for rental of uniforms and laundry services from Cintas Corporation; and

WHEREAS, the City received proposals under each RFP from three firms that were evaluated by staff based upon the proposed cost for services, experience of staff and maintenance team, proposed methodology, quality control program, proficiency with billing practices, financial stability of company, quality and completeness of proposals and other factors; and

WHEREAS, based on the evaluations, staff determined that Cintas Corporation is the most qualified firm to provide rental of uniforms for the Maintenance Division personnel, towels for the Service Center Equipment Shop, towels for the Silliman Aquatic and Family Aquatic Center, floor mats for six City facilities and related services.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby approve a Contractual Services Agreement with Cintas Corporation in an amount not to exceed $129,000 for uniform and laundry services for an initial term of three (3) years through Fiscal Year 2026.

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

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to renew the aforementioned Contractual Services Agreement for up to two (2) additional one (1) year terms upon mutual consent of the City and Cintas Corporation under the terms of the agreement, with additional amounts not to exceed $46,000 and $48,000 each, respectively, for Fiscal Years 2027 and 2028, for a revised total amount not to exceed $223,000.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this day of , 2023 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **CINTAS**, a California corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: Uniform rentals and laundry services, including uniforms for Maintenance Division personnel, towels for the Service Center Equipment Shop, towels for the Silliman Activity and Family Aquatic Center, floor mats for six City facilities and related services.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

A. "Not to Exceed" Compensation. City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant's hourly or other rates set forth in Exhibit

"B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Hundred Twenty-Nine Thousand and No/100 Dollars ($129,000.00) combined for Fiscal Years 2024, 2025 and 2026 unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount. Pursuant to Section 18 of this Agreement, Services may be renewable by Task Order for up to two additional one-year periods. In this event, the total of compensation and costs payable hereunder shall not exceed an additional Forty-Six Thousand and No/100 Dollars ($46,000.00) for Fiscal Year 2027 and an additional Forty-Eight Thousand and No/100 Dollars ($48,000.00) for Fiscal Year 2028, for a combined total of compensation and costs payable for Fiscal Years 2024 through 2028 of Two Hundred Twenty-Three Thousand and No/100 Dollars (223,000.00).

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

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

Invoices shall be sent to:

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

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

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

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

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

the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

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

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

12. RESERVED.

13. RESERVED.

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

A. Verification of Coverage.

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

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

CITY OF NEWARK

Attn: Risk Manager

37101 Newark Boulevard
Newark, CA 94560

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

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

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

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

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

C. Minimum Limits of Insurance.

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

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

No policy required by this paragraph 14 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

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

I. Other Insurance Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel

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

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

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

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

18. TERM/TERMINATION.

A. The initial term of this contract shall be July 1, 2023 to June 30, 2026. If both the City and Consultant agree, this contract is renewable by Task Order for up to two (2) one (1) year periods, as authorized by the Public Works Director subject to available funding to be approved in advance by the City Council.

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

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

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

CINTAS	**CITY OF NEWARK**
DON LEE	TONYA CONNOLLY
Consultant	**Administrator**
Address: Cintas	City of Newark
Attn: Don Lee	Attn: Tonya Connolly
48400 Fremont Blvd.	37101 Newark Boulevard
Fremont, CA 94538	Newark, CA 94560

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

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

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

24. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda. If the damages, injury, loss or claim is caused by the negligence of both parties, the apportionment of said damages, injury, loss or claim shall be shared between both parties based upon the comparative degree of each party's negligence and each party shall be responsible for its own defense and its own cost including but not limited to the cost of defense, attorney's fees and witness's fees and expenses incident thereto.

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

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

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

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

29. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement

supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

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

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

Customer agrees it bears sole responsibility for selecting the flame-resistant clothing and fabrics ("FRC") under this Agreement determining whether such items are appropriate for use by its employees and agents in their applicable work environment(s). Company acknowledges that company has made no representation, warranty, or covenant with respect to the flame-resistant qualities or other characteristics of the FRC or with respect to their fitness or suitability for this or any other purpose. Company makes no representation whether the FRC constitutes appropriate personal protective equipment for the environment(s) to which customer's employees or agents may be exposed or to the FRC's ability to protect users from injury or death. Customer agrees to notify all employees and other agents of customer who may wear or will be wearing the FRC that it is not designated for substantial heat exposure or for use around open flames. Customer acknowledges that compliance with any and all OSHA or other similar regulations or requirements relating to personal protective equipment is the sole responsibility of customer. Further, customer releases company from any and all liability that results or may result from the use of the garments, including but not limited to any alleged failure of the FRC to function as flame-resistant or provide protection against fire and/or heat. Customer hereby agrees to defend, indemnify and hold harmless Company from any claims and damages arising out of or associated with this Agreement or resulting from customer's or its employees' use of the FRC.

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

CITY OF NEWARK,
a municipal corporation

By _____

David J. Benoun, City Manager

Date _____

Attest:

_____

Sheila Harrington, City Clerk

Date _____

Approved as to form:

_____

Kristopher J. Kokotaylo, City Attorney

Date _____

CINTAS,
a California Corporation

By _____

Amanda Smith, Government Account Manager

Date _____

EXHIBIT A

SCOPE OF SERVICES

	Item - Specifications	Quantity	Bid Price	Cintas Weekly	Monthly
City Hall	first aid cabinet	2	$ 682.00	$ 30.00	$ 120.00
	4x6 grey mat - lobby (seasonal)	2	$ 3.43	$ 6.86	$ 27.44
	3x4 grey mat - rear door (seasonal)	1	$ 2.65	$ 2.65	$ 10.60
	TOTAL			**$ 39.51**	**$ 158.04**
Silliman Aquatic Center	first aid cabinet	1	$ 341.00	$ 15.00	$ 60.00
	bar towel	300	$ 0.14	$ 45.50	$ 182.00
	dust mop	14	$ 0.90	$ 12.60	$ 50.40
	3x4 grey mat	3	$ 2.65	$ 7.95	$ 31.80
	4x6 grey mat	2	$ 3.43	$ 6.86	$ 27.44
	TOTAL			**$ 87.91**	**$ 351.64**
Community Center	3x4 grey mat	5	$ 2.65	$ 13.25	$ 53.00
	4x6 grey mat	3	$ 3.43	$ 10.29	$ 41.16
	3x4 grey mat	4	$ 2.65	$ 10.60	$ 42.40
	TOTAL			**$ 34.14**	**$ 136.56**
Senior Center	first aid cabinets	1	$ 341.00	$ 15.00	$ 60.00
	bar towels	20	$ 0.14	$ 5.70	$ 22.80
	3x10 grey mat	1	$ 4.22	$ 4.22	$ 16.88
	4x6 grey mat	2	$ 3.43	$ 6.86	$ 27.44
	3x5 kleen scrape mat	1	$ 2.60	$ 2.60	$ 10.40
	TOTAL			**$ 34.38**	**$ 137.52**
Police Department	24x50 bath towel	100	$ 0.93	$ 98.30	$ 393.20
	16x27 steam towel	60	$ 0.80	$ 52.72	$ 210.88
	3x10 grey mat	1	$ 4.22	$ 4.22	$ 16.88
	4x6 grey mat	1	$ 3.43	$ 3.43	$ 13.72
	3x5 kleen scrape mat	1	$ 2.60	$ 2.60	$ 10.40
	TOTAL			**$ 161.27**	**$ 645.08**
Service Center	first aid cabinet	2	$ 682.00	$ 30.00	$ 120.00
	orange shop towel	100	$ 0.13	$ 17.00	$ 68.00
	blue shop towel	50	$ 0.12	$ 7.80	$ 31.20
	fender covers	4	$ 1.18	$ 6.72	$ 26.88
	3x4 grey mat	3	$ 2.65	$ 7.95	$ 31.80
	4x6 grey mat	1	$ 3.43	$ 3.43	$ 13.72
	Carhartt Active Jacket	42	$ 1.13	$ 47.33	$ 189.34
	Streets - Carhartt E-Vis workshirt	44	$ 1.18	$ 51.92	$ 207.68
	Streets - Carhartt Flex Pants	44	$ 0.45	$ 19.93	$ 79.73
	Parks - Kakhi Carhartt Flex Shirt	88	$ 0.43	$ 37.49	$ 149.95
	Parks - Charcoal Carhartt Pants	88	$ 0.45	$ 39.86	$ 159.46
	Fleet - Navy Lab Coat	33	$ 0.29	$ 9.54	$ 38.15
	Fleet - Grey Carhartt Shirt	33	$ 0.43	$ 14.06	$ 56.23

Fleet - Charcoal Carhartt Pant	33	$ 0.45	$ 14.95	$	59.80
Bldgs. Navy Carhartt FR Shirts	33	$ 0.56	$ 18.48	$	73.92
Bldgs. Navy Carhartt FR Pants	33	$ 0.63	$ 20.79	$	83.16
376 Carhartt Jacket	42	$ 0.19	$ 7.98	$	31.92
Uniform Advantage	429	$ 0.09	$ 38.61	$	154.44
Prep Advantage	429	$ 0.05	$ 21.45	$	85.80
Emblem Advantage	176	$ 0.06	$ 10.56	$	42.24
TOTAL			**$ 425.85**	**$**	**1,703.41**
overall % discount	18%				

EXHIBIT B

PAYMENT

Contractor will submit delivery weekly list and a monthly invoice to the City no later than twenty-one days following each month end. Contractor's invoice will indicate the quantities and types/descriptions of all delivered items at each location. The City will remit payment for services rendered no later than thirty (30) days from the date the invoice was received by the City. This will be the only form of payment.

EXHIBIT C

QUALIFICATIONS

Cintas has demonstrated its ability to perform the desired scope of services required under the agreement. Cintas has been in business since 1929 and continues to provide value added service. Cintas channels servant-led passion and uses it for boots-on-the-ground community service, financial support of numerous not-for-profits and nurturing a mindset among all employee-partners. Cintas has 400 locations across the United States.

STAFF REPORT

Item D. 12.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Art Interiano, Deputy Community Development Director
SUBJECT	Adopt a resolution authorizing the City Manager to execute the Fourth Amendment to the Contractual Services Agreement with 4Leaf Inc. to provide temporary professional planning services

SUMMARY AND RECOMMENDATION

The City has relied upon professional consultants to provide services and experience that City staff are unable to provide and to increase capacity during busy periods or when staff resources are low. In August 2021, the City entered into a Contractual Service Agreement (CSA) with 4Leaf Inc. to provide temporary professional planning services in order to complete necessary Planning Division-related tasks. 4Leaf has provided these services since September 2021. Since then, the City Council has approved three amendments to this agreement which combined have totaled $380,150. Staff has evaluated the business need for 4Leaf services for the remainder of calendar year 2023 and has concluded that the services are required to maintain a high level of customer service within the Planning Division. Staff recommends approval of a fourth amendment to the existing CSA, increasing the “not-to-exceed” amount by $119,600 for an amended total not-to-exceed amount of $499,750. The scope of services would remain the same. This increase can be accommodated within the approved Fiscal Year 2024 Planning Division Professional Services budget.

Staff recommends that the City Council approve a resolution authorizing the City Manager to execute the fourth amendment to the Contractual Services Agreement with 4Leaf Inc. to provide temporary professional planning services.

BACKGROUND

The City has relied upon professional consultants to provide services and experience that city staff are unable to provide, such as technical traffic and circulation studies and environmental review services, as well as capacity during busy periods or when staff resources are low. For example, the city currently has several contractual services agreements with consultants for on-call professional city planning services, code enforcement services as well as Public Works construction inspection and civil engineering development plan review services. These consultant services agreements provide the city with the flexibility to address service, and experience needs while maintaining high customer service levels. 4Leaf has been providing professional planning services to the Community Development Department since 2021 as part of a

Contractual Service Agreement (CSA).

DISCUSSION/ANALYSIS

The need for augmentation to current staff services continues for the Community Development Department (CDD). For the Planning Division to manage the current workload and address the needs of both short and long-range planning, there is an ongoing need for professional services. The 4Leaf staff is assigned to assist the Planning Division in providing customer services and plan review functions. These functions would have been difficult for the existing staff to perform and achieve the high service levels that are expected by the community. Having this assistance allows the Associate and Senior Planners to focus on moderate and complex work tasks. As a result, there is still a business need for a consultant to perform certain services and plan review tasks, such as processing single-family design reviews and accessory dwelling unit project applications.

Staff recommends that the City amend the existing CSA to increase the “not-to-exceed” amount by $119,600 (a value representing approximately 1040 hours of consultant staff services) thereby extending the services for approximately 6 months. The scope of services would remain the same. Examples of services include responding to inquiries regarding technical planning matters at the public counter, responding to phone and/or email inquiries, processing entitlement applications, and completing building permit plan checks.

FISCAL IMPACT

The total not-to-exceed amount for the 4Leaf fourth contract amendment would be increased by $119,600 for a total not-to-exceed amount of $499,750. The costs for this service can be accommodated in the 2022-2024 Biennial Budget in FY 2024 for Planning Division Professional Services. The agreement and fourth amendment were prepared in accordance with the City’s Purchasing Rules and Regulations.

REVIEW AND APPROVAL

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

Attachments

4th CSA Agreement with 4Leaf for Planning Services
4Leaf Original CSA
4Leaf 1st Amendment to CSA
4Leaf 2nd Amendment to CSA
4Leaf 3rd Amendment to CSA v2
Resolution

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

This Fourth Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and 4LEAF, INC., a Type "C" Corporation ("Consultant") (sometimes referred to as "Parties") dated August 31, 2021 (the "Agreement"), is entered into as of _____ ___, 2023 for the provision of temporary professional planning services.

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of temporary professional planning services to provide technical assistance by individuals possessing experience consistent with minimum qualifications provided by the City; and

WHEREAS, Section 27, Modifications, 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 previously executed an amendment to the Agreement to increase the amount of compensation pursuant to the Agreement, in an agreement dated March 18, 2023; and

WHEREAS, the Parties desire to amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount; 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 not to exceed compensation by $119,600, for a total not to exceed amount of $499,750 (from a previous not to exceed amount of $380,150).

2. The Agreement's Exhibit B (Payment) is amended as outlined in the new Payment (Exhibit 1), attached hereto and incorporated herein by reference.

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

City of Newark

_____

David J. Benoun
City Manager

Dated: _____

Consultant

_____

Kevin Duggan
President
4LEAF, Inc.

Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

EXHIBIT 1

PAYMENT

Consultant will provide the individual performing at the Assistant Planner level at the hourly rate of $110/hour for an amount not to exceed $380,150.

C21045

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 31st day of August, 2021 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and 4LEAF, INC., a Type "C" Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested a proposal to perform the services generally including the provision of temporary professional planning services to provide technical assistance by individuals possessing experience consistent with minimum qualifications provided by the City.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. **COMPENSATION.**

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One hundred ten thousand and No/100 Dollars ($110,000.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

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

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

Invoices shall be sent to:

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

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

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

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

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such

other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

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

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

A. Information from City. City has made an effort to provide Consultant with all information necessary for Consultant's performance of Services. If Consultant believes

additional information is required, Consultant shall promptly notify City and City will provide to Consultant all relevant non-privileged information in City's possession.

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

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

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

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

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

12. RESERVED.

13. RESERVED.

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

A. Verification of Coverage.

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

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

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

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

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

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

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

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

C. Minimum Limits of Insurance.

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

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

No policy required by this paragraph 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

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

I. Other Insurance Provisions.

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

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

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

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

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

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

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

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

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

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

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

16. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and

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

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

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

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

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

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

18. TERM/TERMINATION.

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

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

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by **STEVEN TURNER, COMMUNITY DEVELOPMENT DIRECTOR** of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

4LEAF, INC.	**CITY OF NEWARK**
CRAIG TOLE	STEVEN TURNER
Consultant	**Administrator**
Address: 4LEAF, Inc.	City of Newark
Attn: Craig Tole	Attn: Steven Turner
2126 Rheem Drive	37101 Newark Boulevard
Pleasanton, CA 94588	Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 8-31-21

4LEAF, INC.
Type "C" Corporation

By _____
Kevin J. Duggan, President

Date: 8/25/2021

Attest:

Kathleen L. Sletten
Deputy City Clerk

Date 8/31/21

Approved as to form:

_____
City Attorney

Date 8/31/2021

EXHIBIT A

SCOPE OF SERVICES

Technical Assistance at an Assistant Planner Level

Consultant shall provide the City with an individual that can provide technical assistance at an Assistant Planner level. The individual shall possess experience acceptable to the City, for a period not to exceed twelve months. Examples of services include responding to inquiries regarding technical planning matters at the public counter, responding to phone and/or email inquiries, processing entitlement applications including but not limited to; design review, use permits, zoning verification letters, and completing planning plan checks. Examples of services are further described below.

Consultant shall make the individual available up to 40 hours per week; the Community Development Director and Consultant will agree on hours of availability, which may be adjusted from time-to-time.

Other Temporary Professional Planners

Consultant shall provide the City with other professional planners to provide technical assistance as identified by the City, subject to the provision of Section 4 (ADDITIONAL SERVICES) of the Agreement.

EXAMPLES OF SERVICES - Services may include, but are not limited to, the following:

Perform technical review and monitor land use and development applications, including following up on building permits, plan checks and listings fees.

Prepare staff reports for routine land use and development plan permits including determination of overall content and format of reports.

Review and process less complex development projects, including administrative use permits, sign permits, tree removal permits, home occupation permits, etc.

Assist planners in conducting and preparing statistical and research projects, compiles zoning and planning related data as required; prepares a variety of correspondence.

Maintain department records and files in the computerized permit tracking system. Prepare graphic and mapped data using computer-based mapping/GIS.

Perform other duties of a similar nature or level.

EXHIBIT B

PAYMENT

Consultant will provide the individual performing at the Assistant Planner level at the hourly rate of $105/hour for an amount not to exceed $110,000.

EXHIBIT C

QUALIFICATIONS

3859459.1

EXHIBIT C: QUALIFICATIONS

4LEAF, Inc. (4LEAF) is a California "C" Corporation established in 1999 and incorporated in 2001. Our extensive team of professional Planners are fully equipped with the training and experience to help balance current, long-range, and environmental planning services for jurisdictions throughout California. Our goal is to set the industry standard for excellent customer service as we continue to grow our highly qualified staff that has reached **300+ professional personnel** throughout California, Washington, Nevada, Oregon, and New England.

FIRM MANAGEMENT

President: Kevin Duggan
(P) – (925) 462-5959 (E) – kduggan@4leafinc.com

Director of Housing Policy: Jane Riley, AICP
(P) – (707) 293-4313 (E) – jriley@4leafinc.com

Project Manager/Dir. of Planning: Daniel Hortert, AICP
(P) – (925) 999-6184 (E) – dhortert@4leafinc.com

Dir. of Development Services: Michael Renner, CBO
(C) – (925) 785-3581 (E) – mrenner@4leafinc.com

OFFICE LOCATIONS

Bay Area - Corporate Office
2126 Rheem Drive
Pleasanton, CA 94588

Sacramento Office
8896 North Winding Way
Fair Oaks, CA 95628

Southern California Area Office
5140 Birch Street, Second Floor
Newport Beach, CA 92660

Paradise Office
6848 Skyway, Suite F
Paradise, CA 95969

Santa Cruz Office
701 Ocean Street
Santa Cruz, CA 95060

San Diego Office
402 West Broadway, Suite 400
San Diego, CA 92101

Washington Office
1201 Pacific Avenue, Suite 600
Tacoma, WA 98402

New England Office
132 Central St., Suite 210
Foxboro, MA 02035

4LEAF Consulting, LLC
125 E. Reno Ave., Suite 3
Las Vegas, NV 89119

PROFESSIONALS

Title	Number of Staff
Planners	25
Environmental Planners	2
Principal Planners	6
AICP Accredited Planners	5
ICC Permit/Planning Technicians	32

PHILOSOPHY OF THE FIRM

4LEAF employs 25 professional Planners with a variety of skills and experience, which will provide the depth of staffing necessary to achieve all requirements and needs of our clients. 4LEAF approaches client relationships differently than what you might encounter with a large corporation. **The 4LEAF philosophy is to be the best firm by providing our clients with outstanding customer care and first-rate customer service**—we put our philosophy into action by building relationships and prioritizing the needs of our clients. This has led us to become the industry leader in providing Planning and Community Development services to public and private agencies.

4LEAF Planners have successfully taken on complex duties in locations hardest hit by wildfires in recent years including the City of Malibu, Town of Paradise, County of Sonoma, and County of Santa Cruz. Our ability to augment services to expedite Planning and permitting processes ensures that residents are afforded an opportunity to get their lives back. Other recent on-call Planning placements include the City of Pinole where 4LEAF assignments consist of a Permit Technician, Code Enforcement Officer, a Project Planner, and a 4-month contract for a Planning Manager to oversee the Planning, Building, and Code Enforcement Divisions. In addition, 4LEAF has secured an assignment with the City of Pleasant Hill overseeing complex developer funded projects as well as City-driven policy updates.

4LEAF has successfully placed a variety of skilled staff in local and county agencies for over 20 years. Our professional, certified, and registered staff bring the greatest knowledge and understanding of their respective fields, which ensures that our clients receive staff that are highly experienced and able to assimilate into any environment, project, and team.

PLANNING SERVICES

4LEAF thrives on customer service and recognizes that every contact we make—whether an applicant, the general public, or an agency representative—is critical for building and maintaining partnerships. Customer care is a core value at 4LEAF, and our staff is expected to operate in a fashion aligned with this value. Our Planners have successfully completed many design review applications, use permits, subdivisions/plats, land development code updates, general and comprehensive plan updates and development, cannabis regulations, environmental documentation oversight, affordable housing, and solar, wind, and energy compatibility projects.

Additionally, 4LEAF provides staff augmentation services for local government organizations by placing skilled professionals across all levels of Planning and Community Development including Planners, Permit Technicians, Plan Checkers, Building Inspectors, Code Enforcement Officers, and Engineering Technicians. We are also able to provide current, long-range, and environmental planning functions for upcoming projects. All 4LEAF Planners and Environmental Professionals can operate at various levels within the profession.

APPROACH

Our staff's attention to detail and organized approach to project management helps maintain project schedules and ensures positive and timely results. 4LEAF Planners have the specific skills to complete any request and possess the technical writing and report preparation abilities needed to convey the greatest detail in a manner that is easy

to understand with solid recommendations of findings rooted in the plans, policies, and codes that reinforce our clients' goals.

We are dedicated to understanding the vision of a community and rigorously working towards that vision. We utilize application checklists as the foundation of our review and translate policies and regulations as they apply to development applications. We transpose our findings into informative, concise, and simple to understand staff reports or studies. These endeavors cannot be accomplished in a vacuum and our staff are well-versed in project management and will work diligently with other departments and agencies to ensure that the highest levels of review and feedback are achieved.

4LEAF Planners will arrive on-site with a positive attitude and will make every attempt to move projects forward to achieve successful outcomes. We are creative in our approach and can develop alternative methods to achieve the best outcome for the communities, agencies, and applicants. The Planning Division at 4LEAF is responsible for integrating staff into Local and State jurisdictions where we are routinely called upon to supplement vacancies and staff shortages. We also provide staff augmentation services when projects require focused processing and management of a variety of land use applications for compliance with land development codes and general, adopted area, and specific plans.

Our team evaluates the environmental impacts of private development proposals and coordinates with other divisions to ensure that standards for building safety and infrastructure systems are appropriately addressed with new development.

ON-CALL SERVICES

The 4LEAF standard is to provide staff who are well equipped and capable of interpreting plans, policies, and codes quickly and concisely to ensure a timely turnaround for various planning applications. Whether a Conditional Use Permit (CUP), Development Review, Subdivision or Map Reviews, General Plan, or Zoning Amendments, we can meet your needs.

4LEAF Planners are expected to comprehend plans, policies, and the codes of our client agencies to the greatest extent possible prior to beginning assignments. We understand a wide range of Planning principles and have mastered the concepts of the industry. Our team of Planners has successfully managed complex projects ranging from pre-application through final approval including environmental review and certification. At 4LEAF, we perform a deep dive into agency plans and policies to fully comprehend the vision, mission, and culture of your organization. This allows us to place the most qualified individual(s) and fulfill agency needs.

RELEVANT PROJECT EXAMPLES

Our project history includes the below jurisdictions for which the following services are provided: Comprehensive Planning Services including Specific Plans, General Plan Amendments, and work on Long-Range initiatives related to fire resiliency and disaster recovery. Other Planning duties undertaken by our staff include the development of submittal forms to meet statutory requirements, taking in and reviewing projects for rebuilding and temporary housing, conducting pre-design rebuild meetings, responding to the planning and zoning information hotline as applicable, housing and safety element updates, and conducting site inspections and property research to support application processing and meetings.

City of Pleasant Hill

On-Call Planning Services

4LEAF is currently **providing a Senior-Level Planner** to the City where we oversee several complex planning projects. All projects with the City of Pleasant Hill are developer-funded and responsibilities include:

CITY OF PLEASANT HILL

- Preparing staff reports, resolutions, and ordinances for recommendations
- Processing applications for minor/major subdivisions
- Planned Unit Development/Specific Plan
- General Plan Amendment
- Minor/Major Subdivisions
- Development Plans
- CEQA Review
- Architectural Review Permits



Current/recent project support:

- **Downtown Cleveland Multi-family Specific Plan**: Architectural Review, Planned Unit Development/Specific Plan "Concept Plan," Development Plan, General Plan Amendment, and environmental review for a 189-unit multi-family residential development near the City's Downtown.
- **Oak Park Specific Plan:** 34 lot major subdivision, development plan, and rezone (PUD). Rezone from R-10 (SFR 10,000 min) to Multi-family very low density as part of a Planned Unit Development/Specific Plan, development plan review.
- **590 Creekside Minor Subdivision:** 2-lot single family subdivision. Prepared all staff reports findings and resolution for approval before the Planning Commission and City Council.
- **2001 CCB Façade Improvements:** Façade improvements for a medium sized retail center. Architectural Review permit. Application withdrawn because of costs.

Client Name: City of Pleasant Hill
Client Contact: Troy Fujimoto, Interim City Planner
Client Telephone: (925) 671-5209
Client Email: TFujimoto@PleasantHillca.org

City of Pinole

Planning, Code Enforcement, Permit Processing, Plan Review Services

4LEAF is providing **one (1) Associate Planner, one (1) Planning Manager, one (1) Code Enforcement Officer, and one (1) Senior Permit Technician** to assist with the City of Pinole's planning needs.

Developer-funded projects:

- **Lucky's Façade Modification** – Design review for upgrade to façade for Lucky's store in a major retail center. Required Planning Commission approval.
- **1409 & 1431 Nob Hill** – Design review for two (2) Single-Family residential structures.
- **East Bay Ophthalmology Center** – 1289 Pinole Valley Road. Design review for a 6,900 square foot medical office building. Planning Commission and City Council approval.
- **West Coast Arborists, Inc.** – Design review for Contractor's yard including remodeling existing 2,000 s.f. metal building, resurfacing of existing paved area and addition of new paving. Required Planning Commission approval.
- **Making Waves Academy Pinole Campus** – Application submitted for Design Review and Sign Program of a new K-4th public school campus on a 7.8-acre infill parcel. The project includes the demolition of the existing Tenet Medical building and construction of two state of the art two-story classroom buildings, a multi-purpose building and an administrative building totaling 95,250 square feet and outdoor space. Required Planning Commission approval (project withdrawn).
- **Hazel Drive Four-Lot Subdivision** – Design Review for single family development and Development Agreement for roadway connection to Sunnyview Drive, West end of Hazel Drive. Required City council approval due to Development Agreement.
- **Pinole Square** – Application submitted to renovate and expand the existing Safeway Grocery store and add a new gas station and construct new commercial pad buildings. Manage environmental review consultant. Planning Commission and City Council Approval. Finishing up environmental review.
- **Pinole Woods** – Design Review for a 100+ unit senior housing development.

City-funded project:

- Downtown pedestrian/parking study.

Client Name: City of Pinole
Client Contact: Tamara Miller, Development Services Director/Engineer
Client Telephone: (510) 724-9017
Client Email: TMiller@Ci.Pinole.ca.us



City of Greenfield, CA

Planning & Building Department Services

4LEAF was selected as the sole provider of Building Department Services for the City of Pacific Grove in 2019 on a five-year contract. 4LEAF provides the entire Building Department personnel group, has two (2) Planners on staff, and also helped the City implement the new permitting software iWorQ in 2019. Our scope of services includes:

- Training of Community Development Department staff regarding all facets of prescribed best practices pertaining to Planning and Building permit issuance, including preparation of procedural guidelines/manuals.
- Processing land use current Planning permits.
- Training for use of new iWorQ software and using the software to input data.
- Research and working with the GP/Zoning Code.
- Manage Planning projects.
- Conduct interdepartmental review among City departments.
- Perform application review for discretionary and ministerial projects.
- Environmental reviews, writing Initial Studies, and managing CEQA documents.

Below are the upcoming projects our team plans to work on for the City:

Yanks

- Under construction – consists of museum, roads, 170-room hotel, restaurants, fueling stations, hangars, Air Strip, winery, amphitheater, and Luxury RV Park
- Ongoing building of Phase II
- Project has been around 30 years, valuation of over $100M
- Planned Unit Development permit

Nino Homes

- Entitlements: 150 +/- single family residential development
- Return-market-rate housing developer

Walnut Avenue Specific Plan (WASP)

- 62 acres hosting a Starbucks, Arco, Carl's Junior, an H2A farmworker housing debacle, and a Marriott Fairmont Hotel
- Building plans currently under review
- Senior-Level project management assignment

Client Name:	City of Greenfield
Client Contact:	Paul Mugan, Community Development Dir.
Client Telephone:	(831) 674-5591
Contact Email:	PMugan@Ci.Greenfield.ca.us

City of Malibu

Planning, Public Works, and Fire Recovery

In addition to our other services, 4LEAF is providing the City of Malibu with **two (2) Associate Planners and one (1) Senior Planner** whose main task was providing residents and local professionals with the necessary information to proceed with rebuilding their respective projects. This information included application(s), fees, and average timeline for completion of entitlements. We also worked with the other City departments to create and convey all regulations related to reconstruction.

Rebuilds that differed significantly from the original design or footprint required administrative or Planning Commission approval. Staff worked with the City staff to coordinate outreach and educational meetings to speak to residents and local professionals. Staff also provided data analysis on application types received, approved, and pending for public dissemination and City meetings.

Client Name: City of Malibu
Client Contact: Elizabeth Shavelson, Assistant City Manager
Client Telephone: (310) 456-2489
Client Email: EShavelson@MalibuCity.org



C21045
R11327

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

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and 4LEAF, INC., a Type "C" Corporation ("Consultant") (sometimes referred to as "Parties") dated August 31, 2021 (the "Agreement"), is entered into as of April 12, 2023 for the provision of temporary professional planning services.

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of temporary professional planning services to provide technical assistance by individuals possessing experience consistent with minimum qualifications provided by the City; and

WHEREAS, Section 27, Modifications, 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 amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount; 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 not to exceed compensation by $45,000, for a total not to exceed amount of $155,000 (from a previous not to exceed amount of $110,000.).

2. The Agreement's Exhibit B (Payment) is amended as outlined in the new Payment (Exhibit 1), attached hereto and incorporated herein by reference.

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

City of Newark

David J. Benoun
City Manager

Dated: 4-12-22

Consultant: 4LEAF, Inc.

Kevin Duggan
President

Dated: 3/16/2022

Attest:

Sheila Harrington
City Clerk

Approved as to Form:

Kristopher J. Kokotaylo
Interim City Attorney

EXHIBIT 1

PAYMENT

Consultant will provide the individual performing at the Assistant Planner level at the hourly rate of $105/hour for an amount not to exceed $155,000.

5077303.1

C 21045
R 11371

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

This Second Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and 4LEAF, INC., a Type "C" Corporation ("Consultant") (sometimes referred to as "Parties") dated August 31, 2021 (the "Agreement"), is entered into as of 27th, July, 2022 for the provision of temporary professional planning services.

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of temporary professional planning services to provide technical assistance by individuals possessing experience consistent with minimum qualifications provided by the City; and

WHEREAS, Section 27, Modifications, 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 previously executed an amendment to the Agreement to increase the amount of compensation pursuant to the Agreement, in an agreement dated April 12, 2022; and

WHEREAS, the Parties desire to amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount; 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 not to exceed compensation by $130,000, for a total not to exceed amount of $285,000 (from a previous not to exceed amount of $155,000.).

2. The Agreement's Exhibit B (Payment) is amended as outlined in the new Payment (Exhibit 1), attached hereto and incorporated herein by reference.

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

City of Newark

David J. Benoun
City Manager

Dated: 7-27-22

Consultant

Kevin Duggan
President
4LEAF, Inc.

Dated: 7/12/22

Attest:

Sheila Harrington
City Clerk

Approved as to Form:

Kristopher J. Kokotaylo
City Attorney

EXHIBIT 1

PAYMENT

Consultant will provide the individual performing at the Assistant Planner level at the hourly rate of $110/hour for an amount not to exceed $285,000.

5077303.1

DocuSign Envelope ID: 696E5494-E54F-4961-9D4C-AD345758B4DA

C21045
R11469

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

This Third Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and 4LEAF, INC., a Type "C" Corporation ("Consultant") (sometimes referred to as "Parties") dated August 31, 2021 (the "Agreement"), is entered into as of March 18, 2023 for the provision of temporary professional planning services.

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of temporary professional planning services to provide technical assistance by individuals possessing experience consistent with minimum qualifications provided by the City; and

WHEREAS, Section 27, Modifications, 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 previously executed an amendment to the Agreement to increase the amount of compensation pursuant to the Agreement, in an agreement dated July 7, 2022; and

WHEREAS, the Parties desire to amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount; 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 not to exceed compensation by $95,150, for a total not to exceed amount of $380,150 (from a previous not to exceed amount of $285,000).

2. The Agreement's Exhibit B (Payment) is amended as outlined in the new Payment (Exhibit 1), attached hereto and incorporated herein by reference.

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

City of Newark

DocuSigned by:
075767B2C2304C4...

David J. Benoun
City Manager

Dated: 3/15/2023

Consultant

DocuSigned by:
Kevin Duggan
813734D554DD4B5...

Kevin Duggan
President
4LEAF, Inc.

Dated: 3/15/2023

Attest:

DocuSigned by:
Sheila Harrington
AD90989DBABE45E...

Sheila Harrington
City Clerk

Approved as to Form:

DocuSigned by:
Kristopher J. Kokotaylo
ABFC8AFEC9714E4...

Kristopher J. Kokotaylo
City Attorney

DocuSign Envelope ID: 696E5494-E54F-4961-9D4C-AD345758B4DA

EXHIBIT 1

PAYMENT

Consultant will provide the individual performing at the Assistant Planner level at the hourly rate of $110/hour for an amount not to exceed $380,150.

DocuSign

Certificate Of Completion

Envelope Id: 696E5494E54F49619D4CAD345758B4DA
Status: Completed
Subject: Complete with DocuSign: C21045 4Leaf, Inc. planning services.pdf
Source Envelope:
Document Pages: 3
Signatures: 4
Certificate Pages: 5
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
Sheila Harrington
37101 Newark Boulevard
Newark, CA 94560
sheila.harrington@newark.org
IP Address: 73.158.135.105

Record Tracking

Status: Original
3/15/2023 10:45:18 AM
Holder: Sheila Harrington
sheila.harrington@newark.org
Location: DocuSign

Signer Events	Signature	Timestamp
Kevin Duggan kduggan@4leafinc.com President 2126 Rheem Drive, Pleasanton CA 94588 Security Level: Email, Account Authentication (None)	DocuSigned by: Kevin Duggan 813734D554DD4B5... Signature Adoption: Pre-selected Style Using IP Address: 68.65.68.30 Signed using mobile	Sent: 3/15/2023 10:53:31 AM Viewed: 3/15/2023 11:01:02 AM Signed: 3/15/2023 11:01:14 AM
Electronic Record and Signature Disclosure: Accepted: 3/15/2023 11:01:02 AM ID: 3b2f5c4a-20cf-4032-bb5e-4256ed82910a		
Kristopher J. Kokotaylo kkokotaylo@meyersnave.com City Attorney Security Level: Email, Account Authentication (None)	DocuSigned by: Kristopher J. Kokotaylo ABFC8AFEC9714E4... Signature Adoption: Pre-selected Style Using IP Address: 206.169.145.130	Sent: 3/15/2023 11:01:15 AM Viewed: 3/15/2023 11:02:58 AM Signed: 3/15/2023 11:03:19 AM
Electronic Record and Signature Disclosure: Accepted: 3/15/2023 11:02:58 AM ID: daa0e586-4099-4005-9811-152d7d7498df		
David J. Benoun david.benoun@newark.org City Manager Security Level: Email, Account Authentication (None)	DocuSigned by: 075767B2C2304C4... Signature Adoption: Drawn on Device Using IP Address: 204.156.180.151	Sent: 3/15/2023 11:03:21 AM Viewed: 3/15/2023 8:11:06 PM Signed: 3/15/2023 8:12:31 PM
Electronic Record and Signature Disclosure: Accepted: 3/15/2023 8:11:06 PM ID: c605c873-28d0-433d-bc49-d33571337d54		
Sheila Harrington sheila.harrington@newark.org City Clerk City of Newark Security Level: Email, Account Authentication (None)	DocuSigned by: Sheila Harrington AD90989DBABE45E... Signature Adoption: Pre-selected Style Using IP Address: 73.158.135.105	Sent: 3/15/2023 8:12:32 PM Viewed: 3/18/2023 4:36:12 AM Signed: 3/18/2023 4:36:57 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	**Status**	**Timestamp**
Agent Delivery Events	**Status**	**Timestamp**
Intermediary Delivery Events	**Status**	**Timestamp**
Certified Delivery Events	**Status**	**Timestamp**
Carbon Copy Events	**Status**	**Timestamp**
Kathy Slafter kathy.slafter@newark.org Executive Assistant/Deputy City Clerk City of Newark Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 3/18/2023 4:36:58 AM
Sofia Castillo sofia.castillo@newark.org Admin Support Specialist II City of Newark Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 3/18/2023 4:36:59 AM
Art Interiano art.interiano@newark.org Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 1/30/2023 9:18:46 AM ID: 24666249-f9da-4522-b1b4-0e7a6aa2c99a	COPIED	Sent: 3/18/2023 4:37:00 AM Viewed: 3/21/2023 9:55:06 AM
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**
Envelope Summary Events	**Status**	**Timestamps**
Envelope Sent	Hashed/Encrypted	3/15/2023 10:53:31 AM
Certified Delivered	Security Checked	3/18/2023 4:36:12 AM
Signing Complete	Security Checked	3/18/2023 4:36:57 AM
Completed	Security Checked	3/18/2023 4:37:00 AM
Payment Events	**Status**	**Timestamps**
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Newark (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Newark:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: sheila.harrington@newark.org

To advise City of Newark of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at sheila.harrington@newark.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Newark

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to sheila.harrington@newark.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Newark

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to sheila.harrington@newark.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Newark as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Newark during the course of your relationship with City of Newark.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE THE FOURTH AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT WITH 4LEAF INC. TO PROVIDE TEMPORARY PROFESSIONAL PLANNING SERVICES

WHEREAS, On August 31, 2021, the City of Newark awarded a Contractual Services Agreement (the "Agreement") to 4LEAF Inc. (the "Consultant") to provide temporary professional planning services; and

WHEREAS, pursuant to Resolution No. 11,327 the City Council approved an amendment to the Agreement to increase the amount of compensation (the "First Amendment"); and

WHEREAS, pursuant to Resolution No. 11,371 the City Council approved an amendment to the Agreement to increase the amount of compensation (the "Second Amendment"); and

WHEREAS, pursuant to Resolution No. 11,469 the City Council approved an amendment to the Agreement to increase the amount of compensation (the "Third Amendment"); and

WHEREAS, the City finds that the scope of services described in the Agreement continue to be necessary and desires to amend the Agreement to provide additional funding for the existing scope of services to be provided by the Consultant.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager is hereby authorized to execute the Fourth Amendment to the Contractual Services Agreement with 4LEAF Inc., in a form approved by the City Attorney, to provide technical assistance by individuals possessing experience consistent with minimum qualifications provided by the City and to increase the not to exceed amount of the Agreement by $119,600 for a total not to exceed amount of $499,750.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to take all other actions consistent with this Resolution, including any necessary revisions to the scope of work for the Agreement, in a form approved by the City Attorney, that are within the total not to exceed amount of $499,750.

BE IT FURTHER RESOLVED, that the adopted 2022-2024 Biennial Budget and Capital Improvement Plan, includes appropriations for Fiscal Year 2024 in the Planning Division's professional services budget in an amount to accommodate the requested fourth amendment compensation.

STAFF REPORT

Item D. 13.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Matthew Farrell, Chief Building Official
SUBJECT	Adopt a resolution authorizing the City Manager to execute Contractual Services Agreements for on-call support services with 4Leaf, Inc., BPR Consulting Group, LLC., Bureau Veritas North America, Inc., CSG Consultants, Inc., and True North Compliance Services, Inc. for the Building Inspection Division and amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

SUMMARY AND RECOMMENDATION

The City of Newark Building Inspection Division currently has two Contractural Service Agreements for plan review and inspection services, both of which are set to expire at the end of the current fiscal year. Staff released a Request for Qualifications (RFQ) and 11 firms submitted responses. Staff reviewed the responses and conducted interviews of the potential personnel that would be assisting the division and concluded five firms would best meet the needs of the Building Inspection Division, given the high demand for these services in the current market.

Staff recommends that the City Council, by resolution, authorize the City Manager to execute Contractural Service Agreements with 4Leaf, Inc., BPR Consulting Group, Bureau Veritas North America, Inc., CSG Consultants, and True North Compliance Services, each with a not-to-exceed amount of $300,000 per fiscal year, and amend the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to increase professional services an additional $75,000 to a total of $300,000.

BACKGROUND

The Building Inspection Division has consistently utilized multiple Contractural Services Agreements for plan review and inspection services to help provide staff support as needed based on the demands for service. These agreements are an essential component to the Division's customer service delivery objectives. There are currently two firms under contract with the City, one for on-call plan check services with Bureau Veritas and one for on-call inspection services with 4Leaf. Both agreements are set to expire on June 30, 2023. In addition to typical building plan review and inspection needs, there are four large identified projects currently in the entitlement phase that will likely require these outside services in the upcoming fiscal year.

Staff released a Request for Qualifications (RFQ) per the City's Purchasing Rules and Regulations earlier this year. RFQs were sent to firms previously under contract with the City and to firms that expressed interest in providing this scope of services to the

City. The RFQ document specified that selection would be made based on the quality and completeness of submission as well as a firm's experience with engagements of similar scope and complexity, satisfaction of previous clients, and proposed rate schedules.

DISCUSSION/ANALYSIS

Staff received eleven (11) statements of qualifications for On-Call Building Inspection Services following release of the RFQ. The statements of qualifications were evaluated and ranked according to the selection criteria identified in the RFQ. Staff also conducted interviews of the potential personnel that would be assisting the Building Inspection Division. Based on the evaluation of the RFQ submissions and these interviews, staff concluded that five firms, 4Leaf, Inc., BPR Consulting Group, Bureau Veritas North America, Inc., CSG Consultants, and True North Compliance Services would best meet the needs of the Building Inspection Division.

The proposed change from the current model of two agreements to up to five agreements provides the City with the flexibility to call for service from multiple firms based on specific project needs and customer demands. Staff has recently witnessed that individual firms can get backlogged in service requests and these limitations can negatively impact customer service delivery for the City. Due to the nature of the current industry, requests for limited term or on-call inspection services are becoming more difficult to fulfill in a timely manner. The expansion to five firms under contract would allow for greater flexibility in helping the Building Inspection Division consistently provide its desired level of customer service.

All agreements are proposed for an initial three-year period with the City Manager authorized to extend each contract two times at one-year intervals each. The not-to-exceed amount for each agreement per fiscal year is proposed to be $300,000. This provides the Building Inspection Division with the most flexibility to utilize individual firms based on current availability and fluctuating needs for services. Staff is also recommending an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 to increase professional services an additional $75,000 to a total of $300,000. Staff will diligently monitor expenditures of each agreement to ensure the aggregate total of all five agreements does not exceed the proposed budget of $300,000 in Fiscal Year 2024, if the budget amendment is approved ($225,000 if the budget amendment is not approved).

FISCAL IMPACT

A budget increase of $75,000 is needed for Building Inspection Division professional services in the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024. This increase, if ultimately expended, would be off-set by anticipated increased plan review and inspection services fees associated with future development projects.

REVIEW AND APPROVAL

Prepared by - Matthew Farrell, Chief Building Official
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution RFQ Building Inspection
4Leaf CSA
BPR CSA
BVNA CSA
CSG CSA
TNCS CSA

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTUAL SERVICES AGREEMENTS WITH VARIOUS CONSULTANTS FOR ON-CALL BUILDING CONSTRUCTION INSEPCTION AND DEVELOPMENT PLAN REVIEW SERVICES, AND AMENDING THE 2022-2024 BIENNIAL BUDGET FOR FISCAL YEAR 2024 TO PROVIDE ADDITIONAL FUNDING FOR SAID CONTRACTURAL SERVICE AGREEMENTS

WHEREAS, the City issued Requests for Qualifications for on-call Inspection and Plan Check Services to assist the City with maintaining service levels; and

WHEREAS, a total of eleven statements of qualifications were received and evaluated by staff on the proposed cost for services, qualification and experience of firm and staff assigned to this project, the firms understanding of the City's desires and general approach to completing the work, and other factors including availability; and

WHEREAS, based on staff's evaluations, 4Leaf, Inc., BPR Consulting Group, LLC., Bureau Veritas North America, Inc., CSG Consultants, Inc., and True North Compliance Services, Inc. were determined to be the firms who will provide the best overall service to the City; and

WHEREAS, the Public Works Department requires additional funding for Building Inspection Division Professional Services in the amount of $75,000 for Fiscal Year 2024; and

WHEREAS, the costs for additional funding for said Building Inspection Contractual Services will be offset from revenues from construction permit fees and other development fees associated with the projects for which said contractual services will be provided.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute Contractual Services Agreements, each in a form approved by the City Attorney, with 4 Leaf, Inc., BPR Consulting Group, LLC., Bureau Veritas North America, Inc., CSG Consultants, Inc., and True North Compliance Services, Inc in an amount not to exceed $300,000 each, per fiscal year, for an initial term of three (3) years.

BE IT FURTHER RESOLVED that specific consultant work activities shall be authorized by the City Manager or their designee with individual Task Orders, and all such activities are subject to prior budgetary funding authorization by the City Council.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to extend the proposed Contractual Services Agreements to for up to two (2) additional one (1) year terms.

BE IT FURTHER RESOLVED that the City Council does hereby authorize an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for the fiscal year 2024 as follows:

TO:	120.60.062.620.6221	General Contractual Services	$75,000
FR:	120.3000	Unallocated Fund Balance	$75,000

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this day of , 20 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and 4 LEAF, INC., a Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: **ONCALL INSPECTION AND PLAN REVIEW SERVICES**.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) per fiscal year unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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

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

Invoices shall be sent to:

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

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

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

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

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written Task Order approved in advance of the performance thereof. Such Task Order shall

include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a Task Order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or $30,000, whichever is greater for such Additional Services.

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require

complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. <u>Minimum Scope of Insurance</u>.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), or Code 8 (hired) and 9 (non-owned) if consultant has no owned autos.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

C. <u>Minimum Limits of Insurance</u>.

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

I. Other Insurance Provisions.

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

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

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

3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. Similarly, no major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement.

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

5. Qualifications. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

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

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this

Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

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

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

(2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire in three (3) years from said date or the Agreements may be extended up to two (2) additional one (1) year terms as authorized by the City Manager.

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

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

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

4LEAF, INC.	**CITY OF NEWARK**
Kevin Duggan **President**	CHIEF BUILDING OFFICIAL **Administrator**
Address: 4Leaf, Inc Attn: Kevin Duggan 2126 Rheem Dr Pleasanton, Ca 94588	City of Newark Attn: Chief Building Official 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date _____

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

4Leaf, Inc.
a California Corporation

By _____
Consultant (Signature & Title)

Date _____

_____
Printed Name

EXHIBIT A

SCOPE OF SERVICES

Plan Checking, On Call inspection services – The consultant shall provide all equipment, services, and work required to review and inspect building plans and permit applications, including, but not limited to, major building permit construction documents and perform requested services. The type of improvements to be reviewed and inspected include but are not limited to commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.

EXHIBIT B

PAYMENT

SECTION E: FEE SCHEDULE

FY2023-2024 FEE SCHEDULE & BASIS OF CHARGES

FOR THE CITY OF NEWARK

A. All Rates are Subject to Basis of Charges

PLAN REVIEW COST STRUCTURE	NOTES
Complete Plan Review Percentage: 70% **Partial Plan Review Percentage: 40%** ***(Inclusive of all disciplines except Fire and Civil which are billed on an hourly basis)*** **Hourly Plan Review: $125 Non-Structural Review** **$160 Structural Review**	**Fee includes:** ➢ **Initial review and two (2) rechecks. Hourly charges apply after three (3) or more rechecks.** **Shipping, courier, and electronic service.** **Plan Review services subject to 2hr minimum fee.**

1. Building

Chief Building Official $170/hour

Structural Plan Review Engineer..... $160/hour

Non-Structural Plans Examiner $125/hour

Mechanical & Plumbing Plans Examiner..... $140/hour

Electrical Plans Examiner..... $160/hour

Certified Access Specialist (CASp) Inspector $160/hour

Certified Access Specialist (CASp) Plans Examiner $160/hour

Senior Combination Building Inspector (Building Inspector III) $135/hour

Commercial Building Inspector (Building Inspector II) $120/hour

Residential Building Inspector (Building Inspector I) $105/hour

Permit Manager $110/hour

Senior Permit Technician..... $95/hour

Permit Technician..... $85/hour

Clerk/Administrator..... $70/hour

Civil Plan Review (Grading, Improvement Plans) $160/hour

Supervising Inspector of Record $165/hour

Inspector of Record (Including DSA/OSHPD) $155/hour

Project Manager $175/hour

Principal-in-Charge $245/hour

GoFormz Software ..... $50/user monthly

2. Fire

Fire Protection Engineer (FPE) $195/hour

Fire Prevention Officer $155/hour

Fire Plans Examiner $155/hour

Fire Inspector $140/hour

Fire Inspector $120/hour

3. Public Works Inspection (Prevailing Wage) *

Civil Plan Review (Grading, Improvement Plans) $160/hour

Certified Access Specialist (CASp) Inspector (Regular time) ……..…….. $160/hour
Certified Access Specialist (CASp) Plans Examiner ……..…….. $160/hour
Public Works Inspector (Regular Time) ……..…….…… $153/hour
Public Works Inspector Apprentice ……..…….…… $99/hour

*If selected, we can provide a more detailed list of Public Works roles based on the project.

B. BASIS OF CHARGES

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

- **All invoicing will be submitted monthly.**
- **Staff Augmentation work (excluding plan review) is subject to 4-hour minimum charges unless stated otherwise. Services billed in 4-hour increments.**
- **Most plan reviews will be done in 10 business days or less and 5 business days or less for re-checks. This is not inclusive of holidays or the day of the pick-up of plans.**
- **Expedited reviews will be billed at 1.5x the plan review fee listed in the fee schedule. Return time will be within seven (7) days of receipt of the plans from the City.**
- **Plan review of deferred submittals & revisions will be billed at the hourly rates listed.**
- **All plan review services will be subject to a $250.00 minimum fee if percentage-based fee or 2-hour minimum charge if hourly rates apply.**

- **Larger complex plan reviews can be negotiated to achieve the best possible pricing.**
- **All plan review services are billed on a percentage basis and includes the initial review and 2 rechecks.**
- **Plan reviews will be billed on an hourly basis only after the initial review and 2 rechecks unless otherwise agreed upon on a case-by-case basis.**
- **Fire and Civil Reviews are billed on an hourly basis and are not included in our plan review percentage.**
- **4LEAF assumes that these rates reflect the FY2023-2024 contract period. There will be a 3% escalation for FY2024-2025, FY2025-2026**
- **Overtime and Premium time will be charged as follows:**
  - ***Regular time (work begun after 5AM or before 4PM) 1x hourly rate***
  - ***Nighttime (work begun after 4PM or before 5AM) 1.125x hourly rate***
  - ***Overtime (over 8-hour M-F or Saturdays) 1.5x hourly rate***
  - ***Overtime (over 8 hours Sat or 1st 8-hour Sun) 2x hourly rate***
  - ***Overtime (over 8 hours Sun or Holidays) 3x hourly rate***
- **Overtime will only be billed with prior authorization of the Director or other designated City personnel.**
- **All work with less than 8 hours rest between shifts will be charged the appropriate overtime rate.**
- **Mileage driven during the course of Inspections will be charged at cost plus 20%.**
- **Payment due on receipt. All payments over 30 days will be assessed a 1.5% interest charge.**
- **Client shall pay attorneys' fees, or other costs incurred in collecting delinquent amounts.**
- **Client agrees that 4LEAF's liability will be limited to the value of services provided.**
- **In accordance with California's Meal Break and Rest Break Law requirements, Client will be billed one (1) additional hour per day at the regular rate for each missed meal or rest break due to Client-directed tasks**

EXHIBIT C

QUALIFICATIONS

This firm has demonstrated its ability to support Newark's Building Inspection Division quality and level of service through the past 6 years and their references, interviews, and qualifications of available staff.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this day of , 20 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and BPR CONSULTING GROUP, LLC., a Limited Liability Company ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: **ONCALL INSPECTION AND PLAN REVIEW SERVICES**.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) per fiscal year unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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

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

Invoices shall be sent to:

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

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

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

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

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written Task Order approved in advance of the performance thereof. Such Task Order shall

include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a Task Order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or $30,000, whichever is greater for such Additional Services.

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require

complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. <u>Minimum Scope of Insurance</u>.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), or Code 8 (hired) and 9 (non-owned) if consultant has no owned autos.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

C. <u>Minimum Limits of Insurance</u>.

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

I. Other Insurance Provisions.

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

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

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

3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. Similarly, no major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement.

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

5. Qualifications. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

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

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this

Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

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

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

(2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire in three (3) years from said date or the Agreements may be extended up to two (2) additional one (1) year terms as authorized by the City Manager.

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

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

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

BPR CONSULTING GROUP, LLC	**CITY OF NEWARK**
RON BEEHLER **Principal/Director of Client Services**	CHIEF BUILDING OFFICIAL **Administrator**
Address: BPR Consulting Group Attn: Ron Beehler 2130 Professional Dr Suite 150 Roseville, CA 95661	City of Newark Attn: Chief Building Official 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date _____

BPR Consulting Group, LLC.
a Limited Liability Company

By _____
Consultant (Signature & Title)

Date _____

_____
Printed Name

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Plan Checking, On Call inspection services – The consultant shall provide all equipment, services, and work required to review and inspect building plans and permit applications, including, but not limited to, major building permit construction documents and perform requested services. The type of improvements to be reviewed and inspected include but are not limited to: commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.

EXHIBIT B

PAYMENT

RATE SCHEDULE

PLAN REVIEW SERVICES: For complete plan review services for building projects reviewed in either hard copy or electronic format, we propose a fee equal to 65% of the plan review fees based on the City's adopted fee schedule. Plan review services will include an initial first review and two back check reviews of the plans. Any additional plan review services required beyond the third review will be billed at our hourly rates listed within the Schedule of Hourly Billing Rates shown below. Expedited plan checks will be billed at 150% of the standard rate.

For review of revisions to approved plans, review of deferred submittal items and similar reviews, we propose to provide these services on an hourly basis using the rates listed in our Schedule of Hourly Billing Rates shown below. For partial reviews such as foundation only, structural only, life safety only, preliminary reviews, or others, we propose to negotiate a mutually agreeable fixed fee based on the specific services requested or provide services on an hourly basis using the rates listed in our Schedule of Hourly Billing Rates shown below. There is no charge for shipping, supply, or material costs.

INSPECTION SERVICES: Inspection services, when requested, can be provided at the hourly rates listed in our Schedule of Hourly Billing Rates.

SUPPORT SERVICES: For Permit Technician, Fire Sprinkler Review, Fire Code Inspections and Building Official services, we propose utilizing the hourly billing rates included in the Schedule of Hourly Billing Rates below for the specific labor classification utilized.

SCHEDULE OF HOURLY BILLING RATES

The rates displayed in the schedule below reflect BPR's current hourly billing rates.

CLASSIFICATION	HOURLY BILLING RATE
Licensed Plan Review Engineer (structural, civil, electrical, mechanical)	$165
ICC Certified Plans Examiner	$125
CASp Plans Examiner or Inspector	$130
ICC Certified Inspector*	$95 to $130
Building Official	$175
Fire Protection Engineer	$165
ICC Fire Plans Examiner	$125
ICC Fire Inspector	$130
Permit Technician*	$75 to $85
Permit Technician Trainee/ Building Department Support Staff	$55

** Varies based on level of experience and certification*

- **Shipping: There is no charge for courier or shipping services for plan reviews conducted off site.**
- **Overtime: Inspection services and other hourly services provided in**

excess of eight hours per day, nights, and weekends will be charged at 140% of the billing rates indicated above.

- **Expedited Plan Reviews: Expedited plan reviews can be provided at 150% of the above noted hourly rates.**
- **Mileage: Vehicle mileage utilized in the performance of inspection services will be billed at the current IRS vehicle mileage rate.**
- **Minimum Daily Charge: There will be a minimum 8-hour daily charge for all on-call plan review, inspection, permit technician and support services provided within City offices.**

EXHIBIT C

QUALIFICATIONS

This firm has demonstrated its ability to support Newark's Building Inspection Division quality and level of service through references, interviews, and qualifications of available staff.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this day of , 20 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and BUREAU VERITAS NORTH AMERICA, INC., a Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: **ONCALL INSPECTION AND PLAN REVIEW SERVICES**.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) per fiscal year unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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

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

Invoices shall be sent to:

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

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

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

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

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written Task Order approved in advance of the performance thereof. Such Task Order shall

include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a Task Order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or $30,000, whichever is greater for such Additional Services.

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require

complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. <u>Minimum Scope of Insurance</u>.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), or Code 8 (hired) and 9 (non-owned) if consultant has no owned autos.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

C. <u>Minimum Limits of Insurance</u>.

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

I. Other Insurance Provisions.

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

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

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

3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. Similarly, no major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement.

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

5. Qualifications. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

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

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this

Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

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

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

(2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire in three (3) years from said date or the Agreements may be extended up to two (2) additional one (1) year terms as authorized by the City Manager.

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

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

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

BUREAU VERITAS NORTH AMERICA, INC.	**CITY OF NEWARK**
CRAIG BAPTISTA	CHIEF BUILDING OFFICIAL
Vice President – Facilities Division	**Administrator**
Address: Bureau Veritas	City of Newark
Attn: Craig Baptista	Attn: Chief Building Official
180 Promenade Circle	37101 Newark Boulevard
Suite 150	Newark, CA 94560
Scaramento, CA 95834	

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date _____

Bureau Veritas North America, Inc.
a California Corporation

By _____
Consultant (Signature & Title)

Date _____

_____
Printed Name

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Plan Checking, On Call inspection services – The consultant shall provide all equipment, services, and work required to review and inspect building plans and permit applications, including, but not limited to, major building permit construction documents and perform requested services. The type of improvements to be reviewed and inspected include but are not limited to: commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.

EXHIBIT B

PAYMENT

CITY OF NEWARK COST FEE PROPOSAL

BV's pricing reflects our commitment to the success of the City of Newark by helping you maintain significant quality and cost saving benefits. These include:

- ✓ **Reduced plan review turnaround times and rapid responses to inspection requests**
- ✓ **Implementation of electronic plan review processes to help improve efficiency and control costs**
- ✓ **Commitment to maintain a proposed rate structure for the life of the initial contract period**
- ✓ **Highly qualified and licensed/certified staff**
- ✓ **Confidence of working with a well-established consultant in business for 195+ years**

PROPOSED SCHEDULE OF FEES	
65% of City Collected Fees	
HOURLY RATES FOR SERVICES*	
PERSONNEL CLASSIFICATIONS / TITLE	**HOURLY BILLING RATE**
Building Official	$165.00
Structural Engineer / Fire Protection Engineer / Senior Plan Review Engineer	$160.00
Plan Review Engineer / Sr. ICC Certified Plans Examiner	$140.00
ICC Certified Plans Examiner	$125.00
Fire Plan Reviewer	$140.00
CASp 1 (Jurisdictional Plan Review)	$135.00
CASp 2 (Inspections, ADA Scoping, Design Assessments and ROW Support)	$150.00
CASp Inspector	$150.00
Supervising Inspector (Commercial) / Sr. Building Inspector	$115.00-$130.00*
Building Inspector	$95.00-$110.00*
Code Enforcement Officer	$105.00-$120.00
ICC Certified Permit Counter Technician	$65.00-$80.00
Administrative / Clerical Support	$55.00-$65.00
Fast track / Expedited Plan Review	1.5x Plan Review Fee

* **Fast track / Expedited plan reviews shall be an additional 1.5 times the fees shown above.**
* **Overtime (OT) will be charged at 1.25 times the standard hourly rate; hours worked on a designated holiday will be charged at the appropriate OT rate. No overtime will be charged without prior City approval.**
* **Rates and cost estimates shown above exclude per diem, prevailing wage and union rates. Should these be applicable, BV will discuss and negotiate fees to account for increased personnel costs.**
* **Hourly rates subject to annual adjustment in accordance with CPI from Engineering News Record (ENR) with the City's prior approval.**
* **Mileage for employee-owned vehicles used in connection with the work will be at the current IRS rate.**
* **On-site hourly services to be invoiced a minimum of 6 hours per day on-site services are provided.**
* **Each individual project will be authorized on a task order basis with a negotiated fee.**
* **Services to be invoiced monthly; plan review fee to be invoiced after initial review.**
* **Purchase of required software licenses will be billed to the city.**

EXHIBIT C

QUALIFICATIONS

This firm has demonstrated its ability to support Newark's Building Inspection Division quality and level of service through the past 6 years and their references, interviews, and qualifications of available staff.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this day of , 20 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and CSG CONSULTANTS, INC., a Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: **ONCALL INSPECTION AND PLAN REVIEW SERVICES**.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) per fiscal year unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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

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

Invoices shall be sent to:

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

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

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

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

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written Task Order approved in advance of the performance thereof. Such Task Order shall

include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a Task Order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or $30,000, whichever is greater for such Additional Services.

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require

complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. <u>Minimum Scope of Insurance</u>.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), or Code 8 (hired) and 9 (non-owned) if consultant has no owned autos.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

C. <u>Minimum Limits of Insurance</u>.

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

I. Other Insurance Provisions.

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

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

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

3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. Similarly, no major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement.

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

5. Qualifications. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

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

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this

Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

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

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

(2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire in three (3) years from said date or the Agreements may be extended up to two (2) additional one (1) year terms as authorized by the City Manager.

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

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

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

CSG CONSULTANTS, INC.	**CITY OF NEWARK**
Cyrus Kianpour **President**	CHIEF BUILDING OFFICIAL **Administrator**
Address: CSG Consultants, Inc Attn: Cyrus Kianpour 550 Pilgrim Dr Foster City, CA 94404	City of Newark Attn: Chief Building Official 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date _____

CSG Consultants, Inc.
a California Corporation

By _____
Consultant (Signature & Title)

Date _____

_____
Printed Name

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Plan Checking, On Call inspection services – The consultant shall provide all equipment, services, and work required to review and inspect building plans and permit applications, including, but not limited to, major building permit construction documents and perform requested services. The type of improvements to be reviewed and inspected include but are not limited to: commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.

EXHIBIT B

PAYMENT

BUILDING DIVISION SERVICES

CSG's fee schedule for proposed work is provided below. If plans are not submitted electronically, CSG will coordinate the pickup and return of all plans to CSG via CSG staff or a licensed courier service. This service is provided at no additional cost. Plan review is based on a percentage of the agency's plan check fees and includes the initial plan review and two subsequent reviews. Additional reviews, deferred submittals, revisions, and RFIs will be charged at the appropriate hourly rate below. RFIs for large developments will be performed at an hourly rate, and turnaround times will be agreed upon in advance with the agency.

PERSONNEL / REVIEW TYPE	ALL INCLUSIVE FEE / HOURLY RATE
Off-Site Building Plan Review (by Percentage)	
Full Building Plan Review by Percentage	65% of Agency's Building Plan Check Fees
Structural Only Plan Review by Percentage	50% of Agency's Building Plan Check Fees
Expedited Plan Review by Percentage	95% of Agency's Building Plan Check Fees
Off-Site Building Plan Review (Hourly)	
Building Plan Review	$135
Structural Only Plan Review	$165
Expedited Plan Review (Hourly)	1.5 x Hourly Rate
Building Department Services	
Permit Technician	$100
Senior Permit Technician	$110
Certified Building Inspector	$120
Senior Building Inspector	$130
Building Official	$160
Code Enforcement Services	
Code Enforcement Officer (Certified)	$130
Fire Prevention Services	
Fire Plan Review	$135
Fire Plan Review – Fire Protection Engineer	$250
Expedited Plan Review	1.5 x Hourly Rate
Senior Fire Inspector	$135
Fire Inspector	$115
Fire Marshal	$160
Fire Permit Technician	$100

All hourly rates include salaries, benefits, workers compensation insurance, local travel, and miscellaneous office expenses. Should the scope of work change, or circumstances develop

which necessitate special handling, CSG will notify the Agency prior to proceeding. Overtime services and services provided outside of normal business hours will be billed at 1.5x the applicable hourly rate. Depending on project size and scope, CSG's percentage-based expedited plan review rate may be adjusted if mutually agreed upon between the Agency and CSG. Hourly rates for publicly funded projects will be based on current prevailing wage rates. On July 1 of each year following the contract start year, CSG will initiate an hourly rate increase based on change in CPI for the applicable region. CSG will mail an invoice every month for services rendered during the previous month. Unless otherwise agreed, payment terms are 30-days from receipt of invoice.

EXHIBIT C

QUALIFICATIONS

This firm has demonstrated its ability to support Newark's Building Inspection Division quality and level of service through references, interviews, and qualifications of available staff.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this day of , 20 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **TRUE NORTH COMPLIANCE SERVICES, INC**., a Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: **ON CALL INSPECTION AND PLAN REVIEW SERVICES**.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) per fiscal year unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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

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

Invoices shall be sent to:

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

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

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

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

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written Task Order approved in advance of the performance thereof. Such Task Order shall

include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a Task Order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or $30,000, whichever is greater for such Additional Services.

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require

complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. <u>Minimum Scope of Insurance</u>.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), or Code 8 (hired) and 9 (non-owned) if consultant has no owned autos.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

C. <u>Minimum Limits of Insurance</u>.

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

I. Other Insurance Provisions.

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

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

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

3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. Similarly, no major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement.

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

5. Qualifications. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

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

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this

Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

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

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

(2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire in three (3) years from said date or the Agreements may be extended up to two (2) additional one (1) year terms as authorized by the City Manager.

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

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

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

TRUE NORTH COMPLIANCE SERVICES, INC.	**CITY OF NEWARK**
Isam Hasenin **President**	CHIEF BUILDING OFFICIAL **Administrator**
True North Compliance Services, Inc Attn: Isam Hasenin 1336 N. Carolan Ave, #106 Burlingame, Ca 94010	City of Newark Attn: Chief Building Official 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date _____

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

True North Compliance Services, Inc.
a California Corporation

By _____
Consultant (Signature & Title)

Date _____

_____
Printed Name

EXHIBIT A

SCOPE OF SERVICES

Plan Checking, On Call inspection services – The consultant shall provide all equipment, services, and work required to review and inspect building plans and permit applications, including, but not limited to, major building permit construction documents and perform requested services. The type of improvements to be reviewed and inspected include but are not limited to commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.

EXHIBIT B

PAYMENT

A. PLAN REVIEW SERVICES

True North proposes to charge 65% of the City's total Plan Review Fee for our plan review services. Our fee includes initial review and all subsequent rechecks. Our fee includes shipping and delivery of plans to/from City Hall. Expedited Plan Check services will be charged at 150% of the proposed fees.

Revisions/Deferred Submittals/RFIs will be billed using the hourly rate table below.

Additional Services: The following hourly rate table applies to on-site staffing services and/or additional services included in our Scope of Services that may be required by the City of Newark. Our hourly rates are all-inclusive and include salaries, overhead, benefits, PTO, etc.

B. Hourly Rates for Additional Services

Position	Hourly Rate
Interim Certified Building Official	$155.00
Plan Review Engineer	$130.00
Senior Plan Review Engineer	$145.00
Structural Engineer	$150.00
Senior Structural Engineer	$165.00
Certified Engineering Geologist/Geotechnical Engineer	$155.00
Licensed Fire Protection Engineer	$155.00
Certified Plans Examiner I	$100.00
Certified Plans Examiner II	$115.00
Building/Housing Inspector I	$100.00
Building/Housing Inspector II	$115.00
Senior Building/Housing Inspector	$125.00
Code Enforcement Officer	$100.00
CASp Plan Reviewer/Inspector	$135.00
Fire Plan Reviewer/Inspector I	$120.00
Fire Plan Reviewer/Inspector II	$135.00
Grading/Public Improvements Plan Review Engineer I	$140.00
Grading/Public Improvements Plan Review Engineer II	$155.00
Planner	$145.00

EXHIBIT C

QUALIFICATIONS

This firm has demonstrated its ability to support Newark's Building Inspection Division quality and level of service through references, interviews, and qualifications of available staff.

STAFF REPORT

Item D. 14.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Michelle Villanueva, Senior Accountant
SUBJECT	Adopt a resolution establishing the Fiscal Year 2024 Tax Appropriations Limit

SUMMARY AND RECOMMENDATION

In accordance with legislation, the governing body of each local jurisdiction in California must, by resolution, establish a Tax Appropriations Limit (also referred to as the GANN Limit) prior to the beginning of each fiscal year. The Tax Appropriations Limit is based on actual appropriations during the State of California Fiscal Year 1978-79 and adjusted each year using population and inflation adjustment factors. Staff recommends that the City Council, by resolution, establish a Tax Appropriations Limit and update the annual adjustment factors for Fiscal Year 2024.

BACKGROUND

In November 1979, California voters approved Proposition 4 (the Gann Initiative) that added Article XIIIB to the State Constitution. Implementation of the provisions of Article XIIIB became effective January 1, 1981. The State Legislature added Division 9 (commencing with Section 7900) to Title I of the Government Code to implement Article XIIIB as amended with Proposition 98 in 1988 and Proposition 111 in 1990, which California voters approved on June 5, 1990.

Proposition 111 allows local jurisdictions to choose among measures of inflation and population growth to compute the adjustment factor. The measures for inflation (price factors) include growth in California per capita income or growth in the City's gross assessed valuation due to new non-residential construction; while measures for population growth include population growth within the county or city.

In 2022, state policy required local agencies to report state subventions that would cause them to exceed local appropriations limits. The state would then count those that exceeded the local limits, at the state level instead. The state budget excluded certain local subventions from their limit, to avoid exceeding the Gann Limit. Local agencies must now include the state subventions within their appropriation limits.

DISCUSSION/ANALYSIS

On June 23, 2022, the City Council adopted Resolution No. 11369 establishing the Fiscal Year 2023 Tax Appropriations Limit to $486,856,508. The City's Tax Appropriations Limit was calculated using the percentage change in California per capita income as the price factor adjustment since the local assessment roll data necessary to calculate the percentage change in the nonresidential assessed valuation is generally not available from the County Assessor's Office until well into the fiscal year. In the absence of final information on this important factor, it is recommended that the known California per capita personal income of 4.44 percent be adopted for Fiscal Year 2024. For the population adjustment factor, it is recommended that the City's percent change in population of 0.66 percent be adopted for Fiscal Year 2024 since the higher percentage change in population is most advantageous to the City.

In accordance with Proposition 111 guidelines, and based on the above information, the proposed Fiscal Year 2024 Tax Appropriations Limit is $511,828,858. The 2023-2024 Biennial Budget appropriations subject to the limit are estimated to be well below the proposed Tax Appropriations Limit.

FISCAL IMPACT

There is no fiscal impact associated with this action.

REVIEW AND APPROVAL

Prepared by - Michelle Villanueva, Senior Accountant
Reviewed by - Gloria del Rosario, Accounting Manager
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Tax Appropriations Limit Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ESTABLISHING THE TAX APPROPRIATIONS LIMIT AND UPDATING THE ANNUAL ADJUSTMENT FACTORS FOR FISCAL YEAR 2024

WHEREAS, pursuant to Article XIIIB of the Constitution of the State of California, the City Council of the City of Newark has established a "Tax Appropriations Limit" for Fiscal Year 2024; and

WHEREAS, the provisions of Article XIIIB became effective January 1, 1981 requiring the governing body of each local jurisdiction in California to establish a Tax Appropriations Limit (also referred to as the GANN Limit) prior to the beginning of each fiscal year by resolution; and

WHEREAS, Proposition 111 allows local jurisdictions to choose among measures of inflation and population growth to compute the adjustment factor. The measures for inflation (price factors) include growth in California per capita income or growth in the City's gross assessed valuation due to new non-residential construction; while measures for population growth include population growth within the county or city; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark, in accordance with Proposition 111 guidelines, and based on the known adjustment factors of 4.44 percent change in California per capita income and a 0.66 percent change in the population growth for the City of Newark, hereby establishes the amount of $ 511,828,858 as the Tax Appropriations Limit for Fiscal Year 2024.

STAFF REPORT

Item D. 15.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Neal Hornbeck, Assistant Maintenance Superintendent
SUBJECT	Adopt a resolution approving an amendment to the Contractual Services Agreement with Gachina Landscape Management, Inc. to increase the contractual not-to-exceed amount for additional landscape maintenance services and amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024

SUMMARY AND RECOMMENDATION

Gachina Landscape Management, Inc. (GLM) entered into a Contractual Services Agreement with the City of Newark for Park and Landscape Maintenance Services, City-owned properties and Landscaping and Lighting District properties in March 2021. GLM currently provides landscape maintenance services to the Civic Center property as well as contracted Landscaping and Lighting District locations and numerous medians and roadside landscaped areas owned and maintained by the City. With the additional areas of responsibility for landscape maintenance, the annual not-to-exceed amount needs to be increased by $48,000 to total $370,000 for Fiscal Year 2024.

Staff recommends that the City Council approve an amendment to the Contractual Services Agreement with Gachina Landscape Management, Inc. to increase the not-to-exceed amount by $370,000 to $870,000 total through Fiscal Year 2024. Staff further recommends an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2024.

BACKGROUND

In March 2021, the City awarded a landscape maintenance services Contractual Services Agreement to Gachina Landscape Maintenance, Inc. (GLM). At the time, the initial not-to-exceed amount was $248,000 for each of two initial fiscal year periods through Fiscal Year 2023. Actual expenditures through June 30, 2023 may be slightly higher, but are not estimated to exceed $500,000. The areas covered under the agreement included the Assessment Districts and numerous medians and roadside landscape areas and was expanded in 2022 to include the Newark Civic Center. GLM has met expectations over the course of the landscape maintenance contract to date.

For several years, Landscaping and Lighting District No. 18 had been maintained by City staff, with supplemental work provided by GLM. A large portion of the landscaped area within Landscaping and Lighting District No. 19 in the Bayside Newark area has also been accepted by the City which now requires that landscape maintenance services be managed by the Maintenance Division. The additional landscape

maintenance area is significant. In order to maintain landscaping levels in a manner consistent with City standards, it is necessary to increase the amount of landscape maintenance work in both Landscaping and Lighting District Nos. 18 and 19 through the use of contract services.

DISCUSSION/ANALYSIS

Staff recommends approving an amendment to the Contractual Services Agreement with GLM to increase the not-to-exceed amount by $370,000 for landscape maintenance services during Fiscal Year 2024, resulting in a total contractual not-to-exceed amount of $870,000 through Fiscal Year 2024. This not-to-exceed increase would provide contractual authority for the landscape maintenance services currently being provided by GLM, including ongoing landscape maintenance at the Civic Center, as well as the addition of the Landscaping and Lighting District Nos. 18 and 19 landscape maintenance services in Fiscal Year 2024. In addition, a small portion of the funds allocated to the increase will be held to encompass any possible irrigation or vandalism issues that may arise.

The Fiscal Year 2023 budget was expanded to include $45,000 for landscape maintenance services at the Newark Civic Center, but not beyond. Staff is recommending that the Biennial Budget and Capital Improvement Plan for Fiscal Year 2024 be increased by $48,000 for continuation of these landscape maintenance services.

The current contract with GLM allows for potential future one-year extensions for Fiscal Years 2025 and 2026. Staff will continue to closely evaluate the performance of GLM. Recommendations for amendments, if any, to increase the contractual not-to-exceed compensation amounts for Fiscal Years 2025 and 2026 will be provided for the City Council's consideration at a future date.

FISCAL IMPACT

The 2022-2024 Biennial Budget and Capital Improvement Plan is projected to include approximately $322,000 for contractual landscape maintenance services in Fiscal Year 2024. Staff recommends amending the 2022-2024 Biennial Budget and Capital Improvement Plan to increase the Landscape and Parks Maintenance Operating budget in the amount of $48,000 for Fiscal Year 2024 for ongoing landscape maintenance services at the Newark Civic Center with funds from the Maintenance Cost Center, a portion of the City's general fund.

REVIEW AND APPROVAL

Prepared by - Neal Hornbeck, Assistant Maintenance Superintendent
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Gachina Resolution
Amendment
Gachina Landscape CSA

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AMENDMENT NO. 1 TO THE CONTRACTUAL SERVICES AGREEMENT WITH GACHINA LANDSCAPE MANAGEMENT, INC. TO INCREASE THE TOTAL NOT-TO-EXCEED AMOUNT FOR ADDITIONAL LANDSCAPING SERVICES AND AMENDMENT OF THE BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, the City of Newark awarded a Contractual Services Agreement to Gachina Landscape Management, Inc. for landscape maintenance services; and

WHEREAS, the initial not-to-exceed amount for the contract was established at $248,000 per fiscal year; and

WHEREAS, the contract expenditures for the first two years through June 30, 2023 are estimated at $500,000; and

WHEREAS, there is a need for additional landscape maintenance services to be provided by Gachina Landscape Maintenance, Inc., including ongoing maintenance at the Newark Civic Center and increased maintenance work in Landscaping and Lighting District Nos. 18 and 19; and

WHEREAS, staff has identified a need to amend the Contractual Services Agreement to increase the not-to exceed amount through Fiscal Year 2024 for landscape maintenance services; and

WHEREAS, the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023 included a budget increase for Fiscal Year 2023 in the amount of $45,000 for landscape maintenance services at the Newark Civic Center that should be extended through Fiscal Year 2024 in the amount of $48,000.

NOW THEREFORE, BE IT RESOLVED that the City Council hereby approves Amendment No. 1 to the Contractual Services Agreements with Gachina Landscape Management, Inc., to increase the not-to-exceed amount of the Contractual Services Agreement by $370,000 for Fiscal Year 2024 to $870,000 total, with any written task orders approved by the Public Works Director based on previously approved budgetary sources.

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to execute the above Contractual Services Agreement amendment, on file with the City Clerk, in a form approved by the City Attorney.

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

To:	140.60.064.643.6221	$ 48,000
From:	140.3000	$ 48,000

FIRST AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND GACHINA LANDSCAPE MAINTENANCE, INC.

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Gachina Landscape Maintenance, Inc., a California corporation ("Consultant") (sometimes referred to as "Parties") dated March 31, 2021 (the "Agreement"), is entered into as of _____, 2023 for ongoing park and landscape maintenance services at City parks, streets, and other City-owned property, including assessment district properties.

RECITALS

WHEREAS, the Parties executed the Agreement for the purpose of having Consultant perform ongoing park and landscape maintenance services at City parks, streets, and other City-owned property, including assessment district properties; and

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

WHEREAS, the Agreement initially included a not-to-exceed amount of $248,000 per fiscal year; and

WHEREAS, the City has the option to extend the Agreement for up to four additional fiscal years through Fiscal Year 2026; and

WHEREAS, the Parties again desire to amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount for the anticipated services in Fiscal Year 2024 to $370,000 resulting in a total cumulative not-to-exceed amount of $870,000 for the Agreement through Fiscal Year 2024; 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 not-to-exceed compensation amount during Fiscal Year 2024 to $370,000 and the total cumulative not-to-exceed compensation to $870,000 for the Agreement through Fiscal Year 2024.

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

CITY OF NEWARK

_____
David J. Benoun
City Manager

Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

GACHINA LANDSCAPE
MAINTENANCE, INC.

By: _____

_____
Printed Name

Dated: _____

a 21011
R11178

CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 31ST day of MARCH, 2021 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and GACHINA LANDSCAPE MANAGEMENT, INC., a California corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: Park and landscape maintenance services as described in that certain document entitled, "Request for Proposals, for Park and Landscape Maintenance Services, City-Owned Properties and Assessment District Properties," and as set forth in all associated response documents, including but not limited to the Proposal to the City of Newark, the Unit Price Schedule, all Specifications, this Agreement, and all Addenda setting for any modification or interpretations of any of said documents.

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. **COMPENSATION.**

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of TWO HUNDRED FORTY-EIGHT THOUSAND and No/100 Dollars ($248,000.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

12. **PUBLIC WORKS REQUIREMENTS.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit D.

13. **PUBLIC WORKS CONTRACTOR REGISTRATION.** Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

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

A. **Verification of Coverage.**

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

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

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

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

B. **Minimum Scope of Insurance.**

Coverage shall be at least as broad as:

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

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

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

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

C. **Minimum Limits of Insurance.**

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

Consultant shall maintain limits no less than:

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

4. Errors and Omissions Liability:	**$1,000,000** per occurrence or claim; $2,000,000 aggregate.

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

No policy required by this paragraph 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

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

Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

I. **Other Insurance Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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

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

18. TERM/TERMINATION.

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

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

30 day

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

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

GACHINA LANDSCAPE MANAGEMENT, INC.	CITY OF NEWARK
BRYAN THOMAS	NEAL HORNBECK
Consultant	**Administrator**
Address: Gachina Landscape Mgmt., Inc. Attn: Business Dev. Manager 1130 O'Brien Drive Menlo Park, CA 94025	City of Newark Attn: Asst. Maint. Superintendent 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 4-1-21

GACHINA LANDSCAPE MANAGEMENT, INC.,
a California corporation

By _____
Consultant

Date 4·1·2021

H. Jaclyn Ishimatsu-Gachina
Printed Name

Attest:

Sheila Harrington
City Clerk

Date 4/6/2021

Approved as to form:

_____
City Attorney

Date 4/1/2021

EXHIBIT A

SCOPE OF SERVICES

The scope of services shall be as defined in the document entitled, "Request for Proposals Park and Landscape Maintenance Services, City-owned Properties and Assessment District Properties," incorporated herein by reference.

EXHIBIT B

PAYMENT

Payment shall be made from monthly invoices submitted by Consultant to City for review and approval based on the Unit Price Schedule of the accepted Bid Proposal from the document entitled, "Request for Proposals, Park and Landscape Maintenance Services, City-Owned Properties and Assessment District Properties," incorporated herein by reference.

EXHIBIT C

QUALIFICATIONS

Qualifications are provided in the Bid Proposal submitted by Consultant for the document entitled, "Request for Proposals, Park and Landscape Maintenance Services, City-Owned Properties and Assessment District Properties," incorporated herein by reference.

EXHIBIT D

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

C. The Consultant and its subcontractors shall forfeit as a penalty to the City $25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.

B. In accordance with California Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage

obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be submitted directly to the Labor Commission, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

RESOLUTION NO. 11,178

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACTUAL SERVICES AGREEMENT WITH GACHINA LANDSCAPE MANAGEMENT, INC FOR PARK AND LANDSCAPE MAINTENANCE SERVICES WITH OPTIONS FOR ANNUAL CONTRACT RENEWALS

WHEREAS, the City of Newark regularly utilizes contractual services to supplement ongoing park and landscape maintenance throughout the City; and

WHEREAS, the City of Newark Maintenance Division of the Public Works Department issued a Request for Proposals for contractual services for Park and Landscape Maintenance Services; and

WHEREAS, a total of three responses were received from prospective landscape maintenance contractors for ongoing park and landscape maintenance services and from among these responses, staff identified Gachina Landscape Management, Inc. as the firm proposing to provide the best overall value to the City based on their ability and experience in the performance of similar work at the cost proposed.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that Gachina Landscape Management, Inc. was determined to provide the best overall value to City.

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to enter into a Contractual Services Agreement with Gachina Landscape Management, Inc. for Park and Landscape Maintenance Services.

BE IT FURTHER RESOLVED that the City Council does hereby authorize the Public Works Director to execute future contract renewals under said Contractual Services Agreement for up to four (4) additional annual contract periods through June 30, 2026, subject to prior funding approval for each fiscal year by the City Council.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on March 25, 2021, by Council Member Collazo who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES:	Council Members Collazo, Freitas, Hannon and Mayor Nagy
NOES:	None
ABSENT:	Vice Mayor Bucci
SECONDED:	Council Member Hannon

APPROVED:

s/ALAN L. NAGY
Mayor

ATTEST:

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

"Total" column, then the amount set forth in the "Total" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.

The undersigned as Proposer, declares that the only persons or parties interested in this Proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he/she has carefully examined the location of the proposed work, the annexed proposed form of contract, and the Plans therein referred to; and he/she proposed and agrees, if this proposal is accepted, that he/she will contract with the City of Newark, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he/she will take in full payment herefor the amounts shown on the following unit price schedule, to wit:

CITY OF NEWARK
Public Works Department

UNIT PRICE SCHEDULE

PARK AND LANDSCAPE MAINTENANCE SERVICES
REQUEST FOR PROPOSAL
CITY-OWNED PROPERTIES AND ASSESSMENT DISTRICT PROPERTIES

Proposer: Gachina Landscape Management Inc.

The Proposer shall submit a Unit Price Schedule based on all of the work as cited herein. The following Unit Price Schedule shall be completed by the Contractor.

BASE BID

Description	Monthly Price	Annual Total
Landscape & Lighting District # 1	$1350.00	$16200.00
Landscape & Lighting District # 2	$428.00	$5136.00
Landscape & Lighting District # 4	$252.00	$3024.00
Landscape & Lighting District # 6	$430.00	$5160.00
Landscape & Lighting District # 7	$504.00	$6048.00
Landscape & Lighting District #11	$1344.00	$16128.00
Landscape & Lighting District #15	$94.00	$1128.00
Landscape & Lighting District #16	$252.00	$3024.00

Description	Monthly Price	Annual Total
Landscape & Lighting District #17	$136.00	$1632.00
Cedar Boulevard East	$682.00	$8184.00
Cherry St Backup and Wall	$1008.00	$12096.00
Cherry Street Median	$346.00	$4152.00
Jarvis Ave, Haley St and Fircrest St.	$1344.00	$16128.00
Thornton Ave East	$1344.00	$16128.00
Thornton Ave Backup and Wall	$336.00	$4032.00
Cedar Blvd West	$94.00	$1128.00
Mel Nunes Sportsfields Park	$2016.00	$24192.00
Thornton Ave West	$94.00	$1128.00
Magnolia Plaza	$94.00	$1128.00
George M. Silliman Activity Center & George M. Silliman Aquatic Center	$1018.00	$12216.00
Cedar Blvd. - Smith Ave. to Mowry Ave. Center medians and sidewalk areas	$756.00	$9072.00
Cedar Blvd. – Mowry Ave. to Balentine Dr. Center medians only	$336.00	$4032.00
Cedar Blvd. – Dupont Ave. to Thornton Ave. Center medians and sidewalk areas	$252.00	$3024.00
Cedar Blvd. –Newark Blvd. to Haley St. Center medians only	$336.00	$4032.00
Lido Blvd. – Cedar Blvd. to Jarvis Ave. Center medians only	$136.00	$1632.00
Newark Blvd. – Jarvis Ave. to Ruschin Dr. Center medians only	$252.00	$3024.00

Description	Monthly Price	Annual Total
Newark Blvd. – Thornton Ave. to Ruschin Dr. Center medians only	$356.00	$4272
Mowry Ave. –I-880 Freeway to Cherry St. Blvd. Center medians only	$430.00	$5160.00
Mowry Ave. – Alpenrose Ct. to Cherry St. Sidewalks only	$136.00	$1632.00
Cherry St.– Mowry Ave. to Golden State Lumber Center medians only	$94.00	$1128.00
Cherry St. – Mowry Ave. to ACFC East sidewalk only	$188.00	$2256.00
Jarvis Ave. – Cardiff St. to Lake Blvd.	$94.00	$1128.00

10,724

TOTAL ANNUAL BASE BID **$198,384.00**

MAJOR IRRIGATION REPAIRS

Description	Unit	Quantity	Unit Price	Total
Valve Replacement Labor per hour	Hourly	30	$95.00	$2850.00
Main Line Repair Labor per hour	Hourly	50	$95.00	$4750.00
Lateral Line Repair Labor per hour	Hourly	50	$95.00	$4750.00
Emergency Call Out Labor per hour	Hourly	10	$112.5 (4 hour min. per call after hours)	$4500.00

LANDSCAPE REPAIR/REFURBISHMENT

One flat of groundcover including labor	Each	30	$65.00	$1950.00
One 1-gallon shrub including labor	Each	30	$28.00	$840.00
One 15-gallon tree including labor	Each	50	$58.40	$2920.00

Landscape Repair/Refurbishment quantities are for estimating purposes only.

7. SELECTION CRITERIA, AND SELECTION PROCESS WITH ESTIMATED DATES

Proposals will be screened, and the top candidate(s) will be reviewed by a selection committee. In reviewing the Proposals, the City will carefully weigh:

- Firm's understanding of the scope of work and general approach to completing the work
- Firm's experience with contracts of similar scope, complexity and magnitude.
- Demonstrated ability of the Company to perform high quality work, to control costs and to meet time schedules as evidenced by proposed methodology.
- Satisfaction of previous clients.
- Proposed rate schedule

a. *Cover Letter.* Describe your firm's interest and commitment to providing the landscape maintenance consulting services over the course of the planned contract. The letter shall be signed by a person authorized to negotiate a contract with the City.

b. *Experience providing similar services/references.* Provide a list of local government clients over the past five years, along with a contact person (name, agency, title, address, and telephone number) for each listed reference.

c. *Staffing, Team Experience.* Describe the qualifications and experience of key team members expected to be assigned to this contract.

d. *Cost Proposal.* Complete the entire Bid Proposal provided in Section 6 (Proposal Format and Content) above based on the estimated areas listed in Section 5 (Base Bid and Approximate Maintenance Areas). If there is a mathematical discrepancy between the monthly and annual cost proposal, the monthly estimate will be selected.

STAFF REPORT

Item D. 16.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Michelle Villanueva, Senior Accountant
SUBJECT	Adopt a resolution authorizing the City Attorney to execute a Certification and Mutual Indemnification Agreement with the County of Alameda for Fiscal Year 2024

SUMMARY AND RECOMMENDATION

The City currently has an agreement with Alameda County that authorizes the collection of various taxes, assessments, and fees on the secured property tax roll. Staff recommends that the City Council, by resolution, authorize the City Attorney to execute a Certification and Mutual Indemnification Agreement with the County of Alameda for Fiscal Year 2024.

BACKGROUND

Since the passage of Proposition 218 in 1996, the County has required that each agency or district sign an annual statement certifying that each assessment, fee, and/or special tax placed on the tax roll meets the requirements of Proposition 218.

DISCUSSION/ANALYSIS

Staff has reviewed each of the City's taxes, assessments, and fees to ensure compliance with the proposition. It is the opinion of the City Attorney that the City's taxes, assessments, and fees are in compliance with Proposition 218 requirements and the City is able to sign the certification. Staff and the City Attorney perform this evaluation on an annual basis.

FISCAL IMPACT

There is no fiscal impact associated with this action.

REVIEW AND APPROVAL

Prepared by - Michelle Villanueva, Senior Accountant
Reviewed by - Gloria del Rosario, Accounting Manager
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY ATTORNEY TO SIGN A CERTIFICATION AND MUTUAL INDEMNIFICATION AGREEMENT WITH THE COUNTY OF ALAMEDA

WHEREAS, the City of Newark has an agreement with the County of Alameda which authorizes the collection of various taxes, assessments, and fees on the secured property tax roll; and

WHEREAS, since 1996, the County of Alameda has required that each agency or district sign an annual statement certifying that each assessment, fee, and/or special tax placed on the tax rolls meets the requirements of Proposition 218; and

WHEREAS, staff has reviewed and confirmed that each of the City's taxes, assessments, and fees are in compliance with Proposition 218.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Attorney is hereby authorized to sign a Certification and Mutual Indemnification Agreement for the County of Alameda, said agreement on file in the Office of the City Clerk.

STAFF REPORT

Item D. 17.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Adopt a resolution approving the City's Investment Policy

SUMMARY AND RECOMMENDATION

Following best practices established by the Association of Public Treasurers of the United States and Canada and the Government Finance Officers Association (GFOA), the City's Investment Policy should be reviewed and approved by the City Council on a timely basis for any material changes. The current updates to the Investment Policy provide additional definitions and examples to clarify key terms.

Staff recommends the City Council adopt the proposed resolution approving the City's Investment Policy for Fiscal Year 2024.

BACKGROUND

The Investment Policy's primary objective is the safety of principal balances, with liquidity and return on investment as the second and third priorities respectively. While not required by State law, both the Association of Public Treasurers of the United States and Canada and the GFOA have established policy standards that recommend investment policies be reviewed annually. At a minimum, finance staff should conduct the annual review. An update to the investment policy is warranted if the annual review results in significant changes to the policy. The last update to the Investment Policy was on June 24, 2021, pursuant to Resolution No. 11,213.

DISCUSSION/ANALYSIS

Staff is proposing updates to the City's Investment Policy that include additional definitions and examples for Credit Risk, Interest Rate Risk, Liquidity and Yield as noted under section 5.0 Objectives. In addition, updates to Local Government Investment Pools, under section 9.0 Authorized and Suitable Investments, are proposed to provide additional guidance on this type of investment and to increase the maximum amount the City may invest in the California Asset Management Program (CAMP), which is a permitted investment under State law. Staff recommends that the remainder of the City's current Investment Policy remain the same because it contains all standard and material issues that an Investment Policy should include.

FISCAL IMPACT

There is no fiscal impact associated with this action.

REVIEW AND APPROVAL

Prepared by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Redlined Resolution Draft

Resolution Redlines accepted

RESOLUTION NO.

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

WHEREAS, the City Council has established and each year approves an Investment Policy regarding the investment of the City's temporary idle cash; and

WHERES, the Investment Policy specifies the City's investment objectives in accordance with California Law and provides a framework for managing and investing the City's funds in accordance with these objectives; and

WHEREAS, the Investment Policy itself requires the City's Investment Policy be reviewed and approved by the City Council each year; and

WHEREAS, City staff have reviewed the existing policy and recommends that the City Council approve the below policy for fiscal year 2024.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Newark thatthe following Investment Policy is hereby set forth as follows:

1.0 PURPOSE

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

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

2.0 POLICY

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

3.0 SCOPE

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

4.0 PRUDENCE (Reference CA Government Code 53600.3)

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

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

5.0 OBJECTIVE

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

5.1 Safety: Safety of principal is the foremost objective of the investment program. Credit and interest risk, relating to investments shall be undertaken in a manner that seeks to ensure the preservationof capital in the overall portfolio.

a) Credit Risk – Credit Risk is the risk of loss due to the failure of the security issuer or backer. Credit risk may be mitigated by:

- Limiting investments to the safety types of securities; and
- Diversifying the investment portfolio so that the potential losses on individual securities will be minimized.

b) Interest Rate Risk – Interest Rate Risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates. Interest Rate Risk may be mitigated by:

- Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity; and
- By investing operating funds primarily in short-term securities.

5.2 Liquidity: The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements, which might be

reasonably anticipated. This is accomplished by striving to have securities mature at the same time cash is needed to meet anticipated demands (static liquidity). Additionally, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity).

5.3 Yield: The City's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio. Return on investment is of less importance compared to the safety and liquidity objects described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed.

6.0 DELEGATION OF AUTHORITY

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

7.0 ETHICS AND CONFLICTS OF INTEREST

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

8.0 AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

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

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

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

9.0 AUTHORIZED AND SUITABLE INVESTMENTS

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

- Bankers' Acceptances (BA)

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

- Certificates of Deposit (CD)

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

- Commercial Paper

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

- Local Agency Investment Fund (LAIF)

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

Controller to the participating government agencies in proportion to each agency's respective amounts deposited in the Fund and the length of time such amounts remained therein. Prior to the distribution, the State's costs of administering the program are deducted from the earnings. LAIF has a maximum investment limit of $75,000,000.

- Local Government Investment Pools (LGIP)

  Share of beneficial interest issued by a joint powers authority organized pursuant to California Government Code Section 6509.7. that invests in the securities and obligations authorized in subdivisions (a) to (q), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible for purchase, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

  i. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
  ii. The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (q), inclusive.
  iii. The adviser has assets under management in excess of $500,000,000.

  California Asset Management Program (CAMP) is a California Joint Powers Authority (JPA) established to provide California public agencies with professional investment services. The CAMP Pool is a permitted investment for all local agencies under California Code Section 53601(p), and falls under the investment category of LGIPs.

  There is not a maximum amount that limits investors in CAMP. The only limitation is that no one investor can hold more than 10% of the total pool assets.

  Whenever the City has monies invested in a LGIP, a copy of the LGIP's information statement shall be maintained on file.

- Negotiable Certificates of Deposit (NCD)

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

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

- Repurchase (RP or REPO) and Reverse Repurchase Agreement

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

- Securities of the U.S. Government

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

- Sweep Account

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

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

10.0 COLLATERALIZATION

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

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

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

securities provided by the Governmental Agency under a reverse repurchase agreement.

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

11.0 SAFEKEEPING AND CUSTODY

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

12.0 DIVERSIFICATION

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

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

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

13.0 INTERNAL CONTROL

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

14.0 PERFORMANCE STANDARDS

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

15.0 INVESTMENT ALLOCATION

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

16.0 INVESTMENT REVIEW COMMITTEE

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

17.0 REPORTING

The City Treasurer may file quarterly reports to the City Manager. If quarterly investment portfolio reports are submitted, it must contain, among other things, a listing of investments, fund balances, activity, and return on investments made by the local agency. Quarterly reports should reflect the current positions and past performance of a portfolio of investments for the period of time under consideration.

18.0 INVESTMENT POLICY ADOPTION

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

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on June 24, 2021, by Council Member Collazo who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES:	Council Members Collazo, Freitas, Hannon, Vice Mayor Bucci and Mayor Nagy
NOES:	None
ABSENT:	None
SECONDED:	Vice Mayor Bucci

APPROVED:

s/ALAN L. NAGY
Mayor

ATTEST:

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

RESOLUTION NO.

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

WHEREAS, the City Council has established and each year approves an Investment Policy regarding the investment of the City's temporary idle cash; and

WHERES, the Investment Policy specifies the City's investment objectives in accordance with California Law and provides a framework for managing and investing the City's funds in accordance with these objectives; and

WHEREAS, the Investment Policy itself requires the City's Investment Policy be reviewed and approved by the City Council each year; and

WHEREAS, City staff have reviewed the existing policy and recommends that the City Council approve the below policy for fiscal year 2024.

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

1.0 PURPOSE

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

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

2.0 POLICY

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

3.0 SCOPE

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

4.0 PRUDENCE (Reference CA Government Code 53600.3)

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

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

5.0 OBJECTIVE

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

5.1 Safety: The safety of principal is the foremost objective of the investment program. Credit and interest risk, relating to investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.

a. Credit Risk – Credit Risk is the risk of loss due to the failure of the security issuer or backer. Credit risk may be mitigated by:
   - Limiting investments to the safety types of securities; and
   - Diversifying the investment portfolio so that the potential losses on individual securities will be minimized.

b. Interest Rate Risk – Interest Rate Risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates. Interest Rate Risk may be mitigated by:
   - Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity; and
   - By investing operating funds primarily in short-term securities.

5.2 Liquidity: The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements, which might be reasonably anticipated. This is accomplished by striving to have securities mature at the same time cash is needed to meet anticipated demands (static

liquidity). Additionally, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity).

5.3 Yield: The City's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio. Return on investment is of less importance compared to the safety and liquidity objects described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed.

6.0 DELEGATION OF AUTHORITY

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

7.0 ETHICS AND CONFLICTS OF INTEREST

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

8.0 AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

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

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

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

9.0 AUTHORIZED AND SUITABLE INVESTMENTS

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

- Bankers' Acceptances (BA)

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

- Certificates of Deposit (CD)

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

- Commercial Paper

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

- Local Agency Investment Fund (LAIF)

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

administering the program are deducted from the earnings. LAIF has a maximum investment limit of $75,000,000.

- Local Government Investment Pools (LGIP)

  Shares of beneficial interest issued by a joint powers authority organized pursuant to California Government Code Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (q), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible for purchase, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

  i. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
  ii. The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (q), inclusive.
  iii. The adviser has assets under management in excess of $500,000,000.

  California Asset Management Program (CAMP) is a California Joint Powers Authority (JPA) established to provide California public agencies with professional investment services. The CAMP Pool is a permitted investment for all local agencies under California Code Section 53601(p), and falls under the investment category of LGIPs.

  There is not a maximum amount that limits investors in CAMP. The only limitation is that no one investor can hold more than 10% of the total pool assets.

  Whenever the City has monies invested in a LGIP, a copy of the LGIP's information statement shall be maintained on file.

- Negotiable Certificates of Deposit (NCD)

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

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

- Repurchase (RP or REPO) and Reverse Repurchase Agreement

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

- Securities of the U.S. Government

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

- Sweep Account

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

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

10.0 COLLATERALIZATION

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

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

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

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

11.0 SAFEKEEPING AND CUSTODY

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

12.0 DIVERSIFICATION

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

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

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

13.0 INTERNAL CONTROL

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

14.0 PERFORMANCE STANDARDS

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

15.0 INVESTMENT ALLOCATION

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

16.0 INVESTMENT REVIEW COMMITTEE

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

17.0 REPORTING

The City Treasurer may file quarterly reports to the City Manager. If quarterly investment portfolio reports are submitted, it must contain, among other things, a listing of investments, fund balances, activity, and return on investments made by the local agency. Quarterly reports should reflect the current positions and past performance of a portfolio of investments for the period of time under consideration.

18.0 INVESTMENT POLICY ADOPTION

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

STAFF REPORT

Item D. 18.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Adopt a resolution authorizing the continued investment of monies into the Local Agency Investment Fund (LAIF) and designating officers authorized to sign on the account

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the continued investment of monies into the LAIF and designate officers authorized to sign on the account.

BACKGROUND

The Local Agency Investment Fund (LAIF) was created by California statute in 1977 as an investment alternative for local governments. The program offers local agencies the opportunity to participate in a major portfolio of investments through the Pooled Money Investment Account (PMIA) which is handled by the expertise of the California State Treasurer's Office. Through the PMIA, the State Treasurer invests taxpayers' money to manage the State's cash flow and strengthen the financial security of local governmental entities. The PMIA has three primary sources of funds: the State general fund; special funds held by State agencies; and monies deposited by cities, counties and other entities into the LAIF. In accordance with California Government Code Section 16429.1 a local agency (City) is authorized to deposit and withdraw its funds with LAIF.

DISCUSSION/ANALYSIS

To ensure that current information is on file and that deposits and withdrawals are made by appropriate personnel, agencies must submit a list of authorized signatures who may initiate transactions with LAIF. The authorized signers for LAIF will be updated to represent current job titles of personnel with duties and responsibilities related to LAIF.

The attached resolution authorizes the investment of monies in LAIF, and provides authorization of the officers by title ensures the City will be able to access its operating cash on a daily basis and maintain proper internal controls. The City currently has the following officers by title authorized to order deposits and withdrawals from the Local Agency Investment Fund (LAIF): Administrative Services Director, City Clerk, Accounting Manager, and Senior Accountant. Staff is recommending that the following officers by title be authorized with LAIF: City Manager, Finance Director, Accounting

Manager, and Senior Accountant.

FISCAL IMPACT

There is no fiscal impact associated with this action.

REVIEW AND APPROVAL

Prepared by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

741 LAIF Investment Authorization

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF)

WHEREAS, The Local Agency Investment Fund is established in the State Treasury under Government Code section 16429.1 et. seq. for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHERES, the City Council of the City of Newark hereby finds that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with Government Code section 16429.1 et. seq. for the purpose of investment as provided therein is in the best interests of the City;

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the deposit and withdrawal of City of Newark's monies in the Local Agency Investment Fund in the State Treasury in accordance with Government Code section 16429.1 et. seq. for the purpose of investment as provided therein.

BE IT FURTHER RESOLVED, as follows:

Section 1. The following City officers holding the title(s) specified hereinbelow or their successors in office are each hereby authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund and may execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution and the transactions contemplated hereby:

NAME	TITLE	SIGNATURE
David J. Benoun	City Manager	_____
Krysten Lee	Finance Director	_____
Gloria Del Rosario	Accounting Manager	_____
Michelle Villanueva	Senior Accountant	_____

Section 2. This resolution shall remain in full force and effect until rescinded by the City Council of the City of Newark by resolution and a copy of the resolution rescinding this resolution is filed with the State Treasurer's Office.

STAFF REPORT

Item D. 19.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Year-end Budget Review and approval of a resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023

SUMMARY AND RECOMMENDATION

Each year, as part of the year-end budget review process, staff reports on trends and actions subsequent to adopting the Biennial Budget and addresses any newly identified budget changes anticipated before the end of the fiscal year (June 30).As part of the year-end closing, revisions are proposed where changes have occurred since the adoption of the Operating Budget in June 2022 and Mid-Year Budget Amendment in March 2023. Staff recommends that the City Council, by Resolution, amend the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023 according to the recommended amendments for each fund presented as Exhibit A.

BACKGROUND

The City Council adopted the 2022-2024 Biennial Budget and Capital Improvement Plan on June 23, 2022. Budget amendments occur throughout the year when unanticipated events result in an increase or decrease in revenue projections and appropriations. Regular practice is to present mid-year and year-end budget amendments to the City Council for consideration. During the mid-year budget review, amendments to the adopted budget were presented and approved by the Council on March 23, 2023.

DISCUSSION/ANALYSIS

As part of the Fiscal Year 2023 year-end review process, amendments are proposed to align budgeted revenues and expenditures with the most current information. These amendments are identified where changes have occurred since adopting the Biennial Budget in June 2022 and Mid-Year Budget Amendment in March 2023.

The Fiscal Year 2023 mid-year report included projections for all General Fund revenue sources. At the time, staff estimated a modest General Fund year-end surplus of approximately $80,000 after transfers. There were no significant deviations from the March projections and therefore no further amendments are recommended to the General Fund operating budget at this time.

In other funds, expenditure modifications are proposed to align the budget to actuals

and are all offset by the fund balance in each of those funds. The adjustments to the Special Revenue Funds, Debt Service Fund, and Internal Services Funds include:

1. Adding appropriation of $108,000 for personnel costs to the Supplemental Law Enforcement Services Fund (SLESF). These costs are offset by state subvention funding.
2. Adding appropriation of $11,000 for citation processing services from Turbo Data Systems.
3. Adding appropriation of $35,000 for maintenance costs for Landscape and Lighting Districts No. 06, 11, and 19.
4. Adding appropriation of $127,000 for Bond Counsel services with respect to required surety payment.
5. Adding appropriation of $60,000 for increased copier cost with newly negotiated leases for additional machines and maintenance.
6. Adding appropriation of $3,000 for special assessment administration fees.

Other minor amendments and associated details are in the attachment, Exhibit A.

FISCAL IMPACT

The recommended amendments included in the year-end review will increase or decrease the Fiscal Year 2023 budgeted revenues, appropriations, and available resources of various funds as presented in Exhibit A.

REVIEW AND APPROVAL

Prepared by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

FY 2023 Year-End Exhibit A

FY 2023 Year End Budget Review Resolution

Exhibit A
Year-end Budget Amendments for Fiscal Year 2023

Revenue:

Special Revenue Funds:			**Increase**	**Decrease**	
211	90.091.910	4791	185,000		TDA County Grant Reimbursement
SRF			185,000		Unappropriated Fund Balance
230	30.031.310	4702	66,000		COPS SLEFSF State Subvention Funds
SRF			66,000		Unappropriated Fund Balance
236	30.033.330	4122	18,000		Police Towing Fees
SRF			18,000		Unappropriated Fund Balance

Expenditures:

Special Revenue Funds:			**Increase**	**Decrease**	
230	30.031.310	5110	50,000		Local contribution match of 20% for P-TAP Award
230	30.031.310	5210	6,000		Citywide Traffic Signal Street Name Signs
230	30.031.310	5220	1,000		
230	30.031.310	5510	51,000		Purchase E-Citation Device
SRF		3000		108,000	Unappropriated Fund Balance
236	30.033.330.	6221	11,000		Citation processing services from Turbo Data Systems
SRF		3000		11,000	Unappropriated Fund Balance

LLDs			**Increase**	**Decrease**	
406	60.068.682	6221	6,000		Gachina Landscaping Services
411	60.068.682	6221	27,000		Gachina Landscaping Services
419	60.068.682	6221	2,000		Gachina Landscaping Services
LLDs		3000		35,000	Unappropriated Fund Balance

Debt Service Funds			**Increase**	**Decrease**	
503	00.000.000	7023	127,000		Bond Council services for surety payment
Debt		3000		127,000	Unappropriated Fund Balance

Internal Service Funds			**Increase**	**Decrease**	
705	87.705.800	6241	60,000		KBA Copier Lease
ISF		3000		60,000	Unappropriated Fund Balance

Fiduciary Funds			**Increase**	**Decrease**	
826	60.068.681	6220	2,000		Special Assessment USBank Administration Fees
FID		3000	-	2,000	Unappropriated Fund Balance

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR 2023

WHEREAS, the 2022-2024 Biennial Budget and Capital Improvement Plan was adopted by the City Council via Resolution No. 11,379 on June 23, 2022; and

WHEREAS, as part of the year-end budget review for Fiscal Year 2023, staff has identified and proposed changes to the budget since the original adoption by the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the certain document entitled "2022-2024 Biennial Budget and Capital Improvement Plan of the City of Newark" adopted by Resolution No. 11,379 on June 23, 2022, and subsequently amended by resolutions, is hereby amended as set forth in Exhibit A attached.

Gdr1

STAFF REPORT

Item E. 1.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Joseph Balatbat, Associate Planner
SUBJECT	Hearing (continued from June 8, 2023) to consider approval of DR2021-006, a Resolution approving Design Review and Vesting Tentative Map for an 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings located at 36952 Mulberry Street (APNs 92-29-21 and 92-29-22)

SUMMARY AND RECOMMENDATION

The Applicant, Rajesh Rao, has submitted an application to demolish an existing single-story residence, detached garage, and on-site improvements and to construct a new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings located at 36952 Mulberry Street. The entitlements would include Design Review and a Vesting Tentative Map. The property owners are Rajesh Rao, Ramaprasad Samudrala, Vidyasagar Deshpande, and Thirumalpathy Balakrishnan. The project would be considered as part of the multi-unit development use classification.

The project consists of merging the two existing lots resulting in an approximately 0.46 acres (20,000 square feet) lot. The project includes (4) two-unit dwellings with three different plan types: Plan A, Plan B, and Plan A-Alt. The Plan A type units would be a total of 2,121 square feet of habitable floor area. The Plan B type units would be a total of 1,410 square feet of habitable floor area. The Plan A-Alt type units would be a total of 2,150 square feet of habitable floor area. All of the proposed residential units would consist of a Spanish style architectural design and would be two stories with an attached two-car garage.

The project would also provide new on-site improvements that include a private driveway, walkways, guest parking spaces, a total of 5,853 square feet of landscape areas, a total of 3,583 square feet of common and private open spaces areas, stormwater bioretention areas, fencing, gates, and decorative features. Additionally, new improvements to the streetscape along Mulberry Street would be provided and would consist of landscape areas, entry walkways, and masonry low pedestals with accent pottery. The project site would be physically suitable for the development type and density, would enhance the appearance of the site, and would be compatible with the characteristics of the surrounding neighborhood.

Staff recommends that the City Council approve DR2021-006, a Resolution approving the following:

1. Design Review for the construction of a new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings; and
2. Vesting Tentative Map to allow for the merger of the two existing lots for the new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings to be on an approximately 0.46 acres (20,000 square feet) lot.

BACKGROUND

The project site is zoned RM: Residential Medium Density with the Old Town Overlay District and has a General Plan designation of Medium Density Residential. The project site consists of two rectangular lots. One lot contains the existing single-story residence and detached garage and the other lot is considered vacant. The project site is bounded by Mulberry Street to the south, Thornton Avenue to the east, Cherry Street to the north, and Dairy Avenue to the west. Additionally, the project site is surrounded by residential (single-family and multi-family) dwelling units, commercial-office businesses, and a tutoring center.

The City Council opened a public hearing for the project on June 8, 2023 and the City Council continued the public hearing to June 22, 2023.

Project Proposal

The project consists of demolishing the existing approximately 1,056 square foot single-story residence (currently 96 years old – not considered a significant historic resource based on available city records), an approximately 400 square foot detached garage, and on-site improvements and constructing a new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings (Attachment 1, Exhibit C). Additionally, the project would include the removal of three existing trees on the property for the new private driveway, guest parking areas, and residential buildings. The two existing lots would be merged and would have a combined total lot size of approximately 0.46 acres (20,000 square feet).

Residential Units

The project would consist of three residential plan types. All of the proposed residential units would be two stories and would include an attached garage. Table 1, below, summarizes the details for each unit, including information on square footage, height, and plan type.

Table 1. Residential Unit Information

Unit #	1st Floor – Living Area Square Footage (sf)	2nd Floor – Living Area Square Footage (sf)	Garage - Square Footage (sf)	Height	Plan Type
Unit 1	1,059 sf	1,062 sf	474 sf	30 feet	A

Unit 2	328 sf	1,082 sf	424 sf	29 feet	B
Unit 3	1,088 sf	1,062 sf	474 sf	30 feet	A-Alt
Unit 4	328 sf	1,082 sf	424 sf	29 feet	B
Unit 5	1,059 sf	1,062 sf	474 sf	30 feet	A
Unit 6	328 sf	1,082 sf	424 sf	29 feet	B
Unit 7	1,088 sf	1,062 sf	474 sf	30 feet	A-Alt
Unit 8	328 sf	1,082 sf	424 sf	29 feet	B

The Plan A type units would be a total of 2,595 square feet. The floor plans for Plan A include a bedroom, bathroom, kitchen, living room, dining/family room, and garage on the first floor and three bedrooms, two bathrooms, loft, and Juliet balcony on the second floor.

The Plan B type units would be a total of 1,834 square feet. The floor plans for Plan B include a bedroom, bathroom, and garage on the first floor and two bedrooms, two bathrooms, kitchen, living/dining room, and balcony on the second floor.

The Plan A-Alt type units would be a total of 2,624 square feet. The floor plans for Plan A-Alt include a bedroom, bathroom, kitchen, living room, dining/family room, and garage on the first floor and three bedrooms, two bathrooms, loft, and Juliet balcony on the second floor.

Building Design
The proposed residential buildings would be of a Spanish style architectural design. The design was inspired by the homes designed by George Washington Smith in the 1920s and 1930s. The proposed residential buildings would provide a variety of massing, wall breaks, architectural features, colors, and materials. Design elements and exterior colors and materials would include the following (Attachment 1, Exhibit C, Sheet A7.2 – A7.4):

- A combination of hip and gable rooflines with terra cotta concrete s-tiles and eave tiles boosted with mud stops.
- Off-white stucco siding with a smooth finish (color: Kelly Moore KM 49).
- Terra cotta decorative tiles at the gable ends.
- Deep green vinyl windows.
- Juliet balconies and balconies with 42-inch-tall metal railing painted in ebony with sandblast glass behind to provide privacy.
- Wood garage door painted off-white (color: Kelly Moore KM 49).
- Decorative wood shutters (color: Kelly Moore KM 149).
- Decorative wrought iron window (or stucco recess) bars (color: Kelly Moore AC255-5).
- Wood entry door (color: Kelly Moore KM 149).
- Wrought iron exterior wall light fixtures to match the style of the architecture.

Open Space and Landscaping
The project would meet the minimum open space requirement of providing a total of

3,583 square feet of open space area (i.e., 2,019 square feet of common open space and 1,564 square feet of private open space) (Attachment 1, Exhibit C, Sheet A0 – A0.b and L1 – L4). The proposed common open space areas would feature a diverse palette of trees, shrubs, perennials, and ground cover. Additionally, the proposed common open space areas would include walkways, steppingstones, boulder/rock outcrops, masonry low pedestals with accent pottery, masonry seat walls, and exterior landscape light fixtures. The proposed private open space areas would include private fenced yards for the residential units with a Plan A type and Plan A-Alt type. For residential units with a Plan B type, the proposed private open space areas would include private balconies on the second floor.

Similar to the proposed common open spaces areas, the other proposed landscape areas would also feature a diverse palette of trees, shrubs, perennials, and ground cover and would consist of walkways, steppingstones, boulder/rock outcrops, masonry low pedestals with accent pottery, decorative masonry entry feature with a group mailbox, and exterior landscape light fixtures. The project would meet the minimum landscape requirement of providing a total of 5,853 square feet of landscape areas on-site.

Proposed common open spaces areas and landscape areas would include stormwater bioretention areas. The proposed improvements on the streetscape along Mulberry Street would include new landscape areas, entry walkways, and masonry low pedestals with accent pottery to enhance the front view of the residential development that would be facing the public right-of-way.

Fences and Decorative Features
The project would include new fencing, gates, and decorative features (Attachment 1, Exhibit C, Sheet A0 and L1 – L4). The new fencing and gates would be of wood material with a height of 6 feet. The new fencing and gates would be located in the private yard open space areas. Decorative features would be proposed at the common open space areas and landscape areas that would include a masonry pedestal with accent pottery with a height that varies from 2 feet to 2’-6”, a masonry seat wall with a height of 1’-6”, and a masonry entry feature with group mailbox with a height of 5 feet.

Parking, Access, and Circulation
Pursuant to Newark Municipal Code (NMC) Section 17.23.040, the required number of on-site parking spaces for a multi-unit building in the Old Town Newark Specific Plan Area is as follows: a minimum of 1.25 spaces per unit with a maximum of 2 spaces per unit. No additional guest parking is required and at least one space per unit must be within a garage. The project includes a two-car parking garage for each residential unit for a total of 16 parking spaces. Although guest parking is not required, the proposed project includes an additional 4 guest parking spaces on-site. A new private driveway along the middle of the property would be created to provide access to the two-car parking garages and guest parking spaces (Attachment 1, Exhibit C, Sheet A0, C-3.0, and L1). Pedestrian circulation throughout the site would be provided via interconnected walkways. The proposed pedestrian walkways and private driveway would incorporate enhanced pavement materials that would define the path of travel and complement the architecture of the building.

Utilities and Easements
The project would include the undergrounding of utilities, including tie-ins for stormwater, sewer, and water along Mulberry Street. New easements would be created that includes an Emergency Vehicle Access Easement (E.V.A.E.), Private Water Line Easement (P.W.L.E.), Private Storm Drain Easement (P.S.D.E.), Private Sanitary Sewer Easement (P.S.S.E.), Public Utility Easement (P.U.E.), and Landscape Easement (L.E.) (Attachment 1, Exhibit C, Sheet C-1.0 – C-6.0).

DISCUSSION/ANALYSIS

General Plan/Zoning Conformity

The Medium Density Residential General Plan designation is intended for garden apartments and condominiums, townhomes, row houses, four- to eight-plexes, and older areas that contain a mix of multi-family and single-family homes within this density range. These areas tend to be multi-family in character but retain some of the characteristics of suburban neighborhoods such as landscaped yards, off-street parking, common open space, and low building heights. Densities in areas with this designation range from 14 to 30 units per net acre. This designation is implemented through the RM: Residential Medium Density zoning district. Pursuant to NMC Section 17.07.020, multi-unit development is permitted in the RM zoning district.

The project was reviewed under the updated 2018 Zoning Code (i.e., Title 17 – Zoning) and the adopted 2021 Old Town Newark Specific Plan. The project would substantially comply with the applicable provisions of the updated Zoning Code and Old Town Newark Specific Plan, except for the minimum density requirements (i.e., the updated Zoning Code requires a minimum density of 14 units/net acre and the Old Town Newark Specific Plan requires a minimum density of 20 units/net acre). Since the project was submitted prior to the adoption of the 2021 Old Town Newark Specific Plan, the project is subject to the minimum density requirements from the updated Zoning Code. Overall, the project would be compatible with the characteristics of the surrounding neighborhood.

Requested Entitlements

Design Review
Pursuant to NMC Section 17.34.020, design review is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to the exterior of a structure, site, or a parking area. Design review ensures that new development supports the goals and objectives of the General Plan and other adopted plans and guidelines.

When considering a Design Review entitlement, the City Council shall evaluate a project to ensure that it satisfies the criteria in NMC Section 17.34.060 to the extent that they apply. Generally, the project would consist of a Spanish-style architectural design, which is highly encouraged in the Old Town Newark Specific Plan. The project would meet the design standards outlined in NMC Chapter 17.07 – Residential Districts, which includes providing the required open space areas, orienting the proposed residential units along the public right-of-way to have their primary entrance facing

Mulberry Street, and avoiding a large-scale and bulky appearance. The proposed residential buildings would provide a variety of massing, wall breaks, architectural features, design elements, and exterior colors and materials that would be compatible in scale and height with the surrounding community and would be of pedestrian scale. Further, the proposed landscaping, hardscaping, and open space areas would complement the residential buildings and enhance the appearance of the site as well as the surrounding natural and built environment.

Vesting Tentative Map
Pursuant to California Government Code Section 66426, a tentative and final map is required for all subdivisions creating five or more condominiums. Additionally, pursuant to California Government Code Section 66474, a legislative body of a city or county shall deny approval of a tentative map if it makes any of the following findings listed in this section. The Applicant has submitted a Vesting Tentative Map (i.e., Vesting Tentative Tract Map 8603) to allow for the merger of the two existing lots for the new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings to be on an approximately 0.46 acres (20,000 square feet) lot.

Generally, the proposed Vesting Tentative Map would be consistent with the General Plan in that the property is developed by street and parcel improvements in conformance with applicable goals and policies. The proposed map would meet the density requirement of the RM zoning district and land use designation. The proposed Vesting Tentative Map and improvements would be constructed per the project plans provided in Attachment 1, Exhibit C and satisfy the conditions of approval included in the proposed Resolution (Attachment 1). The project site is physically suitable for the development type and proposed density of development. Further, the project was reviewed pursuant to the California Environmental Quality Act (CEQA), as will be discussed in the Environmental/Planning Commission Review section, and determined that it would be categorically exempt pursuant to CEQA Guidelines, Article 19, Section 15332 (In-fill Development Projects).

Required Noticing
Pursuant to NMC Section 17.31.060 and Section 17.34.070, on May 23, 2023, a public hearing notice was published in The Tri City Voice and mailed to all property owners within a minimum 500-foot radius of the project site, all neighborhood and community organizations that have filed a written request for notice of projects in the area where the site is located, and all persons and groups who have filed a written request for notice regarding the specific application. The City has not received any written correspondence on this project as of the writing of this report. Any communications received prior to the public hearing will be forwarded to the City Council as desk items and made available to the Applicant and public.

FISCAL IMPACT

As described in NMC Chapter 3.24, the City has established fees that are imposed upon projects for the purpose of mitigating the impacts that the projects have upon the City's ability to provide public facilities. Given that the project is small in nature, the proposed residential units would be provided as market-rate units. Therefore, the Applicant would be required to pay the City's impact fees in effect at the time prior to the issuance of a building permit.

Based on the Fiscal Year 2022-2023 fee schedule, the project would be subject to the following impact fees:

- **Park Impact:** $22,018/unit
- **Public Safety:** $2,533/unit
- **Community Service/Facilities:** $1,414/unit
- **Transportation:** $3,772/unit
- **Housing Impact:** $24.51/sq. ft. for the first 1,000 sq. ft. and $9.82/sq. ft. above 1,000 sq. ft.
- **Art in Public Places:** $270/unit
- **Community Development Maintenance Fee:** 0.5% of construction value

The Applicant would be responsible for remitting the respective impact fees in effect at the time, prior to the issuance of any building permits for the project. The collection of the impact fees is also included in the conditions of approval for the project (see Attachment 1, Exhibit B).

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

California Environmental Quality Act

Pursuant to CEQA Guidelines, Article 19, Section 15332 (In-fill Development Projects), the project qualifies for the Class 32 Categorical Exemption. A residential project is categorically exempt from CEQA if it is: consistent with the general plan and the zoning code; is located on a site with no more than five acres; has no value for endangered or rare or threatened species; would not result in any significant effects relating to traffic, noise, air or water quality; and all required utilities and public services can adequately serve the site.

The project meets the conditions for a Class 32 Categorical Exemption, in that:

- The project would be consistent with the Medium Density Residential General Plan land use designation and RM: Residential Medium Density zoning district. Additionally, the project would be consistent with all applicable General Plan policies and all applicable Zoning Code regulations.
- The project would be developed on an approximately 0.46 acres (20,000 square feet) lot that would continue to be substantially surrounded by urban uses.
- The project is not located within any special habitat area.
- The project would not anticipate having any significant impact on traffic as it would generate less than 100 new traffic trips in a day. Therefore, a traffic analysis was not required. The project would also not result in any significant impacts to noise, air quality, or water quality so as long as the conditions of approval in Attachment 1, Exhibit B are satisfied.
- The project would be located in a developed urban area where all utilities are existing. The project would be adequately served by all required utilities and public

services so as long the conditions of approval in Attachment 1, Exhibit B are satisfied.

Planning Commission
The Planning Commission considered the project at a regular public hearing held on May 9, 2023. Staff presented and answered questions from the Planning Commission. Following questions, the Planning Commission shared their support for the project. The Planning Commission voted 5-0 to recommend City Council approval of the project.

REVIEW AND APPROVAL

Prepared by - Joseph Balatbat, Associate Planner
Reviewed by - Steven Turner, Community Development Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Mulberry Resolution
Exhibit A - Findings of Fact
Exhibit B – Conditions of Approval
Exhibit C – Project Plans
Staff Presentation

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING DR2021-006, A DESIGN REVIEW AND VESTING TENTATIVE MAP FOR AN 8-UNIT FOR-SALE CONDOMINIUM RESIDENTIAL DEVELOPMENT COMPRISED OF (4) TWO-UNIT DWELLINGS LOCATED AT 36952 MULBERRY STREET (APNS 92-29-21 AND 92-29-22)

WHEREAS, Rajesh Rao (the "Applicant"), has filed with the City of Newark an application for a Design Review and Vesting Tentative Map to construct a new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings on a 0.46 acres (20,000 square feet) site located at 36952 Mulberry Street (APNs 92-29-21 and 92-29-22) (the "Property") (the "Project" as illustrated in **Exhibit C**); and

WHEREAS, the Applicant proposes to demolish the existing single-story residence, detached garage, and on-site improvements; and

WHEREAS, the Property is a 0.46 acres (20,000 square feet) site consisting of two legal lots that have a General Plan Land Use designation of Medium Density Residential and are currently zoned RM: Residential Medium Density with the Old Town Overlay District; and

WHEREAS, the Applicant seeks a Design Review, which pursuant to NMC §17.34.020 is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to the exterior of a structure, site, or a parking area; and

WHEREAS, the Applicant seeks approval of Vesting Tentative Tract Map 8603, pursuant to Government Code §66474, to allow for the construction of the Project. Vesting Tentative Tract Map 8603 includes the merger of the two existing lots for the new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings to be on an approximately 0.46 acres (20,000 square feet) lot; and

WHEREAS, pursuant to California Environmental Quality Act (CEQA) Guidelines, Article 19, §15332, the Project is categorically exempt from CEQA if it is: consistent with the general plan and the zoning code; is located on a site with no more than five acres; has no value for endangered or rare or threatened species; would not result in any significant effects relating to traffic, noise, air or water quality; and all required utilities and public services can adequately serve the site; and

WHEREAS, the Planning Commission held a public hearing on May 9, 2023, and after fully considering the Project, entitlements, staff report, findings of fact, conditions of approval, public comments, and all other testimony and evidence presented at the public hearing, recommended City Council approval of the Project; and

WHEREAS, pursuant to NMC §17.31.060 and §17.34.070, a public hearing notice was published in The Tri-City Voice on May 23, 2023 and mailed as required for a public hearing before the City Council at, or after, 7:00 p.m. on June 8, 2023; and

WHEREAS, the City Council held a public hearing on June 8, 2023. The City Council opened the public hearing for public comments and continued the public hearing to a date certain on June 22, 2023; and

WHEREAS, the City Council held the continued public hearing on June 22, 2023, and fully considered the Project, entitlements, staff report, findings of fact, conditions of approval, public comments, and all other testimony and evidence presented at the public hearing; and

WHEREAS, the City Council finds that the staff report, categorical exemptions from CEQA, and standards for approval reflects the City's independent judgement and analysis of the Project; and

WHEREAS, the City Council finds that the Project conforms with the City's General Plan, Zoning Code, and Old Town Newark Specific Plan Area for which are incorporated herein by reference and are available for review at City Hall during normal business hours and on the City's website; and

WHEREAS, the City Council finds that the Project does satisfy the requisite findings of fact necessary for approval as further explained in the staff report and the findings of fact associated with this Resolution, as identified in **Exhibit A** attached to this Resolution.

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

Section 1. That the forgoing recitals are true and correct and made part of this Resolution.

Section 2. That the City Council does hereby make the necessary findings and determinations required by the NMC to approve the requested Design Review and Vesting Tentative Map for the Project, as further explained in the staff report and findings of fact for approval as set forth in **Exhibit A** attached hereto and incorporated herein by this reference.

Section 3. Based on the findings and determinations, the City Council does hereby approve DR2021-006 for a Design Review and Vesting Tentative Map for an 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings located at 36952 Mulberry Street (APNs 92-29-21 and 92-29-22), subject to the Conditions of Approval, as further set forth in **Exhibit B** attached hereto and incorporated herein by this reference.

This Resolution was introduced at the City of Newark City Council's June 8, 2023 regular meeting by Council Member _____, seconded by Council Member _____, and passed as follows:

Attachments

Exhibit A – Findings of Fact

Exhibit B – Conditions of Approval

Exhibit C – Project Plans

Exhibit A

FINDINGS OF FACT

DR2021-006
36952 Mulberry Street
Alameda County Assessor's Parcel Numbers 92-29-21 and 92-29-22

Design Review (NMC §17.34.060)

When conducting design review, the project shall be evaluated to ensure it satisfies the criteria below to the extent applicable.

A. *The overall design of the project including its scale, massing, site plan, exterior design, and landscaping will enhance the appearance and features of the project site and surrounding natural and built environment.*

The overall design would enhance the appearance of the Project site and surrounding environment. The proposed architectural design of the residential buildings would consist of a Spanish style design, which is highly encouraged in the Old Town Newark Specific Plan. The design of the proposed residential buildings is inspired by the homes designed by George Washington Smith in the 1920s and 1930s. The proposed residential buildings would provide a variety of massing, wall breaks, architectural features, design elements, and exterior colors and materials. The proposed residential units along the public right-of-way would have their primary entrance facing Mulberry Street to create that welcoming impression.

The Project would provide private open spaces areas, common open spaces areas, landscaping, and hardscaping. The proposed private open space areas would include private fenced yards and private balconies for selective residential units. The proposed common open space areas would include walkways, steppingstones, boulder/rock outcrops, masonry low pedestals with accent pottery, masonry seat walls, and exterior landscape light fixtures. The proposed landscaping would feature a diverse palette of trees, shrubs, perennials, and ground cover. The proposed hardscaping, which includes the pedestrian walkways and private driveway, would incorporate enhanced pavement materials that would define the path of travel and complement the architecture of the residential buildings. The proposed improvements on the streetscape along Mulberry Street would include new landscape areas, entry walkways, and masonry low pedestals with accent pottery to enhance the front view of the residential development that would be facing the public right-of-way. The proposed open spaces areas, landscaping, and hardscaping would complement the residential buildings and enhance the appearance of the site as well as the surrounding natural and built environment.

This finding can be made in the affirmative.

B. *The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.*

The proposed homes would be two stories with habitable floor areas ranging from 2,121 square feet for the residential units with a Plan A type, 1,410 square feet for residential units with a

Plan B type, and 2,150 square feet for residential units with a Plan A-Alt type. The proposed residential buildings would provide a variety of massing, wall breaks, architectural features, design elements, and exterior colors and materials that would be compatible in scale and height with the surrounding community and would be of pedestrian scale.

The Project would provide private open spaces areas, common open spaces areas, landscaping, and hardscaping that would include several features such as a variety of plants and ground cover, private fenced yards and balconies, masonry low pedestals with accent pottery, masonry seat walls, exterior landscape light fixtures, and enhanced pavement materials. The proposed design of the Project would provide an attractive and comfortable environment for future occupants, visitors, and the general community.

This finding can be made in the affirmative.

C. *Project details, materials, signage and landscaping, are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.*

The proposed design elements for the Project are visually harmonious, in scale with the size of the residential buildings, and balance environmental considerations. The proposed residences would not impair potential or existing views for adjacent and nearby residences. The proposed residential buildings would include attractive and high-quality colors and materials such as off-white stucco siding with a smooth finish, terra cotta concrete s-tiles roofing, deep green vinyl windows, and wood entry doors. The proposed landscaping would complement the homes and be fully integrated with the overall design of the Project. Materials, details, colors and landscaping would all be related to the Spanish style architecture.

This finding can be made in the affirmative.

D. *The design of streetscapes, including street trees, lighting, and pedestrian furniture, is consistent with the intended character of the area.*

The proposed improvements on the streetscape along Mulberry Street would include new landscape areas, entry walkways, and masonry low pedestals with accent pottery to enhance the front view of the residential development that would be facing the public right-of-way. Exterior lighting would be provided along the streetscape but installed on the site. The proposed improvements would be consistent with the intended character of the area. These streetscape improvements would adhere to the City's streetscape standards.

This finding can be made in the affirmative.

E. *Parking areas are designed and developed to buffer surrounding land uses; compliment pedestrian-oriented development; enhance the environmental quality of the site, including minimizing stormwater run-off and the heat-island effect; and achieve a safe, efficient, and harmonious development.*

The City's off-street parking requirement would be satisfied by the provision of a two-car garage for each residential unit for a total of 16 parking spaces. Although guest parking is not

required, the proposed Project would include additional guest parking spaces on-site. The proposed parking spaces would be accessed by a private driveway. Pedestrian circulation throughout the site would be provided via interconnected walkways. New landscaping and common open spaces would be provided to help reduce the heat island effect and stormwater run-off. The bioretention areas would be installed within the landscape areas and common open space areas to minimize stormwater run-off. The proposed Project would be designed to create a safe, efficient, and harmonious environment.

This finding can be made in the affirmative.

F. Lighting and lighting fixtures are designed to complement buildings, be of appropriate scale, provide adequate light over walkways and parking areas to create a sense of pedestrian safety, and avoid creating glare.

The proposed Project would include exterior wall-mounted building light fixtures and on-site light fixtures. The wall-mounted building light fixtures would be of wrought iron material to match the style of the architecture. The on-site light fixtures would be bollard lighting to illuminate the walkways and parking areas to ensure safety while complimenting the architecture of the residential buildings. Both light fixtures would be shielded by glass and would not create glare. The proposed Project is conditioned to require all exterior lighting to minimize glare off-site and comply with all applicable regulations in NMC §17.17.060.

This finding can be made in the affirmative.

G. Landscaping is designed to be compatible with and enhance the architectural character and features of the buildings on site, and help relate the building to the surrounding landscape.

The Project would include landscaping in the open common space areas, landscape areas, and pedestrian walkway areas. The proposed landscaping would complement the proposed architectural style and would enhance the pedestrian experience as they travel throughout the site. The diverse landscaping palette would be compatible with the proposed architectural design which would allow them to relate to the surrounding landscape. The hardscape, including the pedestrian walkways and driveway, would incorporate enhanced pavement materials which define the path of travel and complement the building architecture. The Project would be required to conform to all state and local landscaping and water conservation standards.

This finding can be made in the affirmative.

Vesting Tentative Map (California Government Code §66474)

A legislative body of a city or county shall deny approval of a tentative map if it makes any of the following findings:

A. That the proposed map is not consistent with applicable general and specific plans as specified in Government Code §65451.

The General Plan includes numerous goals and policies pertaining to land use and design, growth management, circulation, community facilities and utilities, open space and conservation, health, safety, and noise. The proposed Vesting Tentative Map is required to abide by all applicable goals and policies included in the adopted General Plan as well as the Old Town Newark Specific Plan. Generally, the proposed Vesting Tentative Map would be consistent with the General Plan and Old Town Newark Specific Plan in that the Property is developed by street and parcel improvements in conformance with applicable goals and policies.

The Project is consistent with many of Newark's General Plan and Old Town Newark Specific Plan goals, policies, and actions including, but not limited to:

General Plan

- **Policy LU-1.10 Vacant and Underutilized Sites** – Encourage the development of Newark's remaining vacant and underutilized sites for their highest and best use, consistent with the designations shown on the General Plan Diagram. Future growth in the city should generally be directed to the areas identified in this General Plan.
- **Policy LU-2.2 Context-Sensitive Design** – Require that new structures, additions, and major renovations are aesthetically compatible with existing structures and the surrounding context, and contribute positively to the visual quality of neighborhoods.
- **Policy LU-2.3 High-Quality Development** – Maintain standards for medium-density, high-density, and mixed-use development that ensure high quality development and adequate buffering and screening from nearby lower density uses.
- **GOAL LU-4** – Enhance Newark's identity as a city of high quality development that is distinctive from other cities in the Bay Area.
- **Policy LU-4.12 Fences and Gates** – Ensure that fences, gates, railings, walls, and other site elements intended to provide safety, security, and privacy are designed to be compatible with each other, with adjacent structures, and with the neighborhood context. Fence, wall, or hedge designs which obscure lines of sight for motorists, or create potential conflicts between pedestrians and cars, should be avoided.
- **Policy LU-8.4 Old Town Architectural Design** – Encourage architectural design in Old Town which is compatible with the prevailing styles of the area's older buildings, and if possible, which incorporates architectural elements that were prevalent in Newark in the early 20th Century.

Old Town Newark Specific Plan

- **Policy LU-6** – New development should be designed to maximize quality of construction, ground-floor activity, and flexibility for adaptation to changes in use over time. This Specific Plan does not regulate any one architectural style, but highly encourages a range of styles, including Victorian, Spanish Mission, and Arts & Crafts. Historic References to the train stations and buildings from the late 19th Century can be expressed through traditional details with roof pitches, framed windows, bay windows, and formal entryways.

This finding can be made in the negative.

B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

The proposed Project meets the density requirement of 14 to 30 units per net acre specified for the RM: Residential Medium Density zoning district and the Medium Density Residential General Plan land use designation. Additionally, the proposed Project would be consistent with the design intent of the Old Town Newark Specific Plan. The proposed Vesting Tentative Map and improvements would be constructed per Project Plans (**Exhibit C**) and satisfy the Conditions of Approval included in this Resolution (**Exhibit B**). Further, the proposed Vesting Tentative Map would designate and/or dedicate emergency vehicle access ways, public utility easements, and other easement as may be required over the common areas and landscape areas. A public utility easement as shown on Sheet C-6.0 of the Project Plans (**Exhibit C**) shall be dedicated on the site along Mulberry Street. Therefore, the proposed design or improvement of the proposed Project is consistent with the General Plan and Old Town Newark Specific Plan.

This finding can be made in the negative.

C. That the site is not physically suitable for the type of development.

The Project site consists of two rectangular lots, with a combined lot size of approximately 0.46 acres (20,000 square feet). The Project site is bounded by Mulberry Street to the south, Thornton Avenue to the east, Cherry Street to the north, and Dairy Avenue to the west and is primarily surrounded by residential (single-family and multi-family) dwelling units and some commercial-office businesses and a tutoring center. The site is physically suitable for the proposed residential development.

This finding can be made in the negative.

D. That the site is not physically suitable for the proposed density of development.

The proposed Project meets the density requirement of 14 to 30 units per net acre specified for the RM: Residential Medium Density zoning district and the Medium Density Residential General Plan land use designation. The Project would be physically suitable for the site.

This finding can be made in the negative.

E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

The City's Community Development Department has determined that this Project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, §15332 (In-fill Development Projects). A residential project is categorically exempt from CEQA if it is: consistent with the general plan and the zoning code; is located on a site with no more than five acres; has no value for endangered or rare or threatened species; would not result in any significant effects relating to traffic, noise, air or water quality; and all required utilities and public services can adequately serve the site. Therefore, as conditioned, the design of the Vesting Tentative Map and the

proposed improvements would not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat.

This finding can be made in the negative.

F. That the design of the subdivision or type of improvements is likely to cause serious public health problems.

The Alameda County Fire Department (ACFD), Building Inspection Division, Engineering Division, Planning Division, and Police Department have reviewed the proposed Vesting Tentative Map. Outside agencies, such as Republic Services, that may be affected by the proposed development have also reviewed the proposed Vesting Tentative Map. The applicant has incorporated the recommendations from each department, division, and agency as part of the Project design. The Project includes Conditions of Approval (**Exhibit B)** that must be addressed at various stages of the Project. Therefore, the Vesting Tentative Map would be consistent with all applicable provisions of the City's Subdivision Ordinance, the Subdivision Map Act, the California Fire Code, the California Building Code, and generally, applicable development standards of the Zoning Code.

This finding can be made in the negative.

G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

The proposed improvements would not conflict with any public easements and/or right of way. The private driveway would be maintained through an agreement between future residents, managed by a homeowner's association. Therefore, as conditioned, the design of the Vesting Tentative Map would not conflict with easements, acquired by the public at large, for access through or use of property within the proposed Property, in that such easements presently exist and such access would be retained, as currently provided within the Project and to adjacent public streets.

This finding can be made in the negative.

EXHIBIT B

CONDITIONS OF APPROVAL

DR2021-006
36952 Mulberry Street
Alameda County Assessor's Parcel Numbers 92-29-21 and 92-29-22

Planning Division

a. The building permit plans shall be substantially consistent with the approved Project Plans (**Exhibit C**), or as otherwise required by these conditions of approval.

b. Prior to the submittal for building permit review, all conditions of approval for this Project, as approved by the City Council, shall be printed on the plans.

c. Prior to the submittal of the final improvement plans review and/or building permit review, whichever occurs first, the applicant shall demonstrate compliance with the accessibility requirements as stated in the updated California Building Codes.

d. Prior to the issuance of a building permit, any changes to the approved color elevations, floor plans, and/or fence details shall be reviewed and approved by the Community Development Director.

e. Prior to the issuance of a building permit, the roof material as submitted by the applicant as part of this application shall be reviewed and approved by the Community Development Director. All roof material shall consist of fire-retardant shake roof, concrete tile, or a roof of similar noncombustible material. Mansard roofs with the above material may be used to screen tar and gravel roofs. All roofs shall be of Class C fire resistant construction or better. Composition shingles shall be Presidential-style or of comparable quality, subject to the review and approval of the Community Development Director.

f. Prior to the issuance of a building permit, the applicant shall submit a "Will Serve" letter, or equivalent document, demonstrating approval of the project and agreeance to provide garbage, refuse and recycling services from Republic Services to the Community Development Director. Any revisions to the proposed garbage, refuse and recycling service pick up plan shall require review and approval by the Community Development Director. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling containers.

g. Prior to the issuance of a building permit, any changes to the approved floor plans shall be submitted for review and approval by the Community Development Director.

h. Prior to the issuance of a building permit, the applicant shall pay the City's impact fees in effect as well as the Community Development Maintenance Fee.

i. Prior to the issuance of a Certificate of Occupancy for an individual unit, roll-up garage doors with automatic garage door openers shall be provided for such unit.

j. Prior to the issuance of a Certificate of Occupancy, the parking areas, aisles and access drives shall be installed and striped as shown on the approved site plan. Guest parking spaces shall be clearly marked as reserved for guests, as approved by the Community Development Director.

k. Prior to final inspection and utility release for each unit, the applicant shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director. The exterior connections for the pre-wire shall be made to the roof and or on a side elevation of the home, not facing a street, just under the building eave, with the satellite mounting location either on the underside of the soffit or on the fascia board.

l. The covenants, conditions, and restrictions (CC&Rs) filed for this development shall include the following provisions:

1) There shall be no short-term rentals which is a rental of the unit or room(s) within a unit for a period of 30 consecutive calendar days or less.

2) Garages shall only be used for automobile parking, incidental storage, and similar uses and shall not be used as living space. This restriction shall not apply when a garage conversion is proposed to accommodate an accessory dwelling unit (ADU) or junior ADU (JADU) in conformance with State regulations in effect.

3) No refuse, garbage or recycling shall be stored outdoors except within designated waste and recycling container areas. Waste and recycling containers may be stored within the garage but may not obstruct required parking areas.

4) All residents shall have access to and use of the common open space areas. Private improvements within common open space areas are prohibited except as shown on approved project drawings.

5) The homeowner's association shall be responsible for maintenance of all common open space areas.

6) Guest parking spaces shall be clearly marked as reserved for guests and available with unrestricted access.

7) Exterior changes including, but not limited to, paint, landscaping, hardscape, and windows and doors, are prohibited unless expressly approved by the City.

m. There shall be no roof-mounted equipment other than satellite dishes, other similar television or radio antennas, and solar equipment.

n. Mechanical and electrical equipment such as air conditioners (AC) units shall not be placed in the front or street side yard. If equipment is placed in any other location that makes it

visible to public view, the equipment shall be properly screened with solid material pursuant to the regulations in NMC §17.17.100 (Screening). The mechanical and electrical equipment shall comply with the noise requirements per NMC §17.24.100 (Noise).

o. All exterior lighting shall comply with all applicable regulations in NMC §17.17.060 (Lighting and Illumination). All exterior lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.

p. The landscape plans submitted for building permit review shall demonstrate compliance with NMC Chapter 17.21 (Landscaping) and §17.23.090 (Parking Area Design and Development Standards).

q. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.

r. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site cleanup shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.

s. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 7:00 a.m.

t. There shall be no short-term rentals which is a rental of the unit or room(s) within a unit for a period of 30 consecutive calendar days or less.

u. Prior to the issuance of grading and site work permit(s), mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster, in that order. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.

v. All signs shall be submitted for the review and approval of the Community Development Director. All signs shall comply with NMC Chapter 17.25, Signage Standards.

w. During project construction, if historic, archeological or Native American materials or artifacts are identified, work within a 50-foot radius of such find shall cease and the City shall retain the services of a qualified archeologist and/or paleontologist to assess the significance of the find. If such find is determined to be significant by the archeologist and/or paleontologist, a resource protection plan conforming to CEQA §15064.5 shall be prepared by the archeologist and/or paleontologist and approved by the Community Development Director. The plan may include, but would not be limited to, removal of resources or similar actions. Project work may be resumed in compliance with such plan. If human remains are encountered, the County Coroner shall be contacted immediately, and the provisions of State law carried out.

x. Construction site trailers and buildings located on-site shall be used for office and storage purposes only and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on the site during construction shall remain graffiti free.

y. Measures to respond to and track complaints pertaining to construction noise shall include: (1) a procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and (2) a sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).

z. The developer shall comply with any and all applicable federal, state, or local laws and regulations.

aa. Per NMC §17.31.130, the approval or conditional approval of the Design Review shall expire two years from the date the Design Review was approved or conditionally approved if it is not exercised or extended within two years of its approval.

bb. Per NMC §16.08.070, the approval or conditional approval of the tentative map shall expire 24 months from the date the map was approved or conditionally approved. The approved or conditionally approved map may be granted additional period(s) of time as permitted by the Subdivision Map Act.

cc. Per NMC §17.31.130, any permit granted under NMC Title 17 - Zoning, shall automatically expire if it is not exercised or extended within two years of its approval, unless a different time period is specified.

Engineering Division

dd. *Informational:* The total geotech peer review charges from the City's consultant is $4,202.50. Per the City's master fee schedule, the total cost due to the City is actual cost plus 25%. The total cost is $5,253.13. A deposit of $5,000 was provided to the City. Therefore, a balance of $253.13 is due to the City prior to project approval.

ee. The conditions of approval from the Engineering Division are subject to change if the site plan is revised.

ff. The project shall conform to Vesting Tentative Tract Map – Tract 8603, sheets C-1.0 through C-6.0, and all conditions of approval set forth herein. Approval of the vesting tentative map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Newark Municipal Code consistent with the State Subdivision Map Act.

gg. The final map shall designate and/or dedicate emergency vehicle access ways, public utility easements, and other easement as may be required over the common area. A public utility easement as shown on sheet C-6.0 vesting tentative map exhibits shall be dedicated along

Mulberry Street.

hh. The development will require approval of final tract maps filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map shall be approved and recorded prior to the issuance of any building permits.

ii. Prior to approval of the final map, the developer shall guarantee all necessary street improvements adjoining the development and over the common area in accordance with tract improvement plans to be approved by the City Engineer. Improvement plans for on-site common areas in the development shall be included with the tract improvement plans to ensure that such improvements are designed and constructed to City Standards. These plans must be prepared by a qualified person licensed by the State of California to do such work. Street improvements shall include, but may not be limited to driveway access, public sidewalks, curb and gutter removal and replacement, frontage landscaping, pavement removal and replacement, replacement or repair of existing damaged public improvements, street lighting, offsite storm drainage to Dairy Avenue, undergrounding dry utility services, and other improvements as shown on the approved exhibits. Common area improvements on-site include, but may not be limited to drive aisles, parking facilities, utilities, storm water treatment measure installations, screen walls, fencing, and all landscape areas.

jj. To maintain the pavement condition on Mulberry Street, the applicant will be required to grind and overlay and/or slurry seal the pavement to centerline or beyond to the nearest lane line where utility tie-ins are necessary.

kk. Prior to the issuance of the initial grading or any building permits for this project, the developer shall submit a Storm Water Pollution Prevention Plan for the review and approval of the City Engineer. The plan shall include sufficient details to show how storm water quality will be protected during both: (1) the construction phase of the project and (2) the post-construction, operational phase of the project. The construction phase plan shall include Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities. The specific storm water pollution prevention measures to be maintained by the contractor shall be printed on the plans. The operational phase plan shall include Best Management Practices appropriate to the uses conducted on the site to effectively prohibit the entry of pollutants into storm water runoff from this site including, but not limited to, trash and litter control, pavement sweeping, periodic storm water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with a permanent thermoplastic stencil with the wording “No Dumping - Drains to Bay,” and other applicable practices.

ll. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2022-0018, revised July 1, 2022, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region. Examples of source control and site design requirements include but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-

stormwater discharges, minimization of impervious surfaces, and treatment of all runoff with Low Impact Development (LID) treatment measures. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The design is subject to review by the Regional Water Quality Control Board. The developer shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the final map approval and recordation of the agreement prior to the issuance of any Certificates of Occupancy.

mm. The developer shall submit detailed grading and drainage plans for review and approval by the City Engineer. These plans must be based upon a City benchmark and need to include pad and finish floor elevations of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer prior to approval of the final map(s). The calculations shall show that the City and County freeboard requirements will be satisfied.

nn. All stormwater treatment measures are subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading and drainage and stormwater treatment design as necessary to satisfy any imposed requirements from the District.

oo. The entire site shall be equipped with full trash capture devices approved by the Regional Water Quality Control Board – San Francisco Bay Region and the Mosquito Abatement District, for 100% trash capture at all on-site and adjoining off-site storm drain inlets. All on-site trash capture devices shall be permanently maintained by the property owner. Acceptable off-site trash capture devices can be found on the City's website at https://www.newark.org/departments/public-works/engineering-division/stormwater-program.

pp. Where a grade differential of more than a 1-foot is created along the boundary lot lines between the proposed development and adjacent property, the developer shall install a masonry retaining wall unless a slope easement is approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer. A grading permit is required by the Building Inspection Division prior to starting site grading work.

qq. The applicant shall submit a detailed soils report prepared by a qualified engineer, registered with the State of California. The report shall address in-situ and import soils in accordance with the City of Newark Grading and Excavation Ordinance, Chapter 15.50. The report shall include recommendations regarding pavement sections for all public and

private streets. Grading operations shall be in accordance with recommendations contained in the soils report and shall be completed under the supervision of an engineer registered in the State of California to do such work.

rr. Prior to issuance of a Certificate of Occupancy or release of utilities for any building, vehicle access ways and parking facilities serving said building shall be paved in accordance with the recommendation of a licensed engineer based on a Traffic Index of 5.0 and striped as shown on the approved site plan. Minimum asphalt concrete thickness for the vehicle access ways shall be 4 inches.

ss. Prior to issuance of a Certificate of Occupancy or release of utilities for each dwelling unit, the on-site drive aisles and uncovered parking facilities shall be installed and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be drained at a minimum slope of 1.0% for asphalt surfaces and 0.3% for Portland cement concrete surfaces.

tt. The applicant shall establish a Homeowner's Association consisting of all property owners of lands in the development at the time of incorporation and in the future for the purpose of maintaining the association's property, common drive aisles, parking facilities, stormwater treatment facilities, and landscaping, including landscaping in adjacent public rights-of-way, and for paying for security lighting, any common garbage collection services, any security patrol services, if provided, and other functions of a Homeowner's Association. All common areas within the development shall be owned and maintained by the Homeowner's Association. Each property owner shall automatically become a member of the association and shall be subject to a proportionate share of the maintenance expenses. The Homeowner's Association shall be incorporated prior to the sale of any individual lots and/or prior to acceptance of tract improvements, whichever occurs first.

uu. Prior to City Council approval of the final map(s), the bylaws governing the property owners' association(s) and any declaration of covenants, conditions and restrictions (CC&Rs) filed for this development shall be reviewed and approved by the City Council at its discretion after mandatory review and recommendations by the City Attorney. Said covenants, conditions and restrictions shall be prominently displayed in the project sales office at all times. Approval of the covenants, conditions and restrictions shall not make the City a party to enforcement of same. The CC&Rs shall apply equally to both owners and renters. The CC&Rs shall be written to require renters to comply with the regulations of the CC&Rs, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall be written to allow less than a majority of owners to have pavement or landscape maintenance done and the cost thereof assessed to all owners in the project. The CC&Rs shall include a pavement maintenance program for on-site pavement.

vv. The Homeowner's Association CC&Rs shall prohibit the on-site parking of non-self-propelled recreational vehicles, including boats, and any self-propelled recreational vehicles not used for transportation unless separate storage facilities are provided. The CC&Rs shall regulate the provision of any on-site parking of self-propelled recreational vehicles used for transportation.

ww. The developer shall also assist the Homeowner's Association by having a management consultant firm review the maintenance and operating functions of the association. The management consulting firm shall be responsible to prepare a written report with recommendations to the association for managing the association's obligations and setting initial monthly assessment costs for each lot in the development. Membership and assessment cost shall be mandatory for all property owners of property in the development and shall run with the land. The developer shall pay all costs of incorporation and initial management review and reports.

xx. The Homeowner's Association shall be responsible for trash and litter control and sweeping of all private streets within the development. All private storm drain systems and all associated trash capture devices shall be cleaned on a regularly scheduled basis as detailed in the required Stormwater Treatment Measures Maintenance Agreement.

yy. The Homeowner's Association shall be required to contract with a professional management firm to handle all necessary maintenance operations. Documentation of such contract shall be submitted to the City of Newark. All commonly owned facilities shall be properly maintained in a manner consistent with the CC&Rs and project requirements.

zz. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards.

aaa. All improvement plans are subject to review and approval by the Alameda County Water District (ACWD), Union Sanitary District (USD), and Pacific, Gas & Electric Company (PG&E). Any modifications to the site design provided with the vesting tentative map as necessary to satisfy requirements from individual utilities or districts are the sole responsibility of the developer. The developer shall coordinate with Pacific, Gas & Electric Co. for the design of the underground utility improvements for the proposed development as soon as practical following vesting tentative map approval. The joint trench and street lighting plans shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval.

bbb. The developer shall repair and/or replace any damaged public improvements along Mulberry Street right-of-way as a result of construction activity to the satisfaction of the City Engineer.

ccc. The developer shall ensure that a water vehicle for dust control operations and a pick-up or vacuum type street sweeper to remove tracked dirt and debris from adjacent streets is kept readily available at all times during construction at the City Engineer's direction.

ddd. The developer shall implement the following measures for the duration of all construction activity to minimize air quality impacts:

1) Watering should be used to control dust generation during demolition of structures and

break-up of pavement.

2) All trucks hauling demolition debris from the site shall be covered.

3) Dust-proof chutes shall be used to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials.

4) All active construction areas shall be watered at least twice daily and more often during windy periods; active areas adjacent to the existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.

5) All trucks hauling soil, sand, and other loose materials shall be covered or require all trucks to maintain at least 2 feet of freeboard.

6) All unpaved access roads, parking areas, and staging areas at construction sites shall be paved, watered three times daily, or treated with (non-toxic) soil stabilizers.

7) All paved access roads, parking areas, and staging areas at construction sites shall be swept daily with water sweepers; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.

8) Limit traffic speeds on unpaved roads to 15 mph.

9) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

10) Replant vegetation in disturbed areas as quickly as possible.

11) Minimize idling time (5 minutes maximum).

12) Maintain properly tuned equipment.

These measures shall be incorporated into the grading specifications as well as the best management practices of the storm water pollution prevention plan and shall be implemented to the satisfaction of the City Engineer.

eee. The developer shall provide all required paper and digital submittals of the tentative map, project final map, tract improvement plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) One full-sized reproducible copy and one reduced reducible copy of the approved tentative map; (2) Two electronic copies of the approved final map and improvement plans in a format approved by the City Engineer; (3) One full-sized mylar copy and one reduced copy of the recorded final map; (4) One reproducible set and four blue-line or photocopied sets of the approved tract improvement plans; (5) Two electronic copies and one mylar set of the as-built tract improvement plans. All digital copies of the final map and improvement plans shall be

prepared in accordance with Union Sanitary District digital submittal standards.

fff. The plans submitted for construction must be drawn to an appropriate scale as required by the City Engineer.

ggg. The CC&Rs for the project shall include a disclosure statement to all property owners indicating that the project site is located within a seismic hazard zone for liquefaction. The disclosure statement shall indicate that the buildings have been designed to current code requirements. The disclosure statement shall also indicate that the buildings, site improvements, and utilities are subject to damage during an earthquake and that the buildings may be uninhabitable after an earthquake. This CC&R disclosure statement is subject to review and approval of the City Engineer prior to final map approval.

hhh. The following language shall be included in the CC&Rs:

Rights of City: Notwithstanding anything to the contrary in this Master Declaration, no amendment hereto which deals with any of the following matters shall be effective without the prior written consent of the Director of the City's Community Development Department, such consent not to be unreasonably withheld: (i) Any amendment, the design or purpose of which is to eliminate an obligation of the Association to maintain, manage and repair the Master Common Property all Improvements therein or to lower the standards for maintaining and repairing such Master Common Property and Improvements; (ii) Any amendment with regard to the fundamental purpose for which the Project was created (e.g., a change from residential use to a different use);(iii) Any amendment to Sections….(list sections required by condition of approval), and all defined terms therein, each of which were required as a condition of approval for the Project.(note: will need to define "Project.")

Enforcement by City: If the Association or any Owner (as the case may be) fails to Maintain the Common Area or any Improvement, or if the Association fails to enforce any of the provisions, listed in Section XXX (Rights of City), the City, as an intended third party beneficiary of the provisions of this Master Declaration, shall have the right, but not the duty, to compel performance of such provisions in any manner provided by law or in equity and in any manner provided in this Master Declaration.

Landscape-Parks Division

iii. All landscape maintenance on-site and along the project frontage, including the right-of-way planter strips along Mulberry Street shall be the responsibility of the Homeowners Association. The applicant shall enter into a Landscape Maintenance Agreement prior to approval of the final map. The Landscape Maintenance Agreement shall run with the land and be binding to the Homeowners Association as successors.

jjj. The applicant shall dedicate to the City of Newark a landscape and public utility easement along the frontage of Mulberry Street in accordance with the vesting tentative map exhibits.

kkk. Landscape plans for work within the public right-of-way, dedicated easement areas, and all common areas shall be included with the tract improvement plans. The landscape plans shall be submitted with the first tract improvement plan check and approved by the City Engineer prior to final map approval. The plans shall be prepared by a licensed landscape architect in accordance with the City of Newark requirements, standard details, and the State of California Model Water Efficient Landscape Ordinance (MWELO).

lll. Prior to the release of utilities or issuance of any Certificate of Occupancy for a given project phase, all landscaping and irrigation systems associated with that phase, including all frontage landscaping, shall be completed or guaranteed by a cash deposit filed with the City in an amount to cover the remainder of the work.

mmm. Prior to installation by the applicant, plant species, location, container size, quality and quantity of all landscaping plants and materials within the public right-of-way shall be reviewed and approved by the City Engineer. All street trees shall be a minimum of 24-inch box specimen. Plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.

nnn. Any above ground utility structures, including backflow prevention devices, and appurtenances, shall be installed within the applicant's property line and a minimum of 10 feet behind street face of curbs. The backflow prevention devices shall have a green painted security cage to protect it from vandalism. These locations shall be screened with landscaping to the satisfaction of the City Engineer. The landscape screen shall not interfere with the utility companies' or City Fire Department's access.

Building Division

ooo. Ensure construction is designed to the 2022 building Standards and CalGreen code.

ppp. Per NMC §17.24.100.A.3, construction for this project, including site work and all structures, shall occur only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday and between the hours of 10:00 a.m. and 6:00 p.m. on Sundays and holidays. The applicant may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request, the Building Official will take into consideration the nature of the construction activity which would occur during extended hours/days, the time duration of the request, the proximity to residential neighborhoods, and input by affected neighbors. All approvals shall be made in writing.

Alameda County Fire Department

qqq. Automatic fire sprinkler system shall be required.

rrr. The first 40 feet at the main entrance shall be part of the fire lane. Fire Lane No Parking signs or red curb painting shall be required.

Police Department

sss. The development shall comply with Chapter 15.06, Security Code, of the Newark Municipal Code and Section 510, Emergency Responder Radio Coverage, of the California Fire Code.

ttt. We would highly recommend installation of community safety cameras in common areas where the units would be most susceptible to criminal activity. This would include parking areas, exterior pathways and exterior doors. The community safety cameras could be operated and controlled by individual owners, the Building Management or the Owners' Association.

uuu. The proposed development should comply with the City of Newark street numbering system and tie in with the existing area street numbering. Additionally, the proposed building should display the street address in a manner clearly visible from the adjacent roadway and parking areas in order to facilitate public safety personnel's ability to quickly identify its location during emergency responses.

vvv. Individual unit numbering should be in a systematic method, specific to each floor and each unit in a non-repeating manner (i.e., no two units in the development with the same address number). Maps with unit numbering of the entire development should be placed in easy to find locations (preferably at entrances to the development and the building) in order to aid public safety personnel's ability to identify specific units during emergency responses.

General Conditions

www. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of project exhibits requiring Planning Commission and/or City Council review and approval.

xxx. If any condition of the project approval be declared invalid or unenforceable by a court of competent jurisdiction, the project approval shall terminate and be of no force and effect, at the election of the City Council on motion.

yyy. The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.

zzz. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the applicant shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the applicant (which shall be the same counsel used by applicant) and reasonably approved by the City. Applicant's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code §66474.9.

aaaa. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code §66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations and other exactions, pursuant to Government Code §66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of §66020, the developer will be legally barred from later challenging such exactions.

MULBERRY RESIDENTIAL

36952 MULBERRY STREET, NEWARK, CA



OWNER/DEVELOPER

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SHEET INDEX

0	COVER SHEET	C1.0	COVER SHEET
A0	SITE PLAN 1ST FLOOR	C2.0	EXISTING & DEMOLITION PLAN
A0b	SITE PLAN 2ND FLOOR	C3.0	GRADING & UTILITY PLAN
A2.1a	1ST FLOOR PLAN OF UNIT 1,2	C3.1	STORM MAIN EXTENSION
A2.1b	2ND FLOOR PLAN OF UNIT 1,2	C4.0	STORMWATER CONTROL PLAN
A2.2a	1ST FLOOR PLAN OF UNIT 3,4	C5.0	SECTIONS & DETAILS
A2.2b	2ND FLOOR PLAN OF UNIT 3,4	C5.1	USD & ACWD DETAILS
A2.3a	1ST FLOOR PLAN OF UNIT 5,6	C6.0	VESTING TENTATIVE TRACT MAP
A2.3b	2ND FLOOR PLAN OF UNIT 5,6	L1	LANDSCAPE CALL OUT PLAN
A2.4a	1ST FLOOR PLAN OF UNIT 7,8	L2	PLANTING PLAN
A2.4b	2ND FLOOR PLAN OF UNIT 7,8	L3	PHOTOGRAPHIC IMAGERY
A4.1	UNIT A PLAN	L4	CONCEPTUAL DETAILS
A4.2	UNIT A-ALT PLAN		
A4.3	UNIT B PLAN		
A7.1	RENDERING		
A7.2	MATERIAL BOARD		
A7.3.1	ELEVATIONS OF UNIT 1,2		
A7.3.1a	COLORED ELEVATIONS OF UNIT 1,2		
A7.3.2	ELEVATIONS OF UNIT 3,4		
A7.3.2a	COLORED ELEVATIONS OF UNIT 3,4		
A7.3.3	ELEVATIONS OF UNIT 5,6		
A7.3.3a	COLORED ELEVATIONS OF UNIT 5,6		
A7.3.4	ELEVATIONS OF UNIT 7,8		
A7.3.4a	COLORED ELEVATIONS OF UNIT 7,8		
A7.4	ROOF PLAN & WINDOW DETAILS		

PROJECT DESCRIPTION

THE PROPOSED PROJECT IS TO DEMOLISH THE EXISTING SINGLE-STORY HOUSE (1,056 SF) AND DETACHED GARAGE (400 SF), AND CONSTRUCT EIGHT (8) UNITS OF FOR-SALE CONDOMINIUMS OVER A 20,000 SF (0.46 ACRE) LOT THAT IS CURRENTLY ZONED RM RESIDENTIAL MEDIUM DENSITY.

THE PROPOSED DENSITY SHALL BE 17.4 U/A, WHICH IS IN THE MID-RANGE OF THE ALLOWABLE DENSITY OF 14-22 U/A WITHIN THE RM ZONE.

THE UNITS WILL BE DISTRIBUTED IN FOUR (4) 2-STORY BUILDINGS, ACCESSED BY A PRIVATE DRIVEWAY DOWN THE MIDDLE. THREE COMMON OPEN SPACES FOR OUTDOOR RECREATION WILL BE LOCATED OFF THIS DRIVE. FOUR (4) 4-BEDROOM-3-BATH UNITS WILL HAVE 2,121 TO 2,150 SF LIVING AREA PLUS A TWO-CAR ATTACHED GARAGE. FOUR (4) 3-BEDROOM-3-BATH UNITS WILL HAVE 1,410 SF OF LIVING AREA PLUS A TWO-CAR GARAGE. FOUR (4) GUEST PARKING SPACES ARE PROVIDED ALONG THE PRIVATE DRIVE.

THE ARCHITECTURE WILL BE IN SPANISH STYLE INSPIRED BY THE HOMES DESIGNED BY GEORGE WASHINGTON SMITH IN THE 1920S AND 1930S. OFF-WHITE STUCCO SIDING AND RED TILE ROOFS WILL BE USED THROUGHOUT THE DEVELOPMENT.

ALL PROPOSED BUILDINGS SHALL BE EQUIPPED WITH NFPA 13D AUTOMATIC FIRE SPRINKLER SYSTEM.

PROJECT DATA

ADDRESS	36952 MULBERRY STREET
APN	092-0028-021, -022
EXISTING GP	MEDIUM DENSITY RESIDENTIAL
EXISTING ZONING	RM RESIDENTIAL MEDIUM DENSITY
SITE DIMENSIONS	200'-0" * 100'-0"
SITE AREA	20,000 SF(0.46 AC)
DENSITY ALLOWED	14-22 DU/AC
DENSITY PROPOSED	17.4 DU/AC
UNITS MIX PROPOSED	(4) 4BR/3BA W/2-CAR GARAGE @ 2,121-2,150 SF (Living Area) (4) 3BR/3BA W/2-CAR GARAGE @ 1,410 SF (Living Area)
SETBACK PROPOSED & PROVIDED	FRONT: 15'-0" REAR: 10'-0" LEFT SIDE: 5'-0" RIGHT SIDE: 5'-0"

Unit #	Floor Area - Level 1 (Living)	Floor Area - Level 1 (Garage)	Floor Area - Level 2 (Living)	Maximum Building Height	Setback - Front	Setback - Interior Side	Setback - Street Side	Setback - Rear	Minimum Distance Between Structures	Lot Coverage over Entire Site	Landscape Percentage over Entire Site	Common Open Space per Unit	Private Open Space per Unit	Enclosed Parking	Unenclosed Parking (Guest)	Plan Type
Unit 1	1,059	474	1,062	30'-0"					20'	0.077	29.3%	252	243	2	0.5	A
Unit 2	328	424	1,082	29'-0"					20'	0.038	29.3%	252	148	2	0.5	B
Unit 3	1,088	474	1,062	30'-0"					20'	0.078	29.3%	252	243	2	0.5	A-ALT
Unit 4	328	424	1,082	29'-0"	See Site Plan				20'	0.038	29.3%	252	148	2	0.5	B
Unit 5	1,059	474	1,062	30'-0"	for Setback Dimensions				20'	0.077	29.3%	252	243	2	0.5	A
Unit 6	328	424	1,082	29'-0"					20'	0.038	29.3%	252	148	2	0.5	B
Unit 7	1,088	474	1,062	30'-0"					20'	0.078	29.3%	252	243	2	0.5	A-ALT
Unit 8	328	424	1,082	29'-0"					20'	0.038	29.3%	252	148	2	0.5	B
TOTAL	5,606	3,592	8,576							0.460	5853	2019		16	4	

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Revisions:
9/30/22
4/21/23 FINAL

COVER SHEET

Sheet No:
0

of Sheets



1 SITE PLAN

1/8" = 1'-0"

NORTH

0 4' 8' 16'

SCALE: 1/8" = 1'-0"

LOT SIZE : 200' X 100' =
20,000 S.F. (0.46 ac)

LOT COVERAGE : 9,198 SF
46.0 % (MAX. 55% ALLOWED)

LANDSCAPE : 5,853 SF =
29.3 % (MIN. 25% REQUIRED)

COMMON OPEN SPACE : 2,019 SF/8 DU =
252 SF PER D.U.
(MINIMUM 20' MIN DIM.)

PRIVATE OPEN SPACE : 148 SF TO 243 SF

LEGEND :

- LANDSCAPE
- COMMON OPEN SPACE
- PRIVATE OPEN SPACE

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Revisions:

SITE PLAN

Sheet No:

A0

of Sheets



PRIVATE OPEN SPACE : 148 SF TO 243 SF

LEGEND :

PRIVATE OPEN SPACE

1 FLOOR PLAN LEVEL 2

1/8" = 1'-0"

0 4' 8' 16'

SCALE: 1/8" = 1'-0"

NORTH

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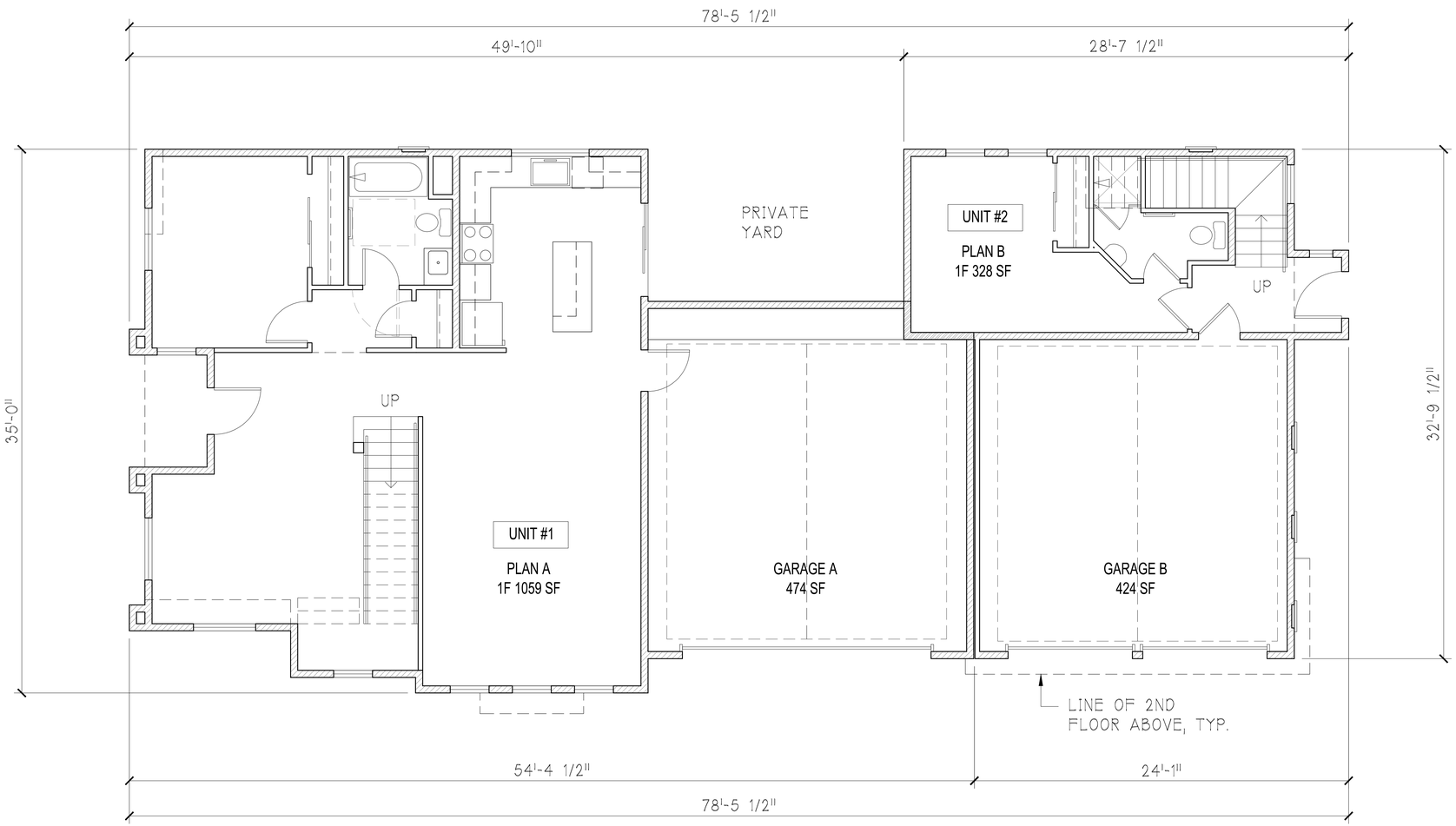
Revisions:

FLOOR PLAN
LEVEL 2

Sheet No:

A0.b

of Sheets



1 **1ST FLOOR PLAN OF UNIT 1,2**

1/4" = 1'-0"

NOTE:
FOR DETAILED DIMENSION &
INFORMATION OF UNITS,
REFER TO A4.X UNIT PLANS.

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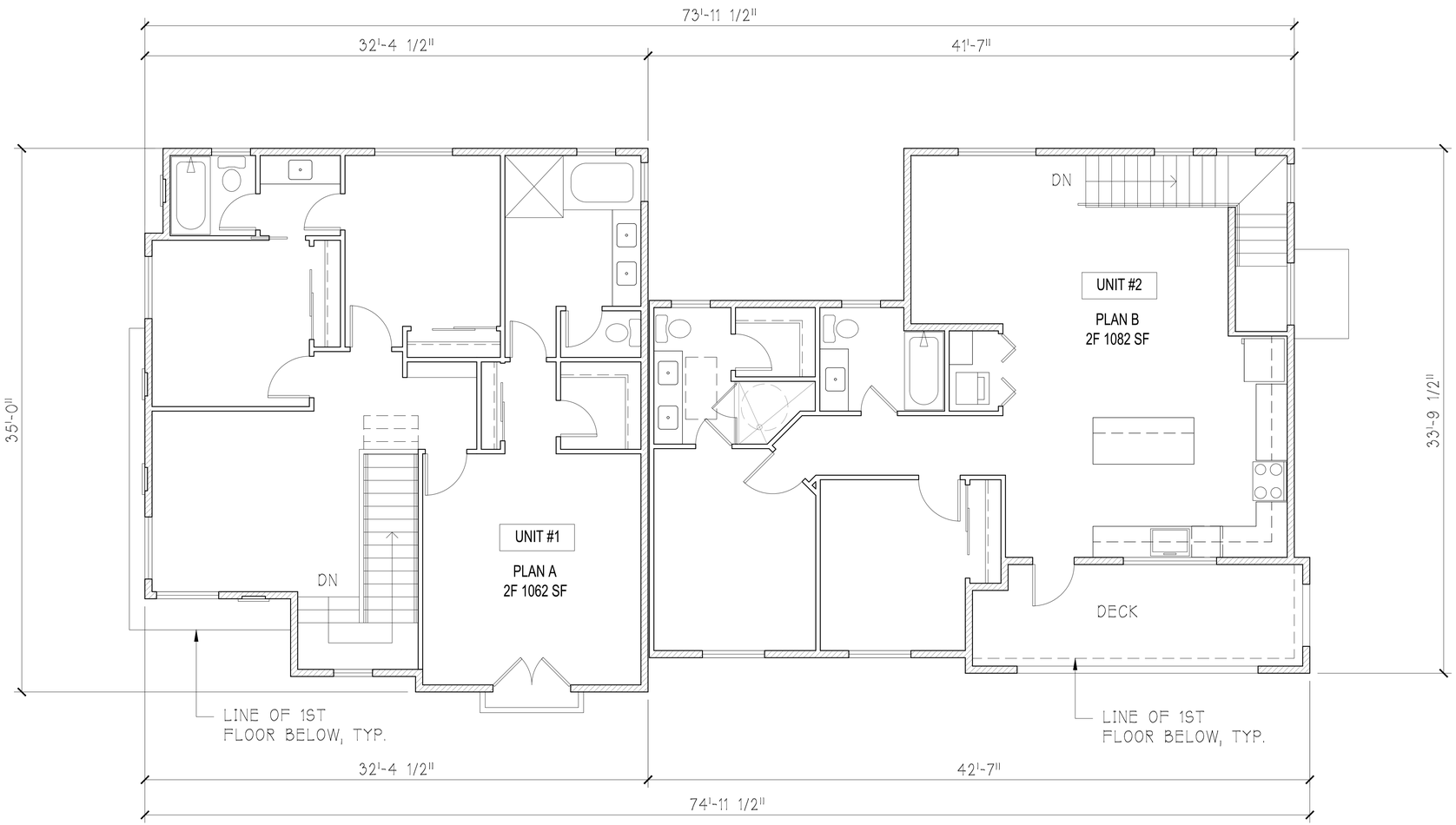
Revisions:

UNIT 1,2 - 1ST FLOOR PLAN

Sheet No:

A2.1a

of Sheets



1 **2ND FLOOR PLAN OF UNIT 1,2**

1/4" = 1'-0"

NOTE:
FOR DETAILED DIMENSION & INFORMATION OF UNITS, REFER TO A4.X UNIT PLANS.

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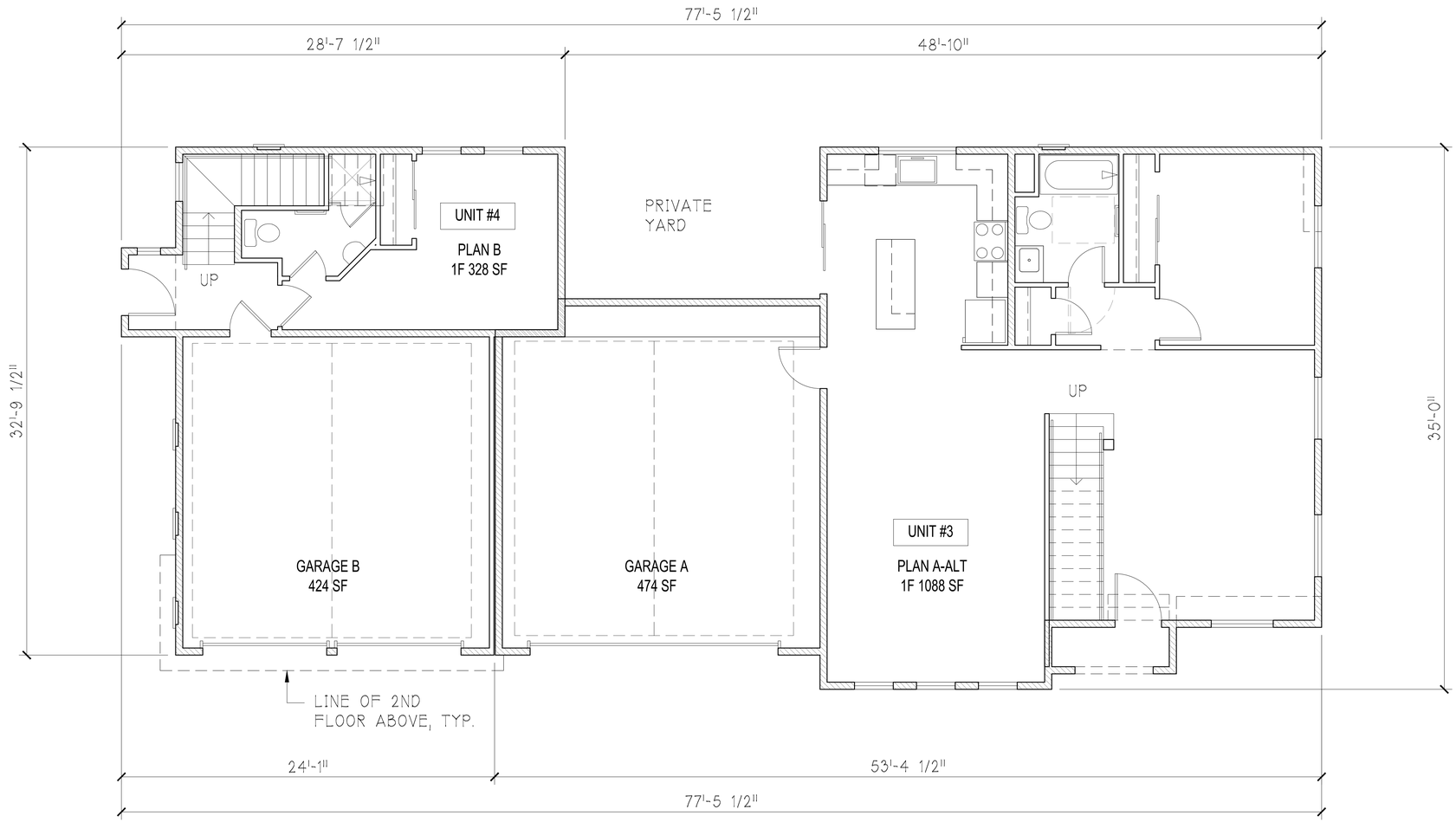
Revisions:

UNIT 1,2 - 2ND FLOOR PLAN

Sheet No:

A2.1b

of Sheets



1 **1ST FLOOR PLAN OF UNIT 3,4**

1/4" = 1'-0"

NOTE:
FOR DETAILED DIMENSION & INFORMATION OF UNITS, REFER TO A4.X UNIT PLANS.

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MULBERRY STREET
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LPMD Architects
1288 Kifer Road, Unit 206,
Sunnyvale, CA 94086
Telephone : 408-992-0280
Fax : 408-992-0281

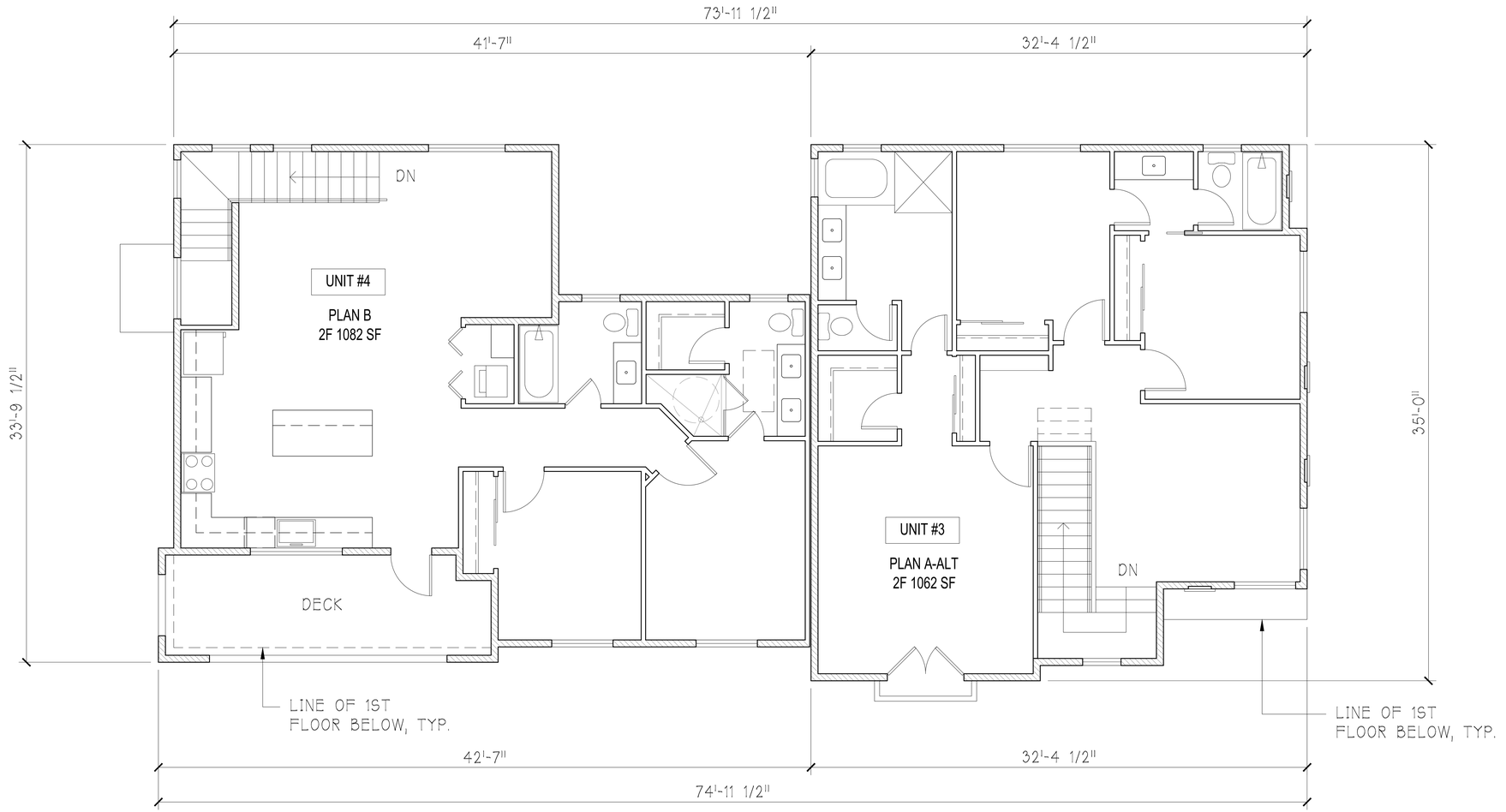
Revisions:

UNIT 3,4 - 1ST FLOOR PLAN

Sheet No:

A2.2a

of Sheets



1 **2ND FLOOR PLAN OF UNIT 3,4**

1/4" = 1'-0"

NOTE:
FOR DETAILED DIMENSION &
INFORMATION OF UNITS,
REFER TO A4.X UNIT PLANS.

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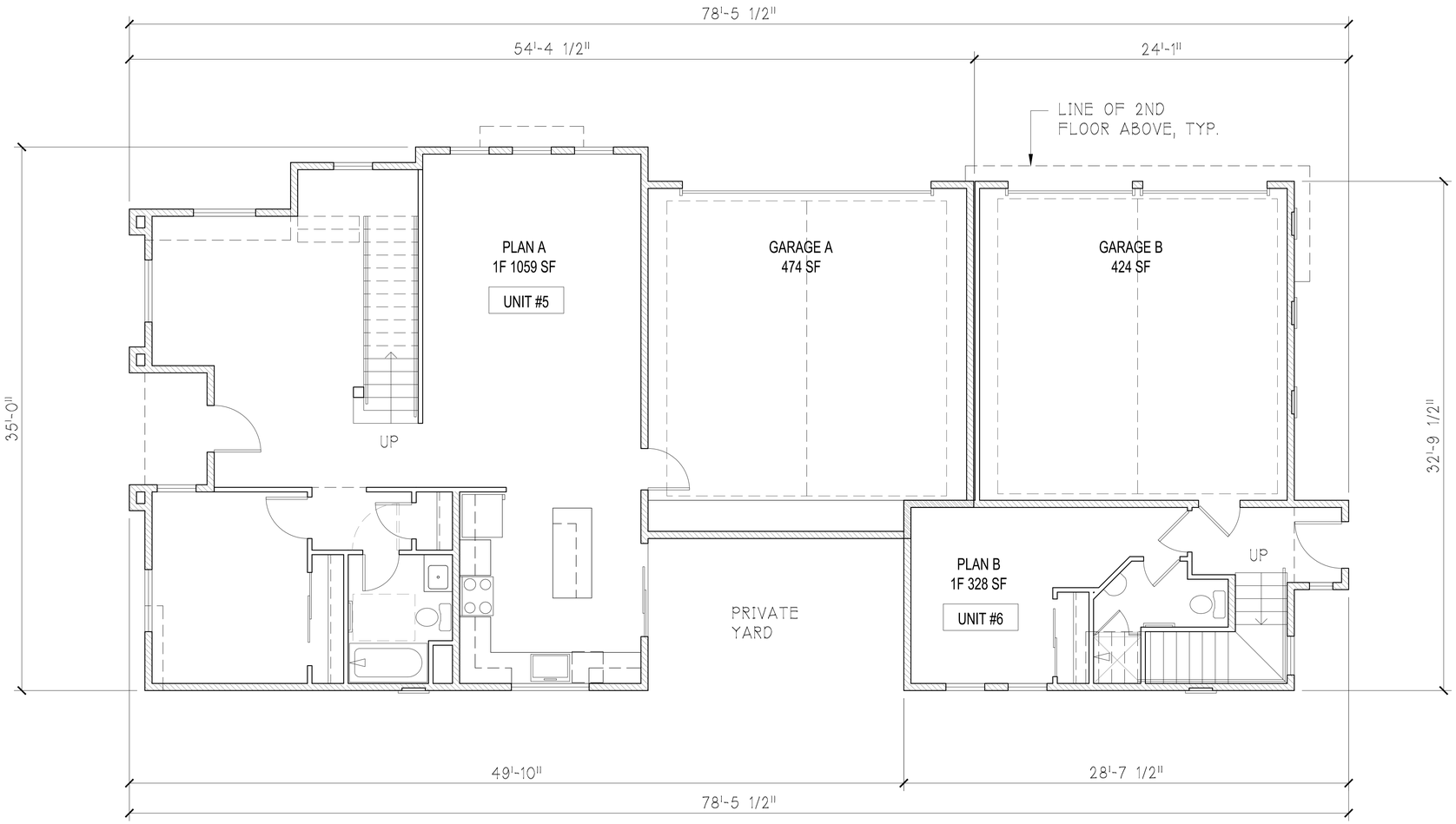
Revisions:

UNIT 3,4 - 2ND FLOOR PLAN

Sheet No:

A2.2b

of Sheets



1 **1ST FLOOR PLAN OF UNIT 5,6**

1/4" = 1'-0"

NOTE:
FOR DETAILED DIMENSION &
INFORMATION OF UNITS,
REFER TO A4.X UNIT PLANS.

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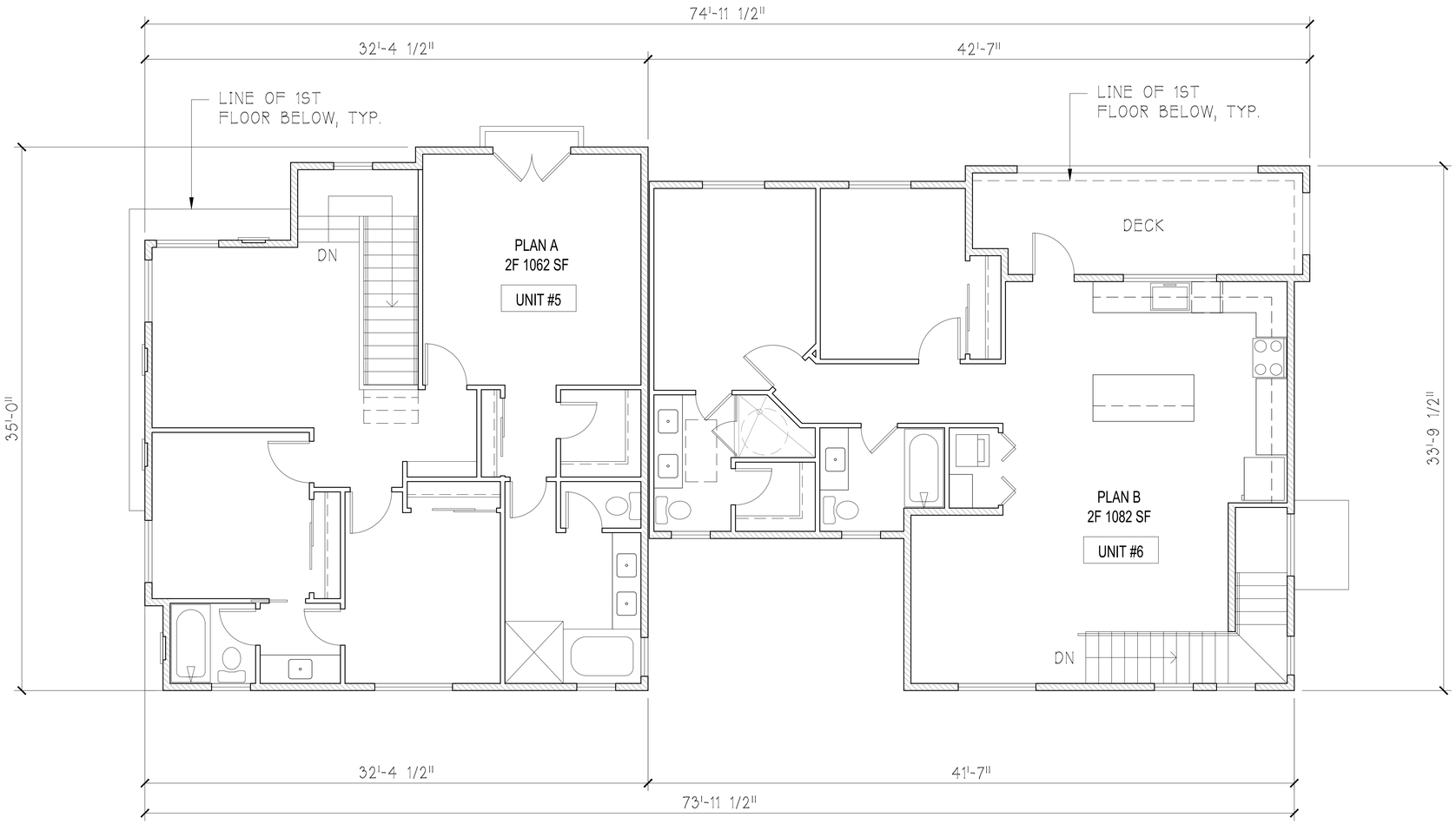
Revisions:

UNIT 5,6 - 1ST FLOOR PLAN

Sheet No:

A2.3a

of Sheets



1 **2ND FLOOR PLAN OF UNIT 5,6**

1/4" = 1'-0"

NOTE:
FOR DETAILED DIMENSION & INFORMATION OF UNITS, REFER TO A4.X UNIT PLANS.

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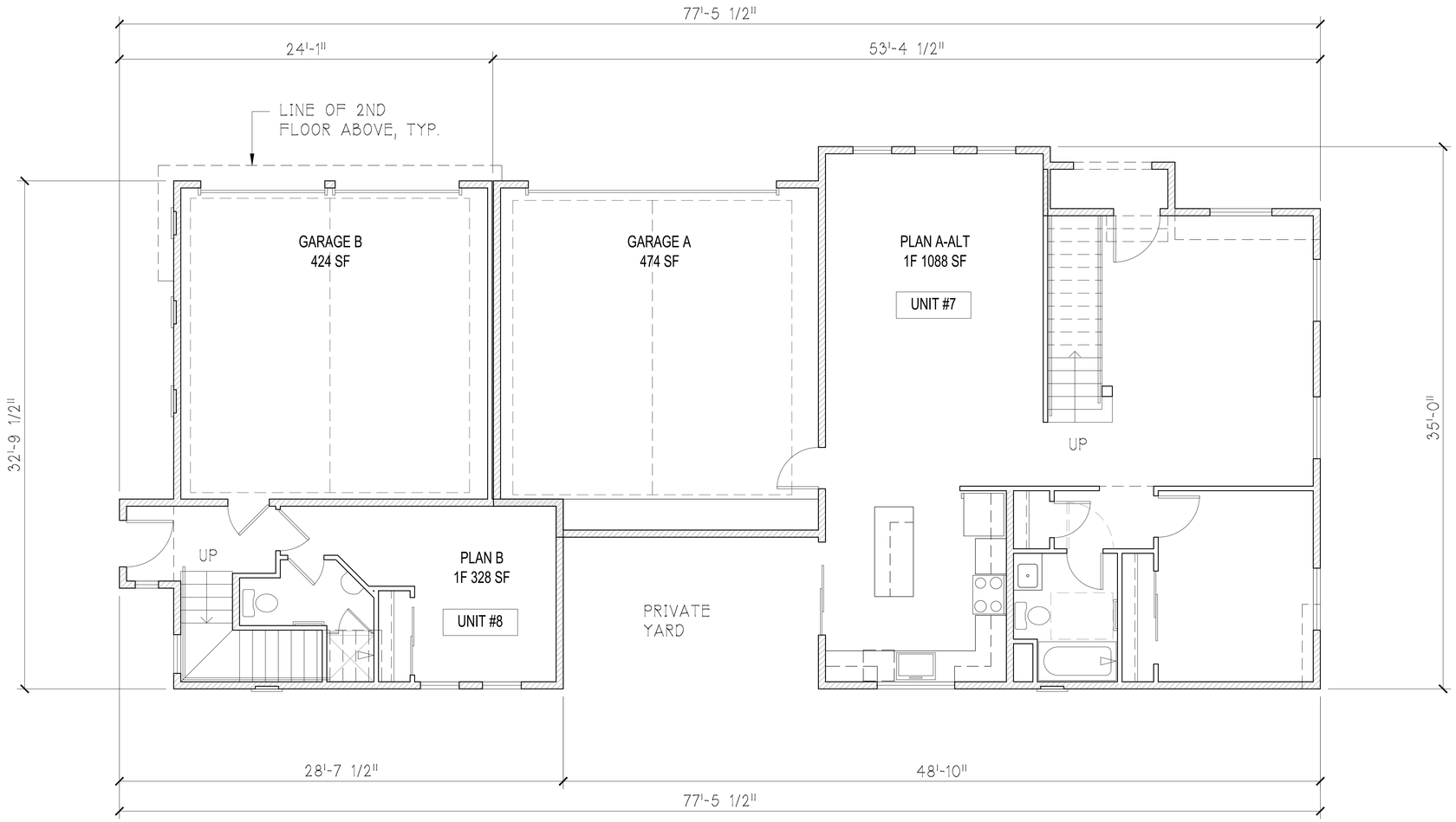
Revisions:

UNIT 5,6 - 2ND FLOOR PLAN

Sheet No:

A2.3b

of Sheets



1 1ST FLOOR PLAN OF UNIT 7,8

1/4" = 1'-0"

NOTE:
FOR DETAILED DIMENSION &
INFORMATION OF UNITS,
REFER TO A4.X UNIT PLANS.

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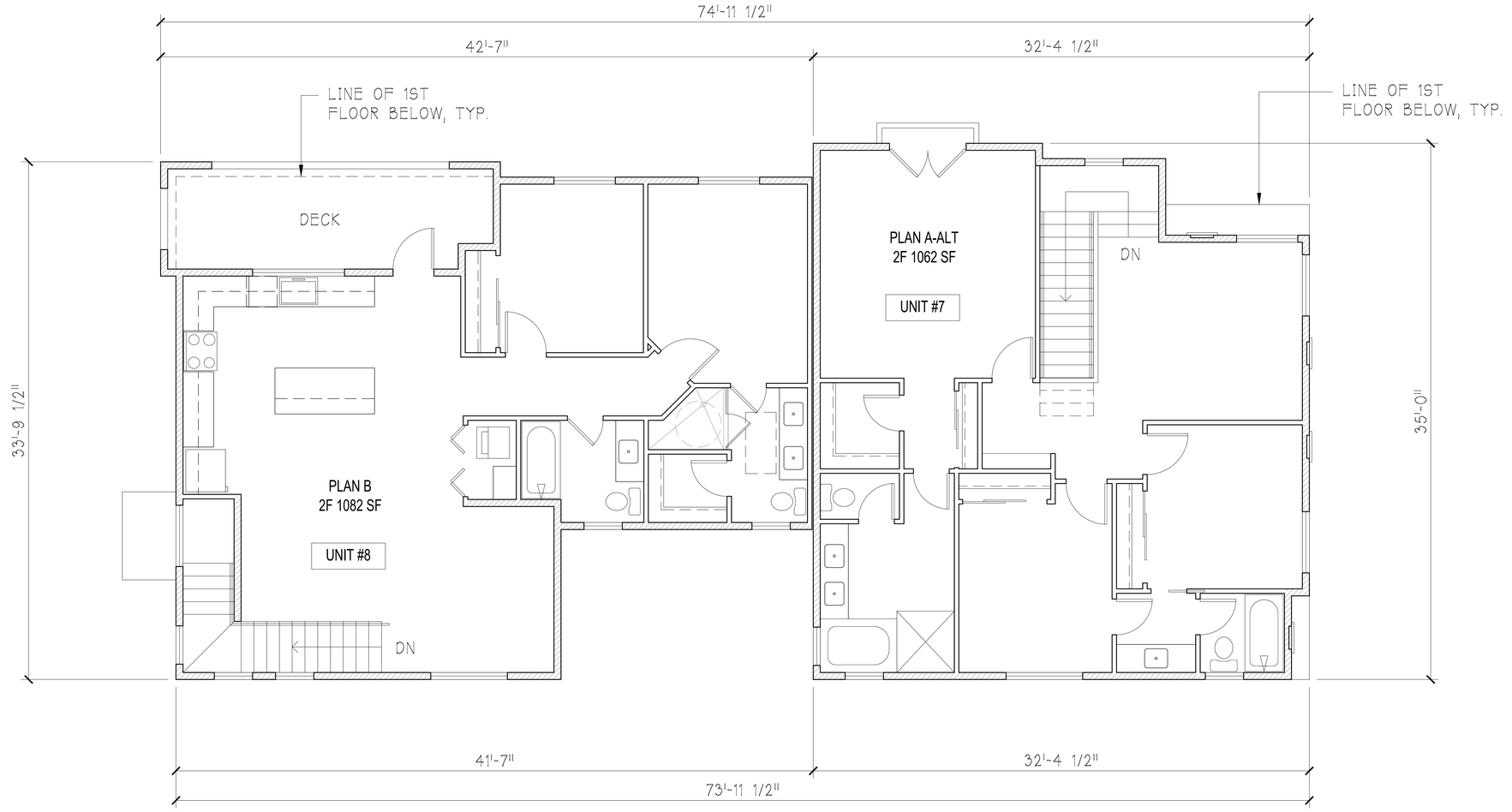
Revisions:

UNIT 7,8 - 1ST FLOOR PLAN

Sheet No:

A2.4a

of Sheets



1 2ND FLOOR PLAN OF UNIT 7,8

1/4" = 1'-0"

NOTE:
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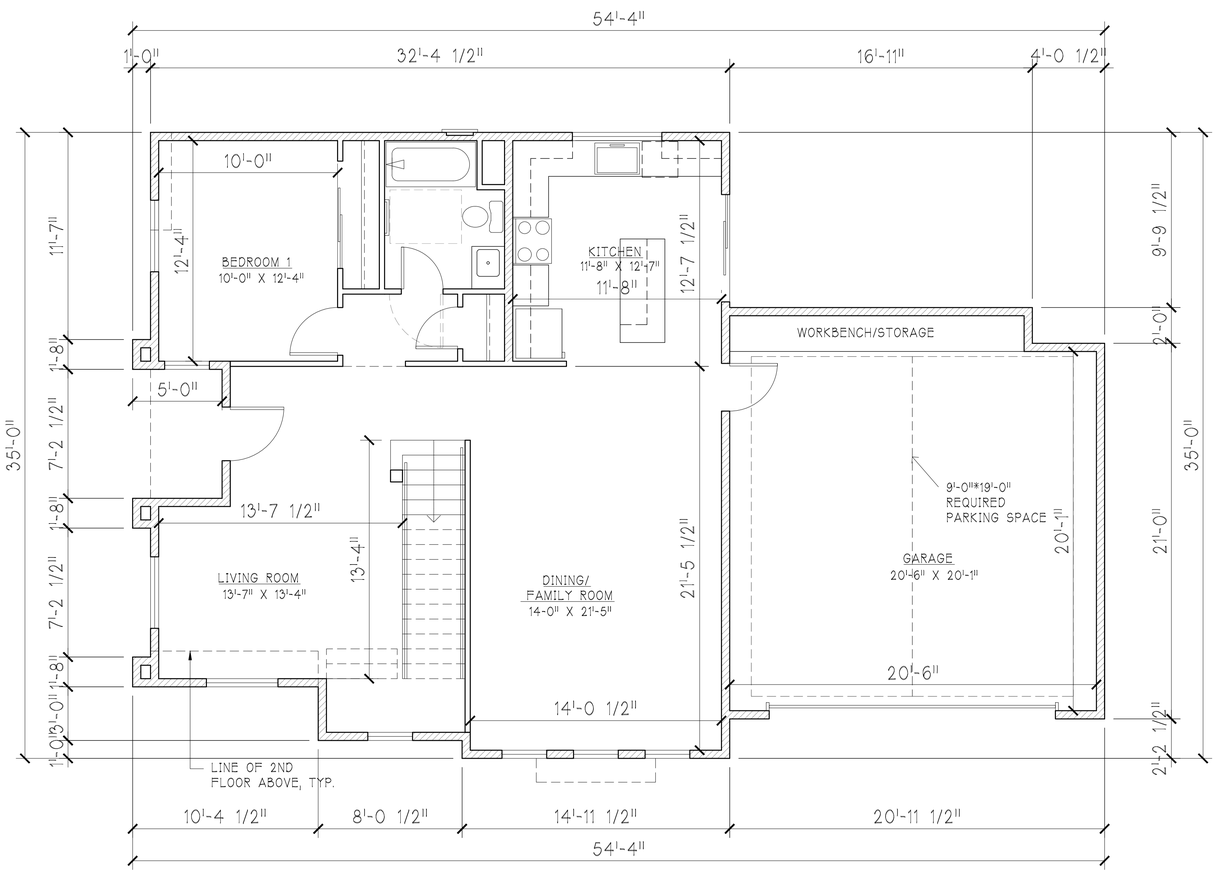
Revisions:

UNIT 7,8 - 2ND FLOOR PLAN

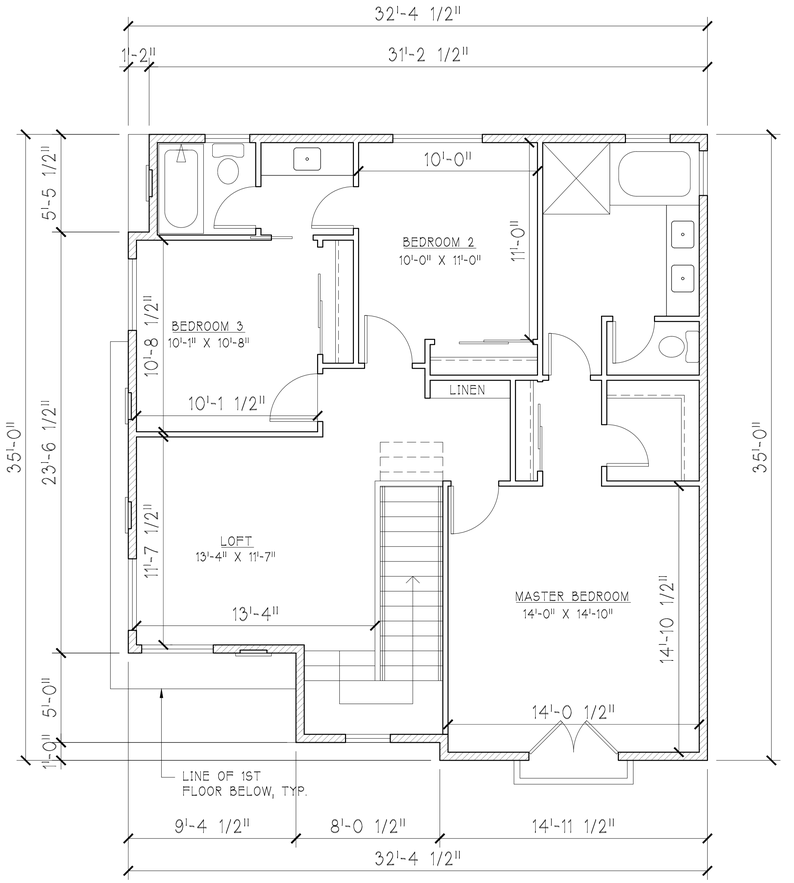
Sheet No:

A2.4b

of Sheets



1 **UNIT A - 1ST FLOOR 1059 SF + 474 SF (GARAGE)**
1/4" = 1'-0"



2 **UNIT A - 2ND FLOOR 1062 SF**
1/4" = 1'-0"

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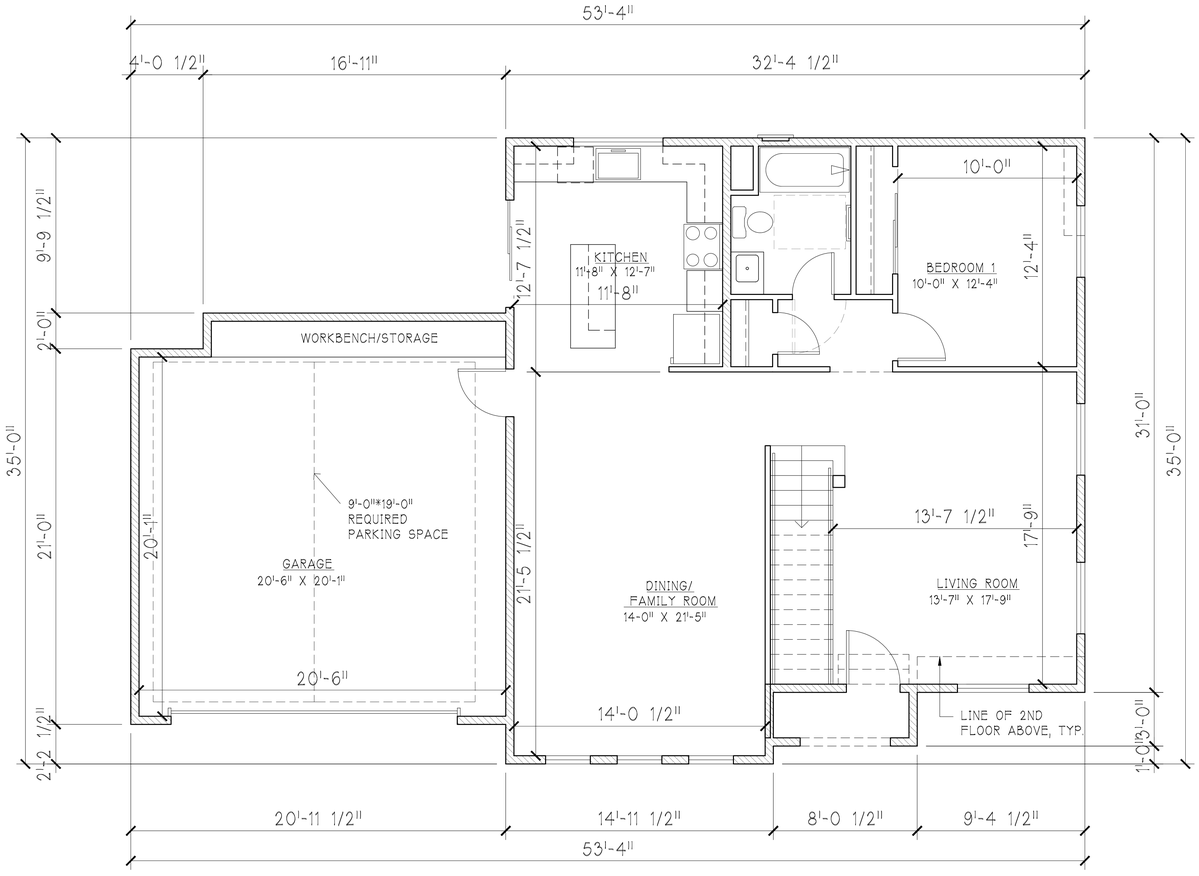
Revisions:

UNIT A PLANS

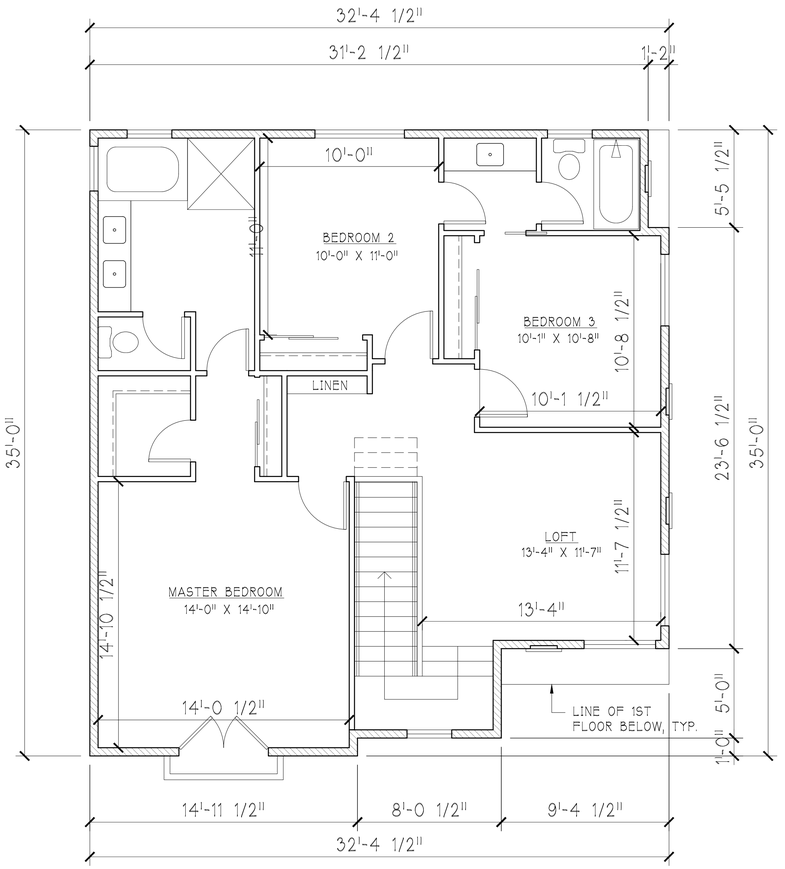
Sheet No:

A4.1

of Sheets



1 UNIT A-ALT - 1ST FLOOR 1088 SF + 474 SF (GARAGE)
1/4" = 1'-0"



2 UNIT A-ALT - 2ND FLOOR 1062 SF
1/4" = 1'-0"

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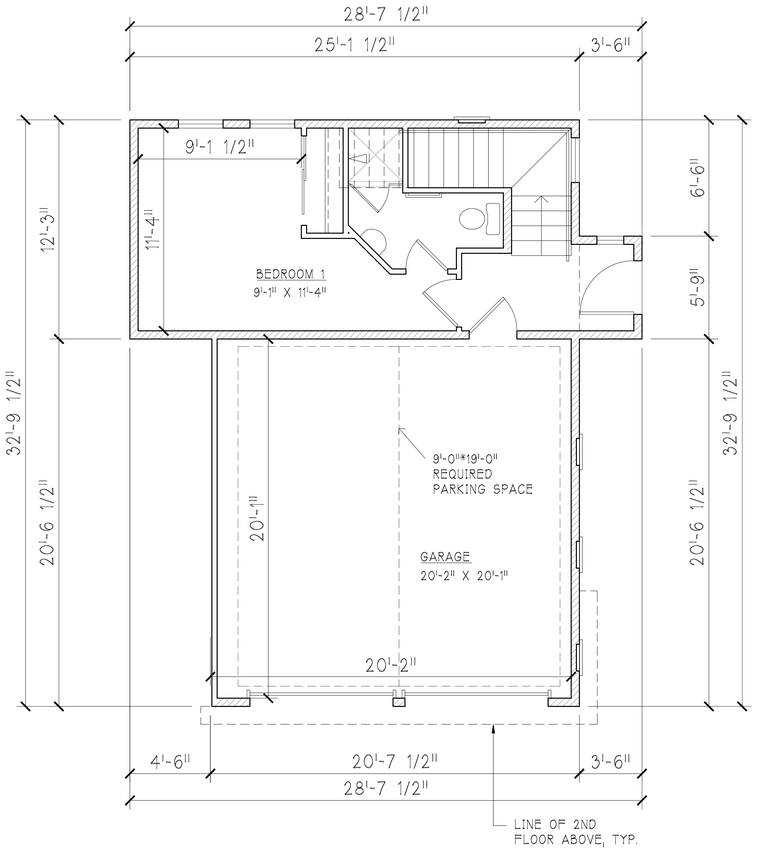
Revisions:

UNIT A-ALT PLANS

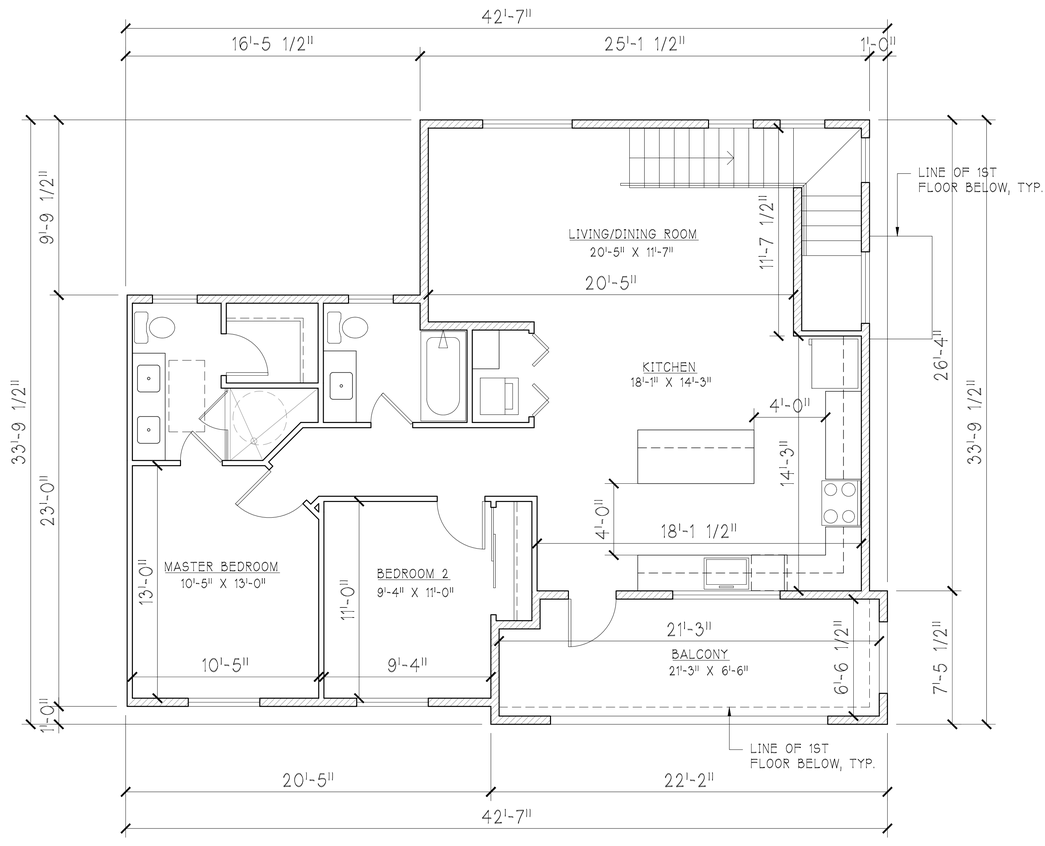
Sheet No:

A4.2

of Sheets



1 UNIT B - 1ST FLOOR 328 SF + 424 SF (GARAGE)
1/4" = 1'-0"



2 UNIT B - 2ND FLOOR 1082 SF + 148 SF (BALCONY)
1/4" = 1'-0"

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UNIT B
PLANS

Sheet No:

A4.3

of Sheets



1



2



3



4

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Revisions:

RENDERINGS

Sheet No:

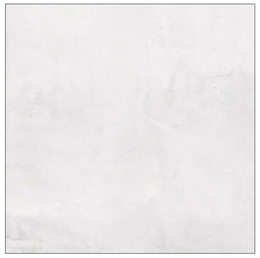
A7.1

of Sheets



1

TERRA COTTA CONCRETE
S-TILE, EAVE TILES
BOOSTED WITH MUD STOPS



2

OFF-WHITE STUCCO
SMOOTH FINISH
COLOR: KELLY MOORE KM 49



3

TERRA COTTA
DECORATIVE TILE



4

VINYL WINDOWS
DEEP GREEN



5

42" TALL METAL RAILING
PAINTED IN EBONY, WITH
SANDBLAST GLASS BEHIND
TO PROVIDE PRIVACY



6

WOOD GARAGE DOOR
COLOR: KELLY MOORE KM 49



7

DECORATIVE WOOD SHUTTERS
COLOR: KELLY MOORE KM 149



8

DECORATIVE WROUGHT IRON
WINDOW (OR STUCCO RECESS)
BARS
COLOR: KELLY MOORE AC255-5





9

WOOD ENTRY DOOR
COLOR: KELLY MOORE KM 149



10

WALL LIGHTS

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COLOR-MATERIAL BOARD

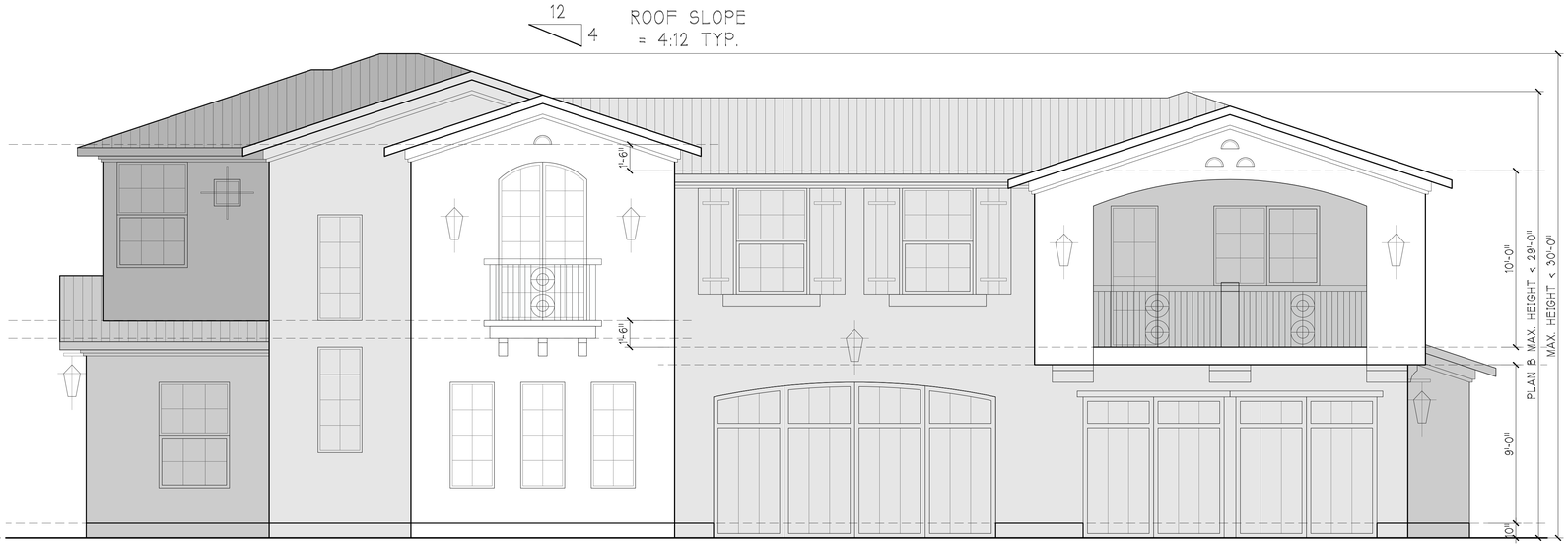
Sheet No:

A7.2

of Sheets



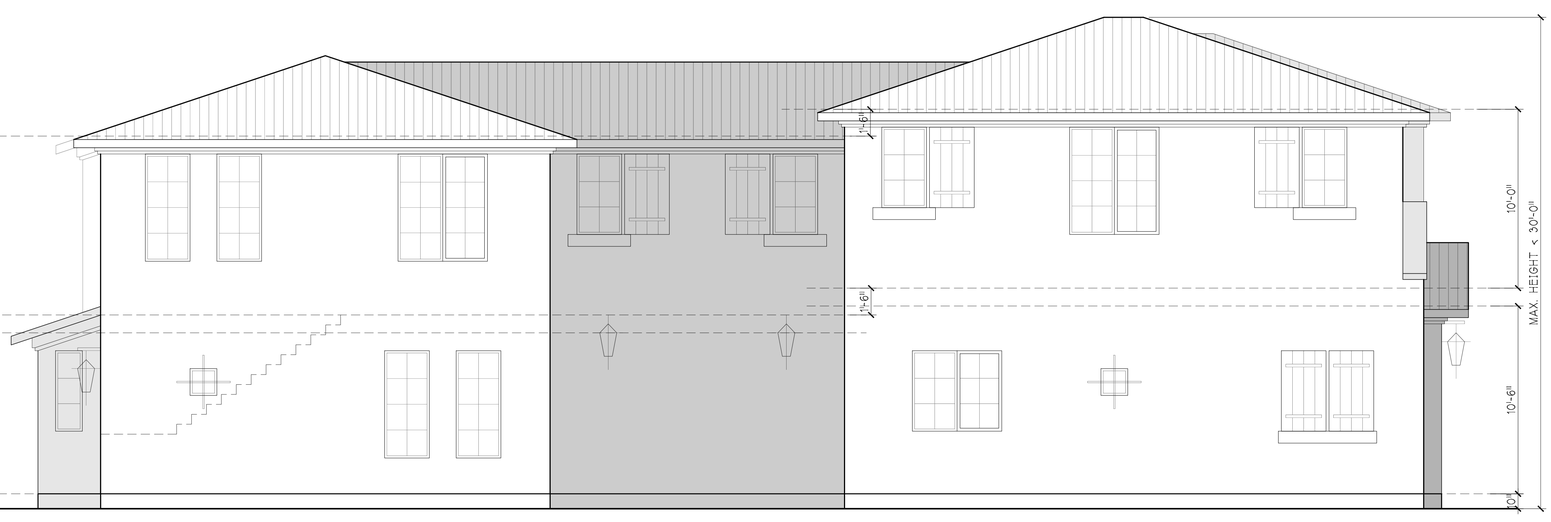
1 **ELEVATION @ UNIT 1,2**
1/4" = 1'-0"
VIEW FROM MULBERRY STREET



2 **ELEVATION @ UNIT 1,2**
1/4" = 1'-0"
VIEW FROM PRIVATE DRIVEWAY



3 **ELEVATION @ UNIT 1,2**
1/4" = 1'-0"
VIEW FROM GUEST PARKING



4 **ELEVATION @ UNIT 1,2**
1/4" = 1'-0"
VIEW FROM PRIVATE BACKYARD

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Revisions:

ELEVATIONS
UNIT 1,2

Sheet No:

A7.3.1

of Sheets



1 ELEVATION @ UNIT 1,2
1/4" = 1'-0"
VIEW FROM MULBERRY STREET



2 ELEVATION @ UNIT 1,2
1/4" = 1'-0"
VIEW FROM PRIVATE DRIVEWAY



3 ELEVATION @ UNIT 1,2
1/4" = 1'-0"
VIEW FROM GUEST PARKING



4 ELEVATION @ UNIT 1,2
1/4" = 1'-0"
VIEW FROM PRIVATE BACKYARD

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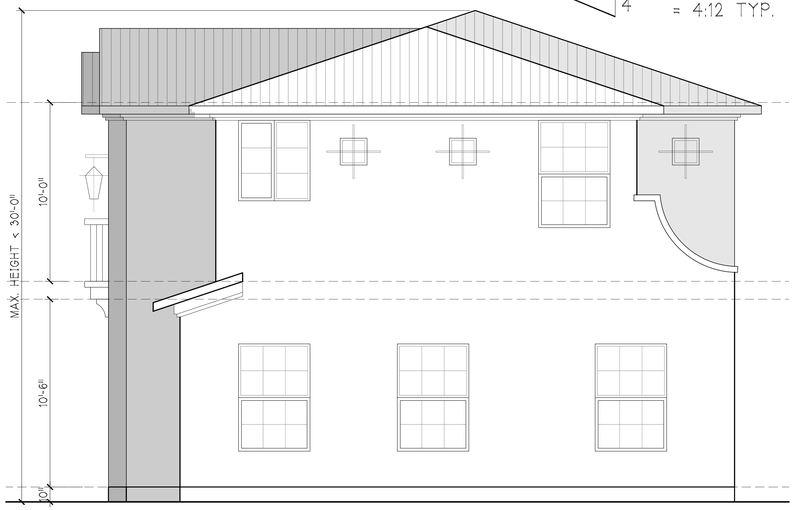
Revisions:

COLORED ELEVATIONS
UNIT 1,2

Sheet No:

A7.3.1a

of Sheets



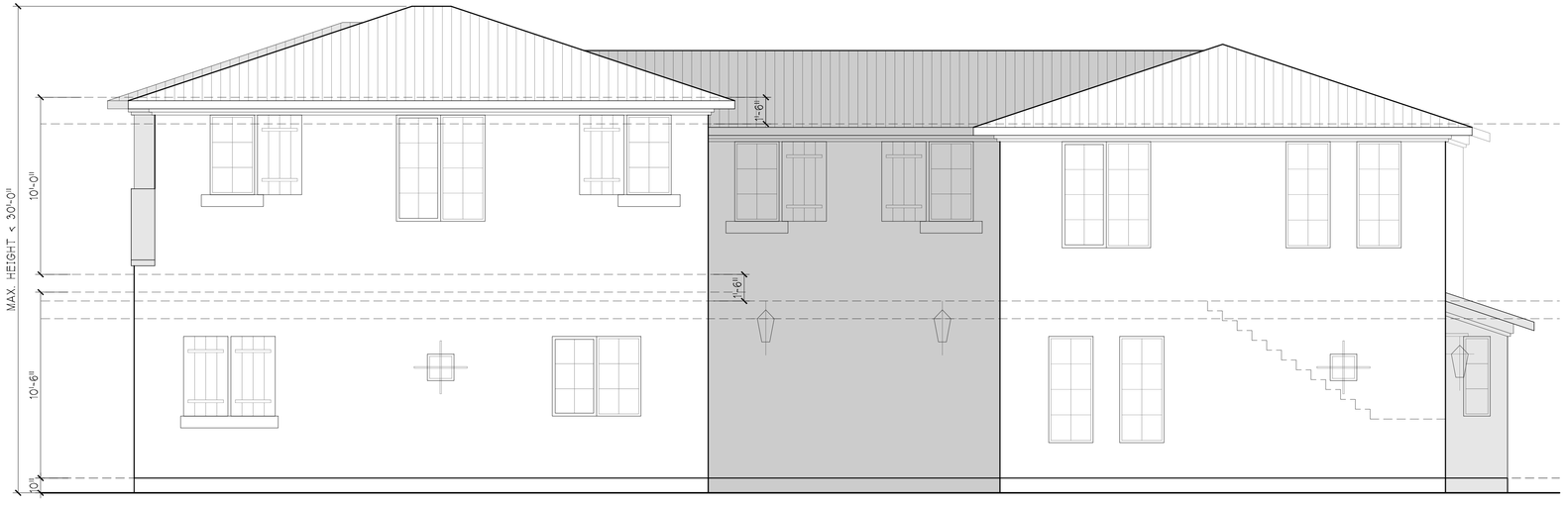
1 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0"
VIEW FROM REAR SIDE OF THE SITE



2 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0"
VIEW FROM PRIVATE DRIVEWAY



3 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0"
VIEW FROM GUEST PARKING



4 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0"
VIEW FROM PRIVATE BACKYARD

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ELEVATIONS
UNIT 3,4

Sheet No:

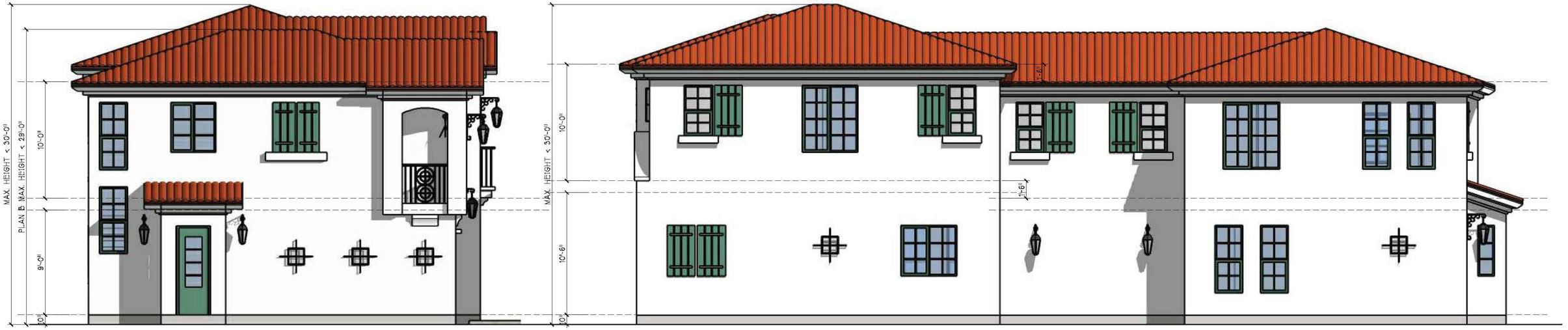
A7.3.2

of Sheets



1 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0" VIEW FROM REAR SIDE OF THE SITE

2 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0" VIEW FROM PRIVATE DRIVEWAY



3 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0" VIEW FROM GUEST PARKING

4 **ELEVATION @ UNIT 3,4**
1/4" = 1'-0" VIEW FROM PRIVATE BACKYARD

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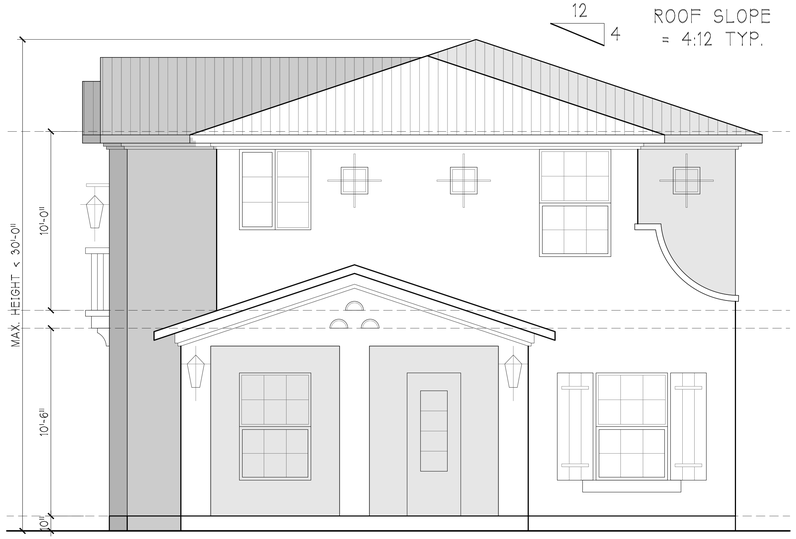
Revisions:

COLORED ELEVATIONS @ UNIT 3,4

Sheet No:

A7.3.2a

of Sheets



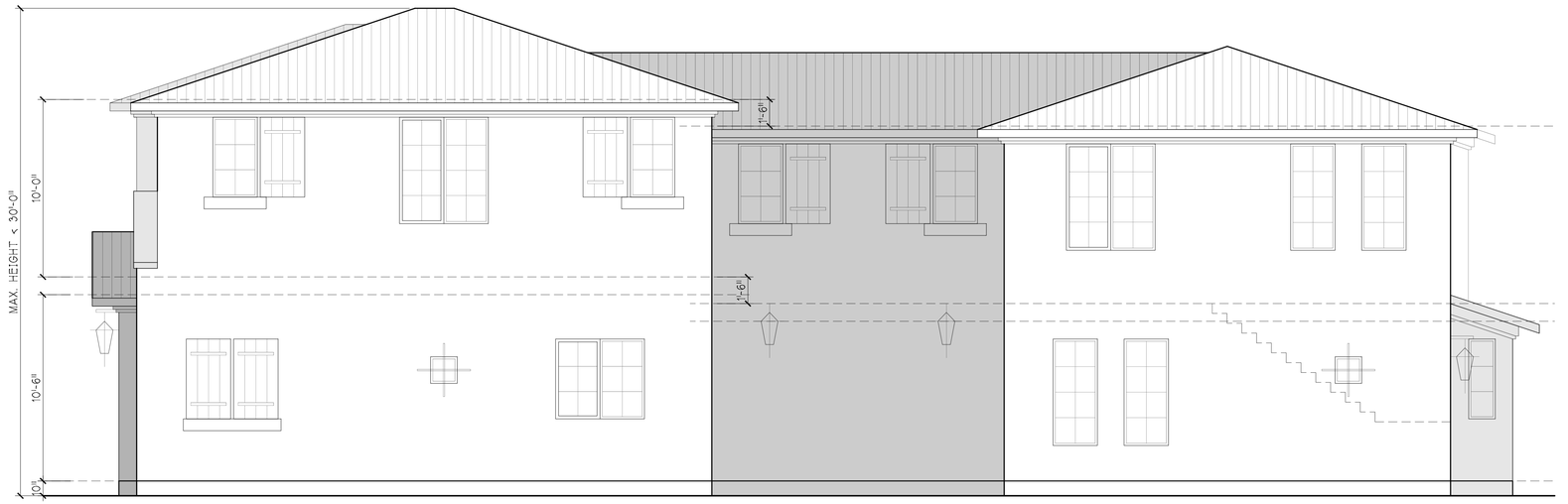
1 **ELEVATION @ UNIT 5,6**
1/4" = 1'-0"
VIEW FROM MULBERRY STREET



2 **ELEVATION @ UNIT 5,6**
1/4" = 1'-0"
VIEW FROM PRIVATE DRIVEWAY



3 **ELEVATION @ UNIT 5,6**
1/4" = 1'-0"
VIEW FROM GUEST PARKING



4 **ELEVATION @ UNIT 5,6**
1/4" = 1'-0"
VIEW FROM PRIVATE BACKYARD

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ELEVATIONS
UNIT 5,6

Sheet No:

A7.3.3

of Sheets



1 ELEVATION @ UNIT 5,6
1/4" = 1'-0"
VIEW FROM MULBERRY STREET



2 ELEVATION @ UNIT 5,6
1/4" = 1'-0"
VIEW FROM PRIVATE DRIVEWAY



3 ELEVATION @ UNIT 5,6
1/4" = 1'-0"
VIEW FROM GUEST PARKING



4 ELEVATION @ UNIT 5,6
1/4" = 1'-0"
VIEW FROM PRIVATE BACKYARD

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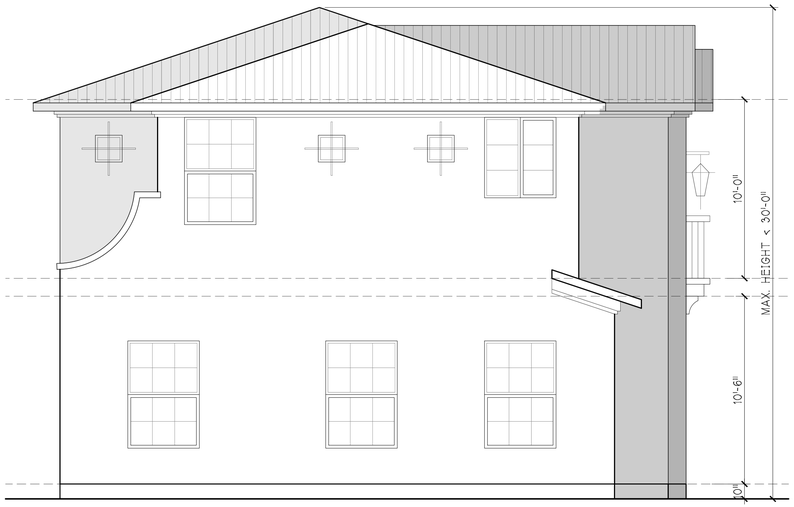
Revisions:

COLORED ELEVATIONS
UNIT 5,6

Sheet No:

A7.3.3a

of Sheets



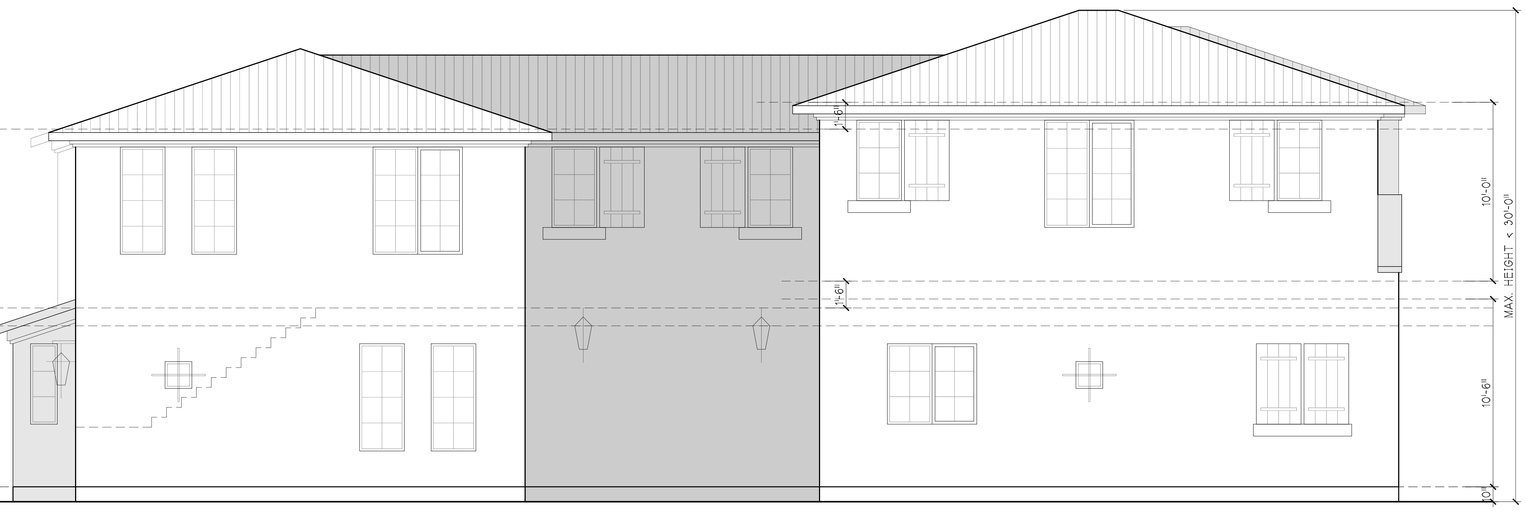
1 **ELEVATION @ UNIT 7,8**
1/4" = 1'-0"
VIEW FROM REAR SIDE OF THE SITE



2 **ELEVATION @ UNIT 7,8**
1/4" = 1'-0"
VIEW FROM PRIVATE DRIVEWAY



3 **ELEVATION @ UNIT 7,8**
1/4" = 1'-0"
VIEW FROM GUEST PARKING



4 **ELEVATION @ UNIT 7,8**
1/4" = 1'-0"
VIEW FROM PRIVATE BACKYARD

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ELEVATIONS
UNIT 7,8

Sheet No:

A7.3.4

of Sheets



1 ELEVATION @ UNIT 7,8
1/4" = 1'-0"
VIEW FROM REAR SIDE OF THE SITE



2 ELEVATION @ UNIT 7,8
1/4" = 1'-0"
VIEW FROM PRIVATE DRIVEWAY



3 ELEVATION @ UNIT 7,8
1/4" = 1'-0"
VIEW FROM GUEST PARKING



4 ELEVATION @ UNIT 7,8
1/4" = 1'-0"
VIEW FROM PRIVATE BACKYARD

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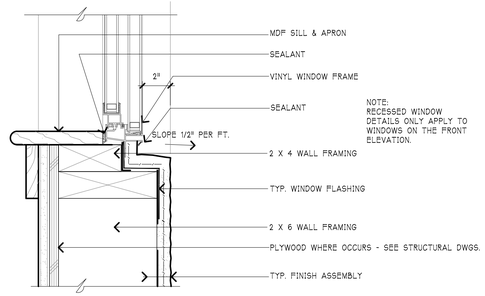
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COLORED ELEVATIONS @ UNIT 7,8

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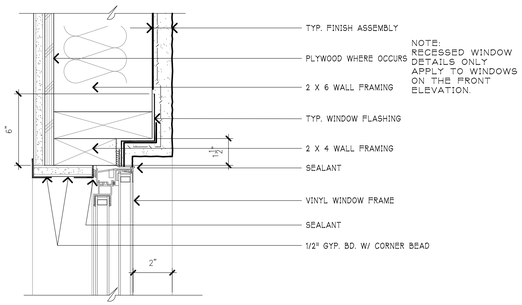
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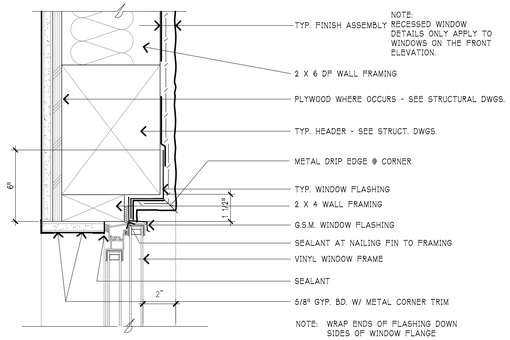
A RECESSED WINDOW SILL

3" = 1'-0"



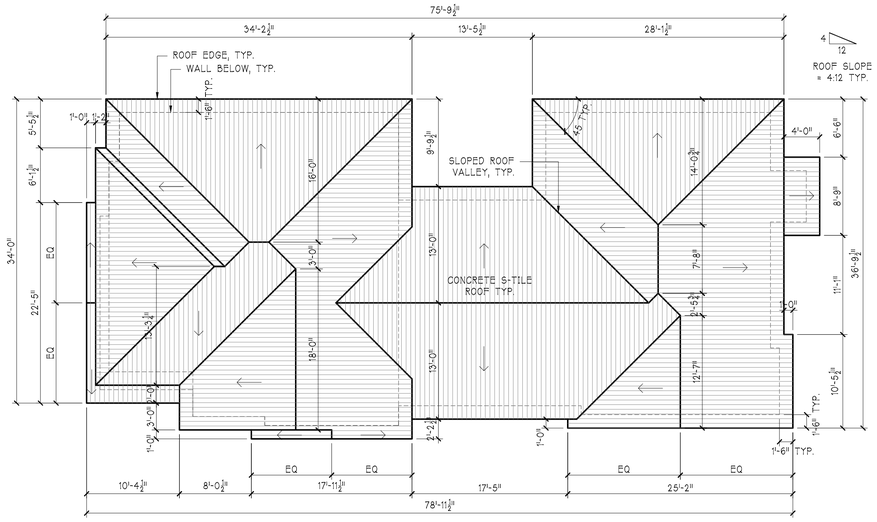
B RECESSED WINDOW JAMB

3" = 1'-0"



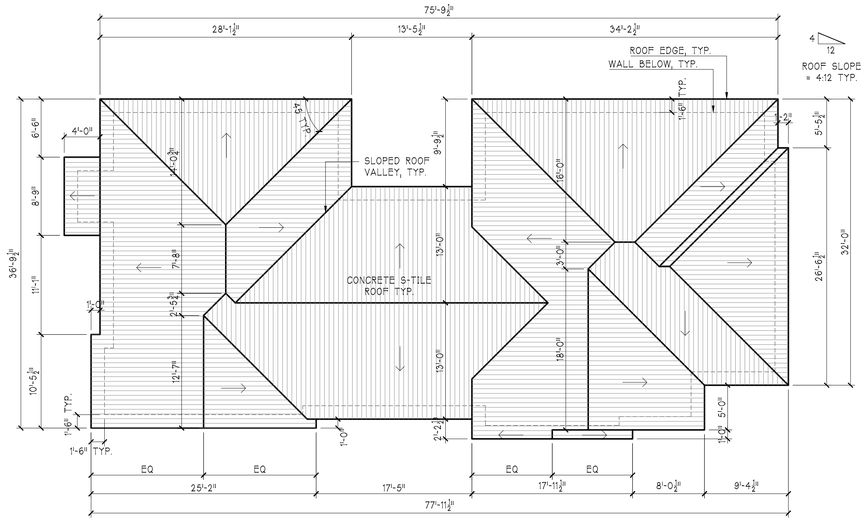
C RECESSED WINDOW HEAD

3" = 1'-0"



1 ROOF PLAN - UNIT 1,2

1/8" = 1'-0"



2 ROOF PLAN - UNIT 3,4

1/8" = 1'-0"

3 ROOF PLAN - UNIT 5,6

1/8" = 1'-0"

4 ROOF PLAN - UNIT 7,8

1/8" = 1'-0"

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ROOF PLAN & WINDOW DETAILS

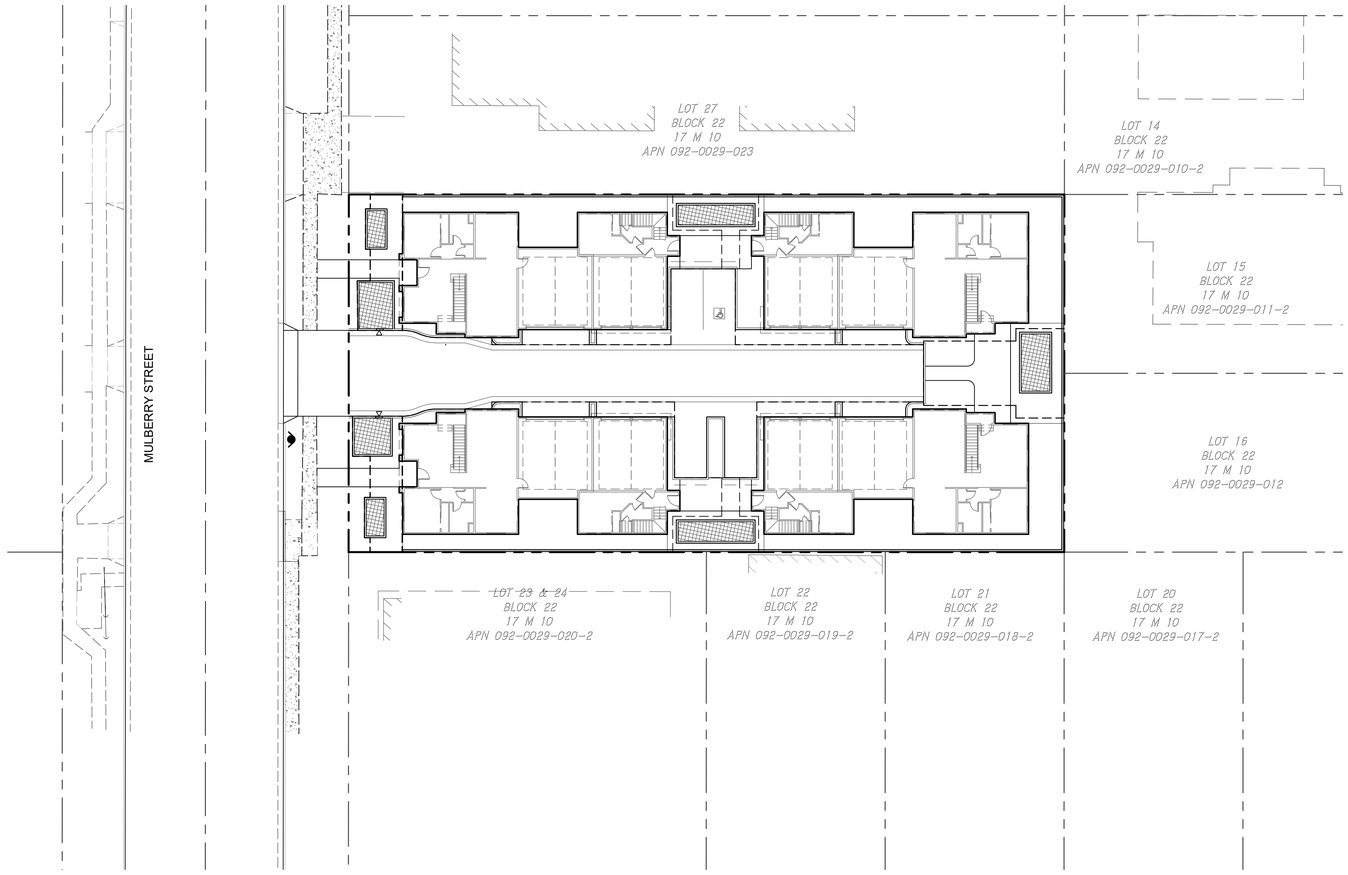
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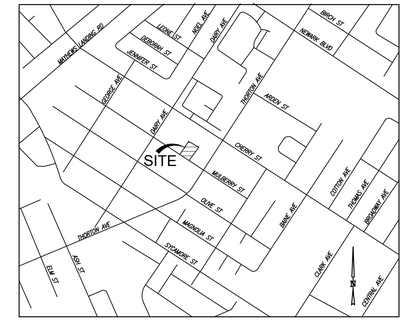
A7.4

of Sheets

36952 MULBERRY STREET

NEWARK, CALIFORNIA





VICINITY MAP
NTS

LEGEND

- PROPERTY LINE – SUBJECT PARCEL
- PROPERTY LINE – ADJACENT PARCEL
- CENTERLINE / MONUMENT LINE, AS NOTED
- EASEMENT LINE
- CURB & GUTTER
- SD — STORM DRAIN LINE
- SS — SANITARY SEWER LINE
- WATER LINE
- PERFORATED PVC SUBDRAIN
- GAS — GAS — GAS — GAS LINE
- STORM DRAIN MANHOLE
- SANITARY SEWER MANHOLE
- STORM DRAIN INLET
- OVERLAND RELEASE PATH
- BIORETENTION AREA

ABBREVIATIONS

ANGPT	ANGLE POINT
ARV	AIR RELEASE VALVE
ASB	AGGREGATE SUBBASE
BFP	BACKFLOW PREVENTER
BO	BLOWOFF VALVE
B/W	BACK OF WALK
C&G	CURB & GUTTER
CL	CENTERLINE
CR	CURB RAMP
DIP	DUCTILE IRON PIPE
DW	CENTERLINE OF DRIVEWAY
EASE	EASEMENT
EP	EDGE OF PAVEMENT
ER	END OF RETURN
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
FG	FINISH GRADE
FH	FIRE HYDRANT
FL	FLOW LINE
FS	FIRE SERVICE
F/W	FRONT OF WALK
GB	GRADE BREAK
HP	HIGH POINT
INV	INVERT
LAT	LATERAL
LE	LANDSCAPE EASEMENT
LP	LOW POINT
LT, RT	LEFT, RIGHT
PSDE	PRIVATE STORM DRAIN EASEMENT
PSSE	PRIVATE SANITARY SEWER EASEMENT
PUE	PUBLIC UTILITY EASEMENT
PVC	POLYVINYL CHLORIDE
PWLE	PRIVATE WATER LINE EASEMENT
RCP	REINFORCED CONCRETE PIPE
RW, R/W	RIGHT OF WAY
SS	SANITARY SEWER
SSCO	SANITARY SEWER CLEAN OUT
SDDI	STORM DRAIN DROP INLET
SDMH	STORM DRAIN MANHOLE
SSMH	SANITARY SEWER MANHOLE
SSLat	SANITARY SEWER LATERAL
SW	SIDEWALK
TC	TOP OF CURB
TDC	TOP OF DEPRESSED CURB
TRC	TOP OF ROLLED CURB
TVC	TOP OF VERTICAL CURB
VCP	VITRIFIED CLAY PIPE
WLE	WATER LINE EASEMENT
WM	WATER METER
WS	WATER SERVICE
WV	WATER VALVE
XING	CROSSING

EARTH WORK QUANTITIES

CUT:	140 CY
FILL:	350 CY
EXPORT:	0 CY
IMPORT:	210 CY

NOTE: EARTHWORK QUANTITIES SHOWN ARE APPROXIMATE. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO INDEPENDENTLY ESTIMATE QUANTITIES FOR HIS/HER OWN USE.

ADDRESS:

36952 MULBERRY STREET
NEWARK, CA

GENERAL NOTES:

ALL FEATURES SHOWN HEREON REPRESENT SURFACE CONDITIONS OF THE PROJECT AREA COMPILED FROM A GROUND SURVEY PERFORMED FEBRUARY 5, 2020. UNDERGROUND UTILITIES, WHERE SHOWN, ARE BASED UPON OBSERVED FIELD MARKINGS BY JMH WEISS AND MAY OR MAY NOT REPRESENT A COMPLETE INVENTORY OF UNDERGROUND UTILITIES OR STRUCTURES. SURVEYOR MADE NO OTHER ATTEMPT TO DETERMINE THE EXISTENCE OR EXTENT OF UNDERGROUND UTILITIES OR OTHER FEATURES NOT SURFACE VISIBLE.

BASIS OF BEARINGS:

BEARINGS ARE BASED UPON THE MONUMENTED ALIGNMENT OF MULBERRY STREET AS SHOWN THAT RECORD OF SURVEY RECORDED IN BOOK 43 OF SURVEYS AT PAGE 39 ON MARCH 9, 2017.

BENCHMARK:

VERTICAL DATUM IS BASED UPON A CITY OF NEWARK BENCHMARK, A BRASS DISC LOCATED IN THE TOP OF CURB AT THE SOUTHWEST CORNER OF MATHEWS LANDING ROAD AND SYCAMORE STREET. TOP OF DISC ELEVATION TAKEN AS 15.61', CITY OF NEWARK VERTICAL DATUM, NGVD 1929.

SHEET INDEX

PAGE	SHEET	DESCRIPTION
1	C-1.0	COVER SHEET
2	C-2.0	EXISTING & DEMOLITION PLAN
3	C-3.0	GRADING & UTILITY PLAN
4	C-3.1	STORM MAIN EXTENSION
5	C-4.0	STORMWATER CONTROL PLAN
6	C-5.0	SECTIONS & DETAILS
7	C-5.1	USD & ACWD DETAILS
8	C-6.0	TENTATIVE TRACT MAP

0 10' 20' 40'
SCALE 1" = 20'

MULBERRY RESIDENTIAL

36952 MULBERRY STREET
NEWARK - CALIFORNIA

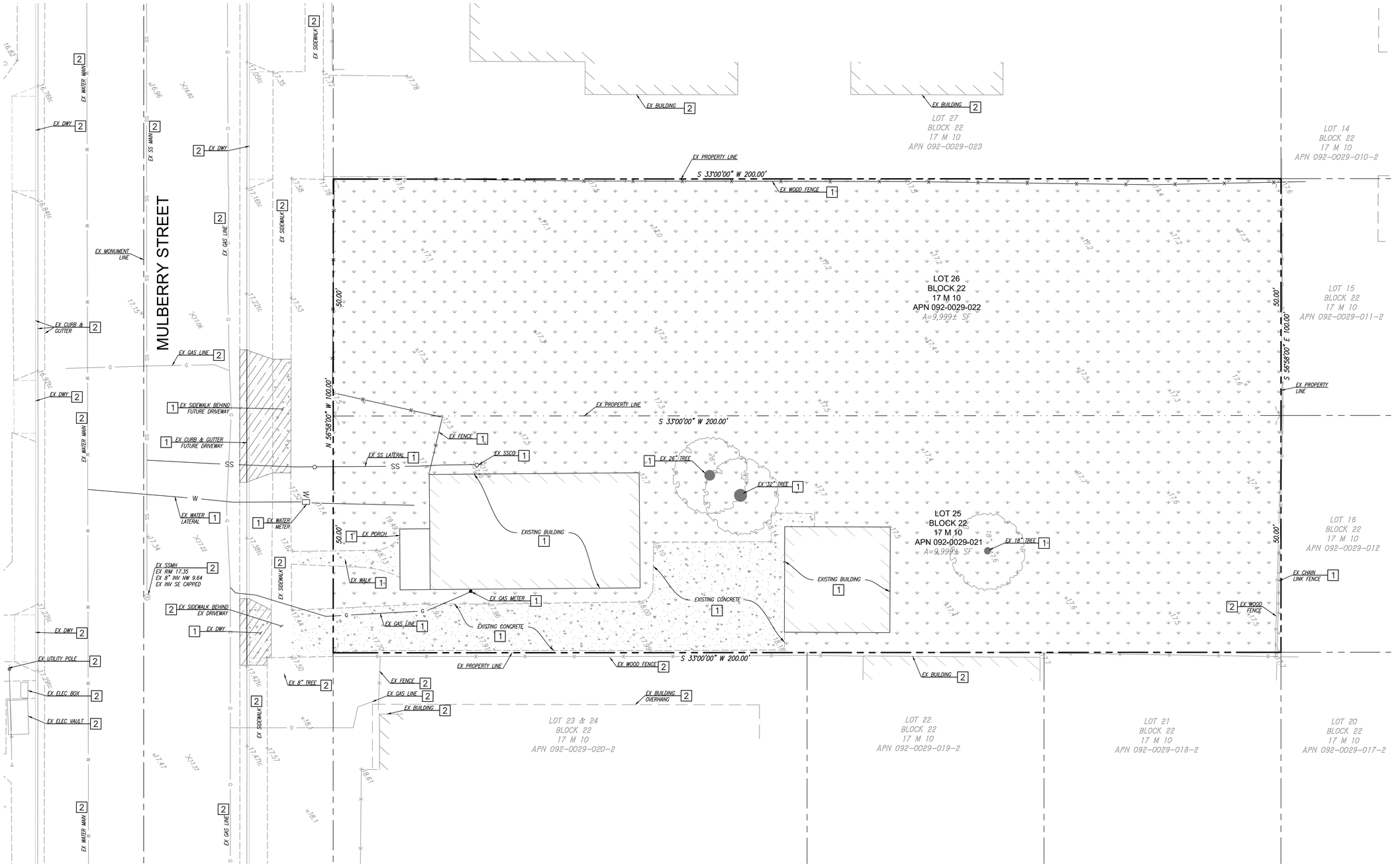
JMH Weiss
Real Estate Development Consultants
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1731 Technology Drive, Suite 880
San Jose, CA 95110
(408) 286-4555
JMHWeiss.com

Date: 7-11-2022
Scale:
Revisions:

Drawing Title: COVER SHEET
Sheet No: C-1.0
Sheet 1 of 8

LPMD Architects
1288 Kifer Road, Unit 206,
Sunnyvale, CA 94086
Telephone : 408-992-0280
Fax : 408-992-0281

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GENERAL DEMOLITION NOTES:

1. CONTRACTOR SHALL VERIFY ALL EXISTING UTILITY SIZES AND INVERTS. ANY DISCREPANCY BETWEEN THESE PLANS AND THE FIELD SHALL BE COMMUNICATED TO THE ENGINEER PRIOR TO DEMOLITION.
2. GAS, WATER, AND SANITARY SEWER SHOWN ON THIS PLAN FOR REFERENCE ONLY. CONTRACTOR SHALL CONTACT U.S.A. (UNDERGROUND SERVICE ALERT AT (800)-227-2600 FOR LOCATION OF ALL UTILITIES. THE OWNER/CONTRACTOR MAY HIRE AN INDEPENDENT CONSULTANT TO LOCATE AND VERIFY ALL ONSITE UTILITIES AT THEIR OWN DISCRETION.
3. ALL EXISTING ELECTRICAL AND GAS FACILITY ABANDONMENT AND/OR REMOVAL TO BE COMPLETED IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE GEOTECHNICAL ENGINEER. ALL REMOVAL AND BACKFILL OF EXISTING FACILITIES TO BE SUPERVISED BY THE GEOTECHNICAL ENGINEER.
4. ALL WATER VALVES TO BE MARKED FOR LOCATION. CONTRACTOR TO MAINTAIN RECORD OF ALL EXISTING VALVES ON-SITE RELATED TO FIRE SUPPLY. NO HYDRANTS SHALL BE REMOVED UNLESS NOTED ON THIS PLAN.
5. SEE GEOTECHNICAL REPORT FOR OPTION OF MATERIAL RECYCLING INCLUDING ASPHALT, CONCRETE, AND BASE MATERIAL.
6. MAINTAIN DRIVEWAY ACCESS FOR ADJACENT PROPERTIES AT ALL TIMES. PROVIDE TRAFFIC SIGNAGE CONTROLS FOR ALL AREAS WHERE TRAFFIC WILL BE LIMITED DUE TO DEMOLITION ACTIVITIES.
7. CONTRACTOR TO PROVIDE EROSION CONTROL BMP'S FOR ALL EXPOSED AREAS DURING DEMOLITION, INCLUDING STOCKPILES. CONSTRUCTION ENTRANCES SHALL BE CONSTRUCTED AT ACCESS POINTS TO DISTURBED AREAS.
8. AN AIR QUALITY PERMIT FOR DEMOLITION IS REQUIRED FROM THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT (BAAQMD). CONTACT PHONE NUMBER IS 415-771-6000.
9. ALL BUILDINGS, CURBS, UTILITIES, AND PAVEMENT WITHIN LIMIT OF WORK TO BE REMOVED UNLESS OTHERWISE NOTED.
10. DAMAGED CURB, GUTTER, AND SIDEWALK WITHIN THE PUBLIC RIGHT OF WAY ALONG PROPERTY'S FRONTAGE SHALL BE REPAIRED OR REPLACED TO THE NEAREST SCORE MARK IN A MANNER ACCEPTABLE TO THE CITY ENGINEER OR HIS DESIGNEE.
11. ALL SANITARY SEWER MAIN AND LATERALS AS SHOWN TO BE ABANDONED SHALL BE DONE IN ACCORDANCE WITH UNION SANITARY DISTRICT REQUIREMENTS.
12. ALL WORK IN THE PUBLIC STREET REQUIRES AN ENCROACHMENT PERMIT AND TRAFFIC CONTROL PLAN.
13. ALL OFFSITE UTILITY BOXES TO REMAIN AND TO BE ADJUSTED TO PROPOSED GRADE UNLESS OTHERWISE NOTED.

LEGEND

- CONCRETE TO BE REMOVED
- GRASS TO BE REMOVED
- TO BE REMOVED
- [1] TO BE REMOVED
- [2] TO REMAIN

NOTES:

1. PHYSICAL ITEMS SHOWN ON THIS SURVEY ARE LIMITED TO THOSE SURFACE ITEMS VISIBLE AS OF THE DATE OF THIS SURVEY AND FROM AVAILABLE RECORD DATA. SUBSURFACE OBJECTS, IF ANY, MAY NOT BE SHOWN. SAID SUBSURFACE OBJECTS MAY INCLUDE, BUT ARE NOT LIMITED TO, UNDERGROUND, UTILITY LINES, UTILITY VAULTS, CONCRETE FOOTINGS, SLABS, SHORING, STRUCTURAL PILES, PIPING, UNDERGROUND TANKS, AND ANY OTHER SUBSURFACE STRUCTURES NOT REVELED BY A SURFACE INSPECTION.
2. TREE TRUNK LOCATIONS ARE APPROXIMATE. TREES THAT CROSS A PROPERTY LINE AT GROUND LEVEL SHOULD BE CONSIDERED TO BE JOINT OWNED BY THE RESPECTIVE PROPERTY OWNERS. CONSULT AN ARBORIST FOR DETAILS.

0 5' 10' 20'

SCALE: 1" = 10'

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NEWARK - CALIFORNIA

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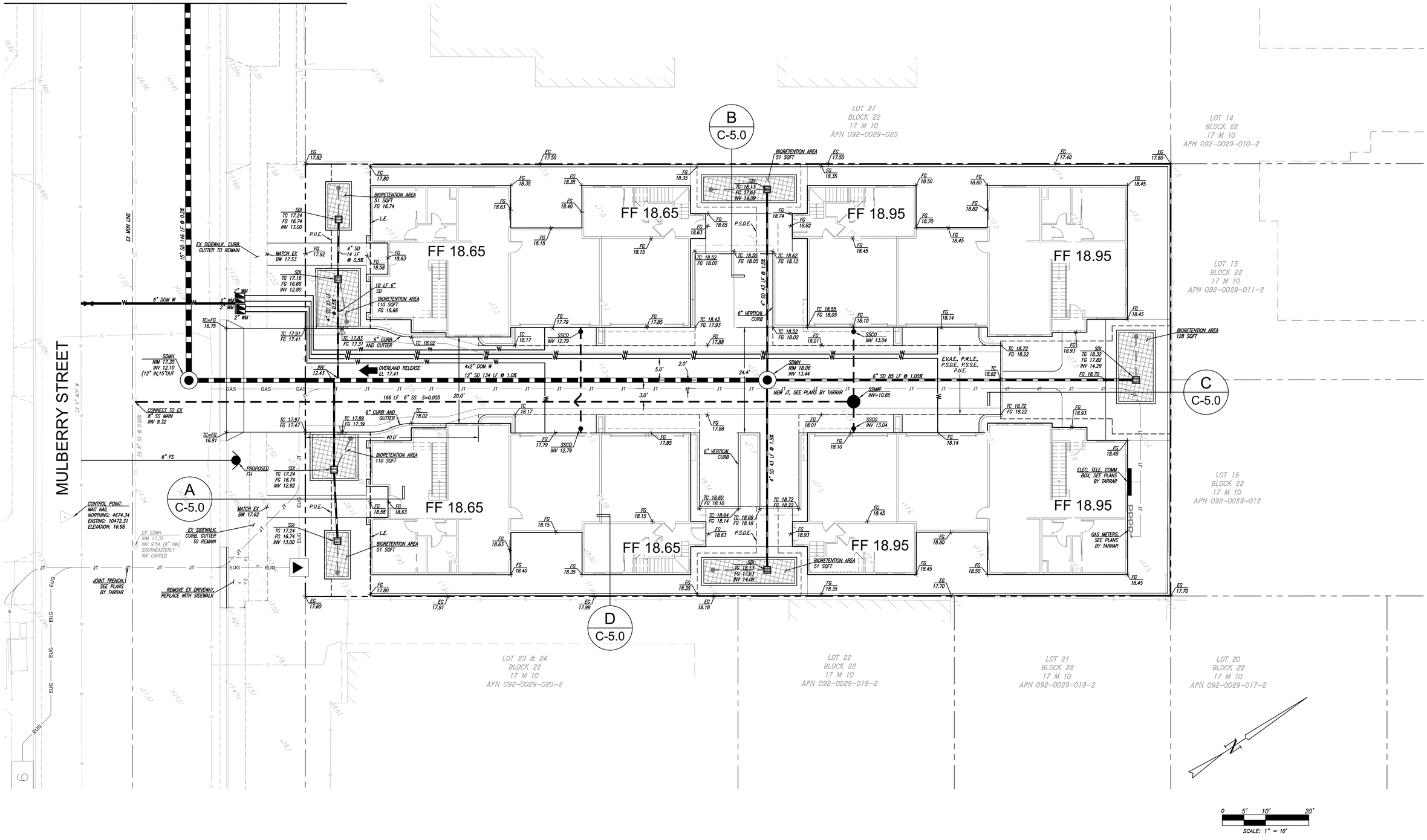
Drawing Title: EXISTING & DEMOLITION PLAN

Sheet No: C-2.0

Sheet 2 of 8

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SEE C-3.1 FOR CONTINUATION



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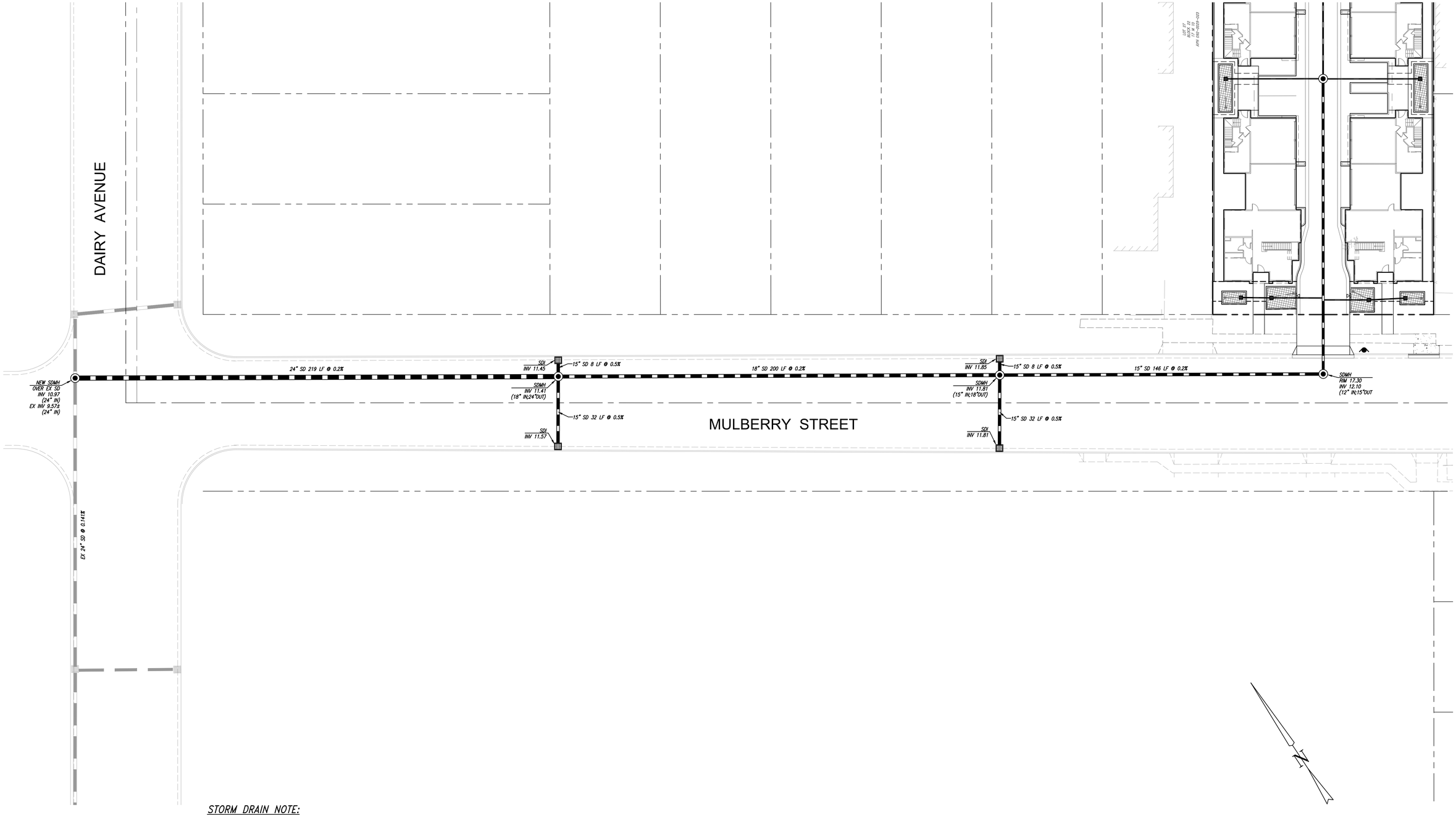
Drawing Title: GRADING & UTILITY PLAN

Sheet No: C-3.0

Sheet 3 of 8

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STORM DRAIN NOTE:

EXISTING STORM DRAIN ELEVATIONS SHOWN HEREON ARE BASED ON AS-BUILTS PROVIDED BY THE CITY OF NEWARK. NO ATTEMPT HAS BEEN MADE TO VERIFY THESE ELEVATIONS.

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Drawing Title: STORM MAIN EXTENSION

Sheet No: C-3.1

Sheet 4 of 8

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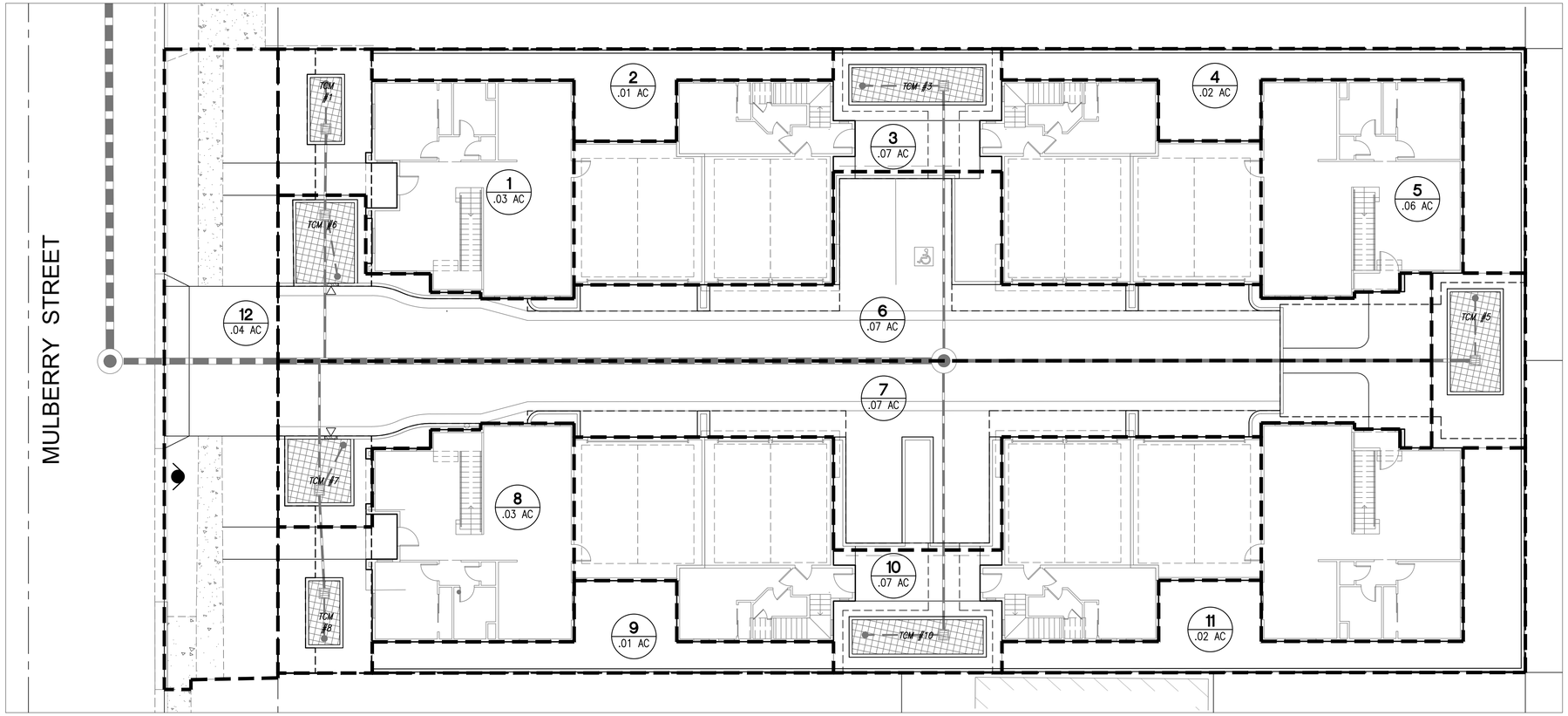


TABLE 1
ROUTINE MAINTENANCE ACTIVITIES FOR FLOW-THROUGH PLANTERS

NO.	MAINTENANCE TASK	FREQUENCY OF TASK
1	INSPECT THE PLANTER SURFACE AREA, INLETS AND OUTLETS FOR OBSTRUCTIONS AND TRASH; CLEAR ANY OBSTRUCTIONS AND REMOVE TRASH.	QUARTERLY
2	INSPECT PLANTER FOR STANDING WATER. IF STANDING WATER DOES NOT DRAIN WITHIN 2-3 DAYS, THE SURFACE BIOTREATMENT SOIL SHOULD BE TILLED OR REPLACED WITH THE APPROVED SOIL MIX AND REPLANTED. USE THE CLEANOUT RISER TO CLEAR ANY UNDERDRAINS OF OBSTRUCTIONS OR CLOGGING MATERIAL.	QUARTERLY
3	CHECK FOR ERODED OR SETTLED BIOTREATMENT SOIL MEDIA. LEVEL SOIL WITH RAKE AND REMOVE/REPLANT VEGETATION AS NECESSARY.	QUARTERLY
4	MAINTAIN THE VEGETATION AND IRRIGATION SYSTEM. PRUNE AND WEED TO KEEP FLOW-THROUGH PLANTER NEAT AND ORDERLY IN APPEARANCE.	QUARTERLY
5	EVALUATE HEALTH AND DENSITY OF VEGETATION. REMOVE AND REPLACE ALL DEAD AND DISEASED VEGETATION. REMOVE EXCESSIVE GROWTH OF PLANTS THAT ARE TOO CLOSE TOGETHER.	ANNUALLY, BEFORE THE RAINY SEASON BEGINS
6	USE COMPOST AND OTHER NATURAL SOIL AMENDMENTS AND FERTILIZERS INSTEAD OF SYNTHETIC FERTILIZERS, ESPECIALLY IF THE SYSTEM USES AN UNDERDRAIN.	ANNUALLY, BEFORE THE RAINY SEASON BEGINS
7	INSPECT THE OVERFLOW PIPE TO MAKE SURE THAT IT CAN SAFELY CONVEY EXCESS FLOWS TO A STORM DRAIN. REPAIR OR REPLACE ANY DAMAGED OR DISCONNECTED PIPING. USE THE CLEANOUT RISER TO CLEAR UNDERDRAINS OF OBSTRUCTIONS OR CLOGGING MATERIAL.	ANNUALLY, BEFORE THE RAINY SEASON BEGINS
8	INSPECT THE ENERGY DISSIPATOR AT THE INLET TO ENSURE IT IS FUNCTIONING ADEQUATELY, AND THAT THERE IS NO SCOUR OF THE SURFACE MULCH. REMOVE ANY ACCUMULATION OF SEDIMENT.	ANNUALLY, BEFORE THE RAINY SEASON BEGINS
9	INSPECT AND, IF NEEDED, REPLACE WOOD MULCH. IT IS RECOMMENDED THAT 2" TO 3" OF COMPOSTED ARBOR MULCH BE APPLIED ONCE A YEAR.	ANNUALLY, BEFORE THE RAINY SEASON BEGINS
10	INSPECT SYSTEM FOR EROSION OF BIOTREATMENT SOIL MEDIA, LOSS OF MULCH, STANDING WATER, CLOGGED OVERFLOWS, WEEDS, TRASH AND DEAD PLANTS. IF USING ROCK MULCH, CHECK FOR 3" OF COVERAGE.	ANNUALLY AT THE END OF THE RAINY SEASON AND/OR AFTER LARGE STORM EVENTS,
11	INSPECT SYSTEM FOR STRUCTURAL INTEGRITY OF WALLS, FLOW SPREADERS, ENERGY DISSIPATORS, CURB CUTS, OUTLETS AND FLOW SPLITTERS.	ANNUALLY AT THE END OF THE RAINY SEASON AND/OR AFTER LARGE STORM EVENTS,

ROCK DEPTH CHART

DMA#	TOTAL STORAGE REQ'D (cu ft)	VOLUME STORED IN PONDING (cu ft)	VOLUME STORED IN GRAVEL SECTION (cu ft)	ROCK SECTION (35% VOID RATIO) (ft)
1	57	34	23	1.29
3	128	84	44	1.00
5	53	43	10	0.45
6	116	73	43	1.17
7	116	73	43	1.17
8	57	34	23	1.29
10	128	84	44	1.00
12	53	43	10	0.45

TREATMENT CONTROL MEASURE SUMMARY TABLE

DMA #	TCM #	Location	Treatment Type	LID or Non-LID	Sizing Method	Drainage Area (s.f.)	Impervious Area (s.f.)	Pervious Area (Permeable Pavement) (s.f.)	Pervious Area (Other) (s.f.)	% Onsite Area Treated by LID or Non-LID TCM	Treatment Area Required (s.f.)	Treatment Area Provided (s.f.)	Overflow Riser Height (in)
1	1	Onsite	Bioretention lined* w/ underdrain	LID	2C. Flow: 4% Method **	1,465	1,192	0	273	7.33%	49	51	6.0
2	-	Onsite	Self-treating areas	LID	N/A	544	0	0	544	2.72%	-	-	-
3	3	Onsite	Bioretention lined* w/ underdrain	LID	2C. Flow: 4% Method **	3,015	2,683	0	332	15.08%	109	126	6.0
4	-	Onsite	Self-treating areas	LID	N/A	730	0	0	730	3.65%	-	-	-
5	5	Onsite	Bioretention lined* w/ underdrain	LID	2C. Flow: 4% Method **	2,648	2,228	0	420	13.24%	91	64	6.0
6	6	Onsite	Bioretention lined* w/ underdrain	LID	2C. Flow: 4% Method **	2,922	2,418	0	504	14.61%	99	110	6.0
7	7	Onsite	Bioretention lined* w/ underdrain	LID	2C. Flow: 4% Method **	2,922	2,418	0	504	14.61%	99	110	6.0
8	8	Onsite	Bioretention lined* w/ underdrain	LID	2C. Flow: 4% Method **	1,465	1,192	0	273	7.33%	49	51	6.0
9	-	Onsite	Self-treating areas	LID	N/A	544	0	0	544	2.72%	-	-	-
10	10	Onsite	Bioretention lined* w/ underdrain	LID	2C. Flow: 4% Method **	3,015	2,683	0	332	15.08%	109	126	6.0
11	-	Onsite	Self-treating areas	LID	N/A	730	0	0	730	3.65%	-	-	-
12	-	Offsite	Maintenance	N/A	N/A	1,845	940	0	905	-	-	-	-
					Totals:	20,000	14,814	0	5,186	100.00%			

Footnotes:

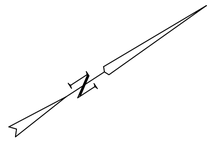
* "Lined" refers to an impermeable liner placed on the bottom of a Bioretention basin or a concrete Flow-Through Planter, such that no infiltration into native soil occurs.

** Sizing for Bioretention Area Required calculated using the 4% Method ((Impervious Area + (.1 x Pervious Area)) x 0.04). Volume sizing used for gravel section sizing

*** Per Chapter 2.3 of the C3 Stormwater Handbook Roadway projects that add new sidewalk along an existing roadway are exempt from Provision C.3.c of the Municipal Stormwater Permit.

LEGEND

- BIORETENTION AREA (BRA)
- DRAINAGE AREA BOUNDARY LINE
- XX — DRAINAGE AREA DESIGNATION
- XX AC — TRIBUTARY AREA

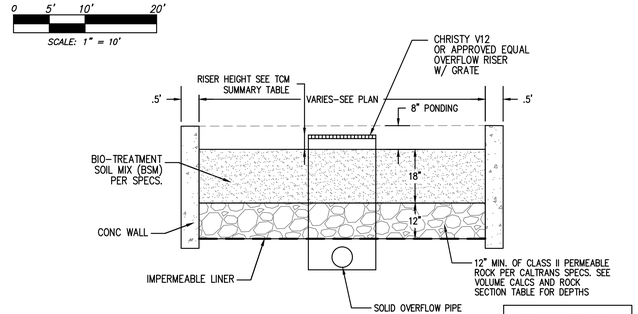


0 5' 10' 20'

SCALE: 1" = 10'

STANDARD STORMWATER CONTROL NOTES:

- *STANDING WATER SHALL NOT REMAIN IN THE TREATMENT MEASURES FOR MORE THAN FIVE DAYS, TO PREVENT MOSQUITO GENERATION. SHOULD ANY MOSQUITO ISSUE ARISE, CONTACT THE ALAMEDA COUNTY VECTOR CONTROL DISTRICT. MOSQUITO LARVICIDES SHALL BE APPLIED ONLY WHEN ABSOLUTELY NECESSARY, AS INDICATED BY THE DISTRICT, AND THEN ONLY BY A LICENSED PROFESSIONAL OR CONTRACTOR. CONTACT INFORMATION FOR THE DISTRICT IS PROVIDED BELOW.*
- *DO NOT USE PESTICIDES OR OTHER CHEMICAL APPLICATIONS TO TREAT DISEASED PLANS, CONTROL WEEDS OR REMOVED UNWANTED GROWTH. EMPLOY NON-CHEMICAL CONTROLS (BIOLOGICAL, PHYSICAL AND CULTURAL CONTROLS) TO TREAT A PEST PROBLEM. PRUNE PLANS PROPERTY AND AT THE APPROPRIATE TIME OF YEAR. PROVIDE ADEQUATE IRRIGATION FOR LANDSCAPE PLANS. DO NOT OVER WATER.*



BIORETENTION BASIN W/ LINER

SCALE: N.T.S.

SIZING METHODS:
4%

PROJECT SITE INFORMATION:

1. **SOILS TYPE:** C
2. **GROUND WATER DEPTH:** 4' - 7'
3. **NAME OF RECEIVING BODY:** NEWARK SLOUGH
4. **FLOOD ZONE:** X
5. **FLOOD ELEVATION (IF APPLICABLE):** NA

BIOTREATMENT SOIL REQUIREMENTS

- BIORETENTION SOIL MIX SHALL MEET THE REQUIREMENTS AS OUTLINED IN APPENDIX C OF THE C.3 STORM WATER HANDBOOK AND SHALL BE A MIXTURE OF FINE SAND AND COMPOST MEASURED ON A VOLUME BASIS OF 60-70% SAND AND 30-40% COMPOST. CONTRACTOR TO REFER TO APPENDIX C FOR SAND AND COMPOST MATERIAL SPECIFICATIONS. CONTRACTOR MAY OBTAIN A COPY OF THE C3 HANDBOOK AT : HTTPS: //WWW.CLEANWATERPROGRAM.ORG
- PRIOR TO ORDERING THE BIOTREATMENT SOIL MIX OR DELIVERY TO THE PROJECT SITE, CONTRACTOR SHALL PROVIDE A BIOTREATMENT SOIL MIX SPECIFICATION CHECKLIST, COMPLETED BY THE SOIL MIX SUPPLIER AND CERTIFIED TESTING LAB.

BIOTREATMENT & FLOW-THROUGH PLANTER NOTES:

1. SEE GRADING PLAN FOR BASIN FOOTPRINT AND DESIGN ELEVATIONS.
2. PLACE 3 INCHES OF COMPOSTED, NON-FLOATABLE MULCH IN AREAS BETWEEN STORMWATER PLANTINGS.
3. SEE LANDSCAPE PLAN FOR MULCH, PLANT MATERIALS AND IRRIGATION REQUIREMENTS
4. CURB CUTS SHALL BE A MINIMUM 18" WIDE AND SPACED AT 10' O.C. INTERVALS OR LESS AND SLOPED TO DIRECT STORMWATER TO DRAIN INTO THE BASINS. CURB CUTS SHALL ALSO NOT BE PLACED INLINE WITH OVERFLOW CATCH BASIN. SEE GRADING PLAN FOR MORE DETAIL ON LOCATIONS OF CURB CUTS.
5. A MINIMUM 0.2' DROP BETWEEN STORM WATER ENTRY POINT (I.E. CURB OPENING, FLUSH CURB, ETC.) AND ADJACENT LANDSCAPE FINISHED GRADE.
6. DO NOT COMPACT NATIVE SOIL / SUBGRADE AT BOTTOM OF BASIN. LOOSEN SOIL TO 12" DEPTH.

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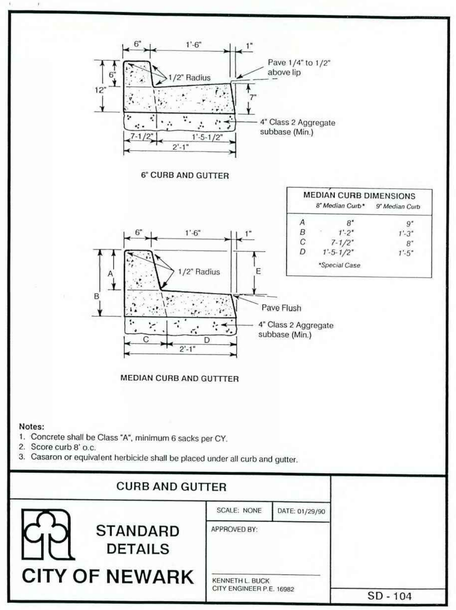
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Sheet No: C-4.0

Sheet 5 of 8

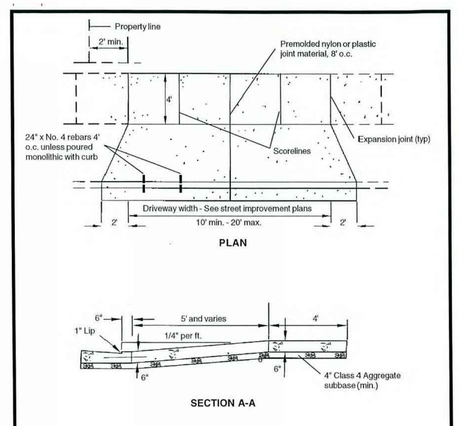
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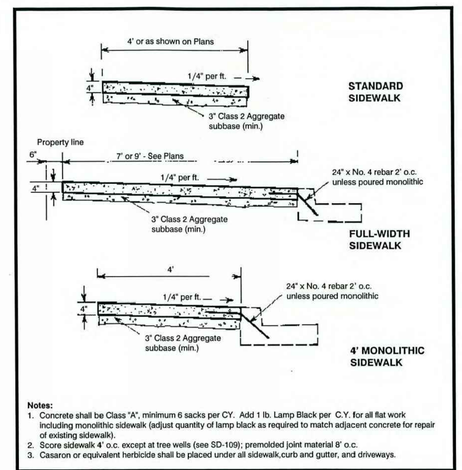
Notes:
1. Concrete shall be Class "A", minimum 6 sacks per CY.
2. Score curb 8' o.c.
3. Casaron or equivalent herbicide shall be placed under all curb and gutter.

CURB AND GUTTER		
STANDARD DETAILS CITY OF NEWARK	SCALE: NONE APPROVED BY: KENNETH L. BUCK CITY ENGINEER P.E. 16982	DATE: 01/29/90 SD - 104



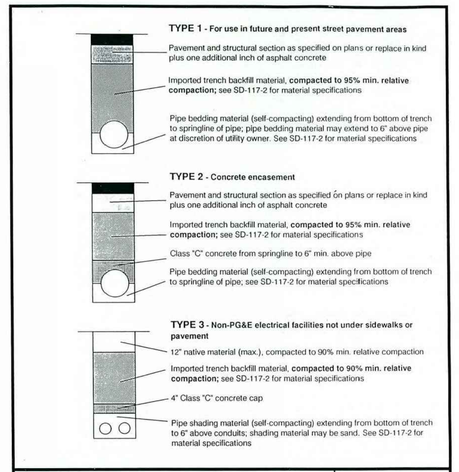
Notes:
1. Concrete shall be Class "A", minimum 6 sacks per CY. 1 LB. lamp black per CY.
2. Casaron or equivalent herbicide shall be placed under all driveways, curb and gutter and sidewalks.

DRIVEWAY - TYPE R		
STANDARD DETAILS CITY OF NEWARK	SCALE: NONE APPROVED BY: KENNETH L. BUCK CITY ENGINEER P.E. 16982	DATE: 03/07/91 SD - 106 - 1



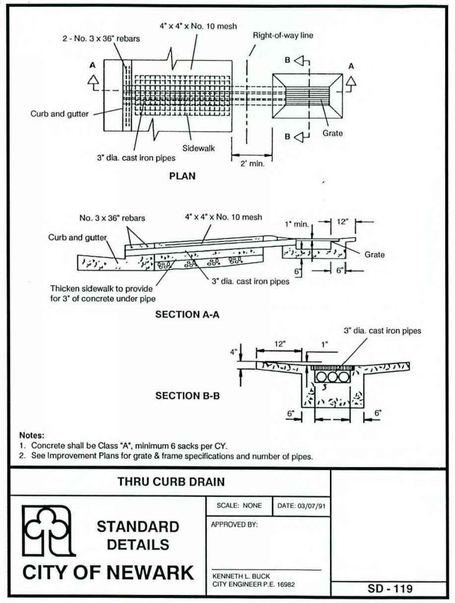
Notes:
1. Concrete shall be Class "A", minimum 6 sacks per CY. Add 1 lb. Lamp Black per C.Y. for all flat work including monolithic sidewalk (adjust quantity of lamp black as required to match adjacent concrete for repair of existing sidewalk).
2. Score sidewalk 4' o.c. except at tree wells (see SD-109); premolded joint material 8' o.c.
3. Casaron or equivalent herbicide shall be placed under all sidewalk,curb and gutter, and driveways.

SIDEWALK		
STANDARD DETAILS CITY OF NEWARK	SCALE: NONE APPROVED BY: KENNETH L. BUCK CITY ENGINEER P.E. 16982	DATE: 12/05/90 SD - 108



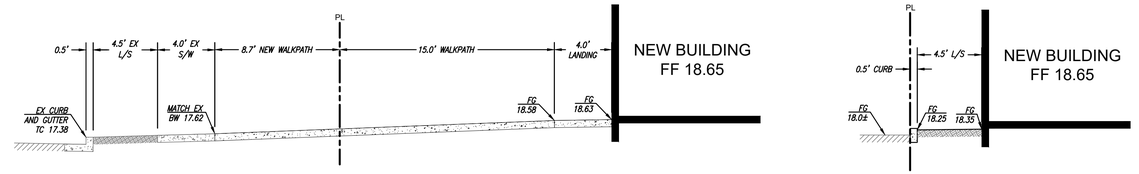
TRENCH BACKFILL - TYPES 1, 2 AND 3		
STANDARD DETAILS CITY OF NEWARK	SCALE: NONE APPROVED BY: Kenneth L. Buck KENNETH L. BUCK CITY ENGINEER P.E. 16982	DATE: 01/31/90 SD - 117 - 1

REGISTERED PROFESSIONAL ENGINEER KENNETH L. BUCK No. 16982 6/30/93 STATE OF CALIFORNIA



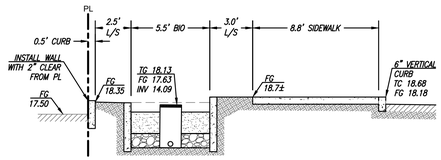
Notes:
1. Concrete shall be Class "A", minimum 6 sacks per CY.
2. See Improvement Plans for grate & frame specifications and number of pipes.

THRU CURB DRAIN		
STANDARD DETAILS CITY OF NEWARK	SCALE: NONE APPROVED BY: KENNETH L. BUCK CITY ENGINEER P.E. 16982	DATE: 03/07/91 SD - 119

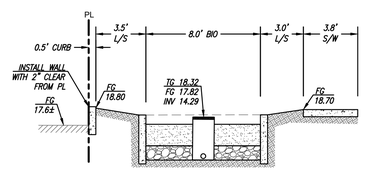


SECTION A
SCALE: 1" = 5'

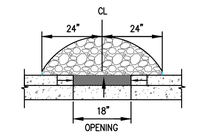
SECTION D
SCALE: 1" = 5'



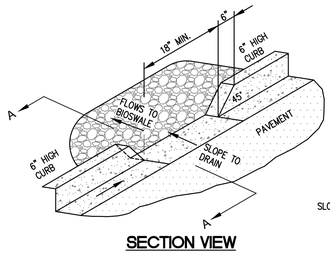
SECTION B
SCALE: 1" = 5'



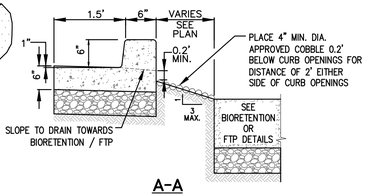
SECTION C
SCALE: 1" = 5'



PLAN VIEW

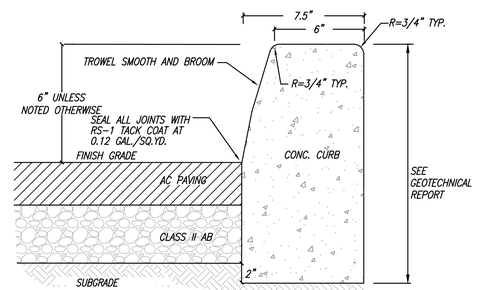


SECTION VIEW



A-A

CURB OPENING
SCALE: N.T.S.



VERTICAL CURB, TYP.
SCALE: N.T.S.

MULBERRY RESIDENTIAL

36952 MULBERRY STREET

NEWARK - CALIFORNIA

JMH Weiss
Real Estate Development Consultants
Planning and Engineering
1731 Technology Drive, Suite 880
San Jose, CA 95110
(408) 286-4555
JMHWeiss.com

Date: 7-11-2022
Scale:
Revisions:

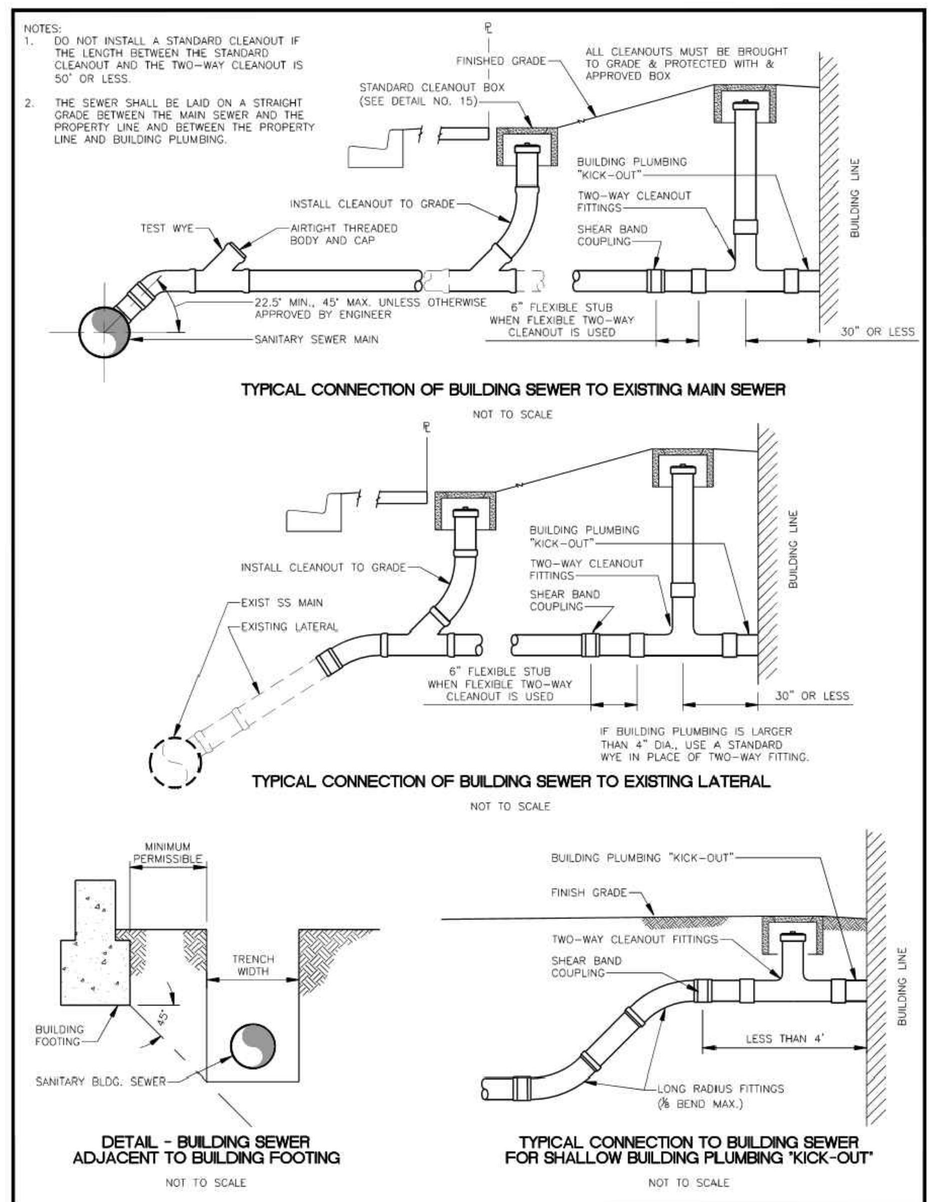
Drawing Title: SECTIONS & DETAILS

Sheet No: C-5.0

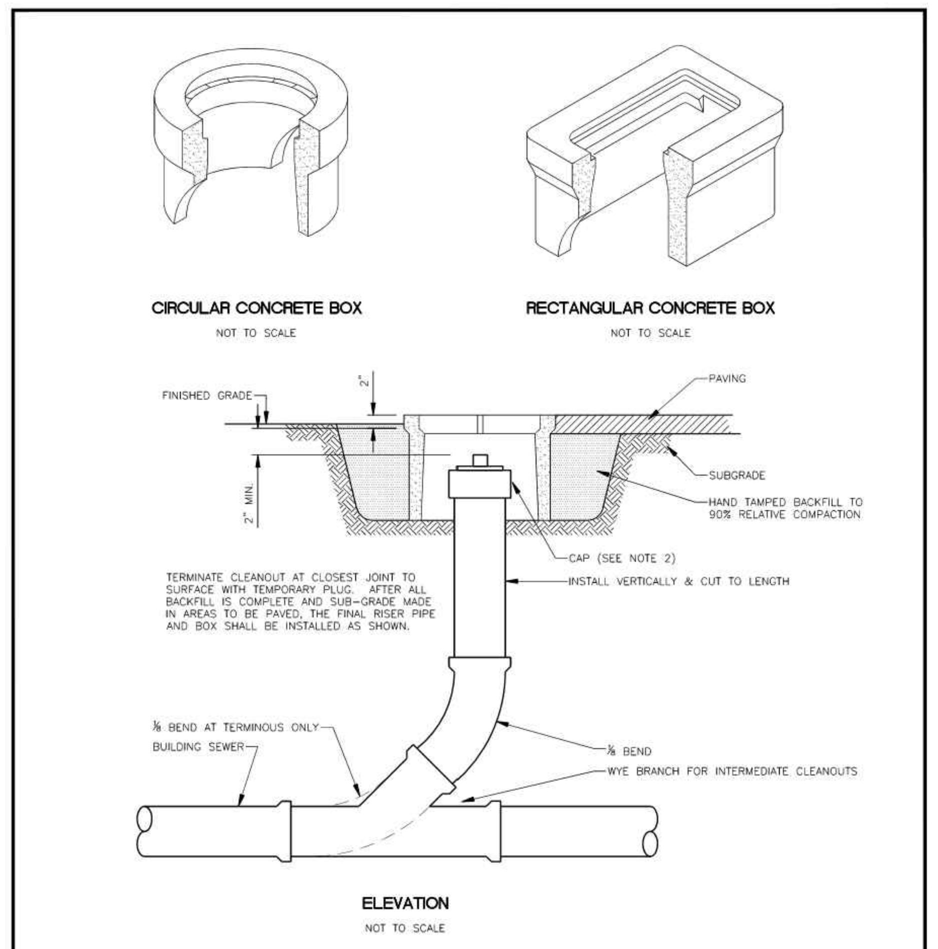
Sheet 6 of 8

LPMD Architects
1288 Kifer Road, Unit 206,
Sunnyvale, CA 94086
Telephone : 408-992-0280
Fax : 408-992-0281

P:\5192 – 36952 Mulberry Street – Newark\Engineering Plans\Planning\Sections & Details.dwg
2022/07/11 4:10 PM By: Daniel Gutekunst

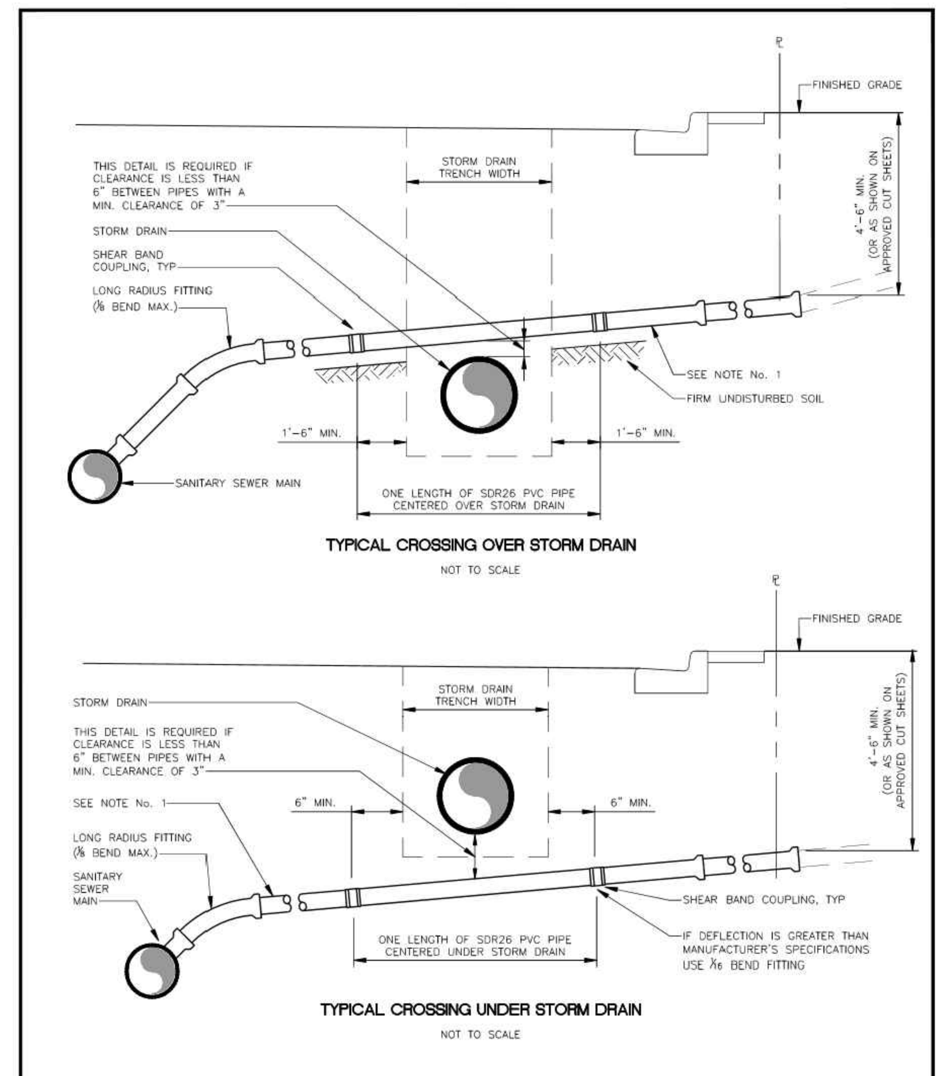


Date 3/15/17 Detail No. 14A Approved By PAUL R. ELDREDGE, RCE 60211 | UNION SANITARY DISTRICT | BUILDING SEWER DETAILS | 14A



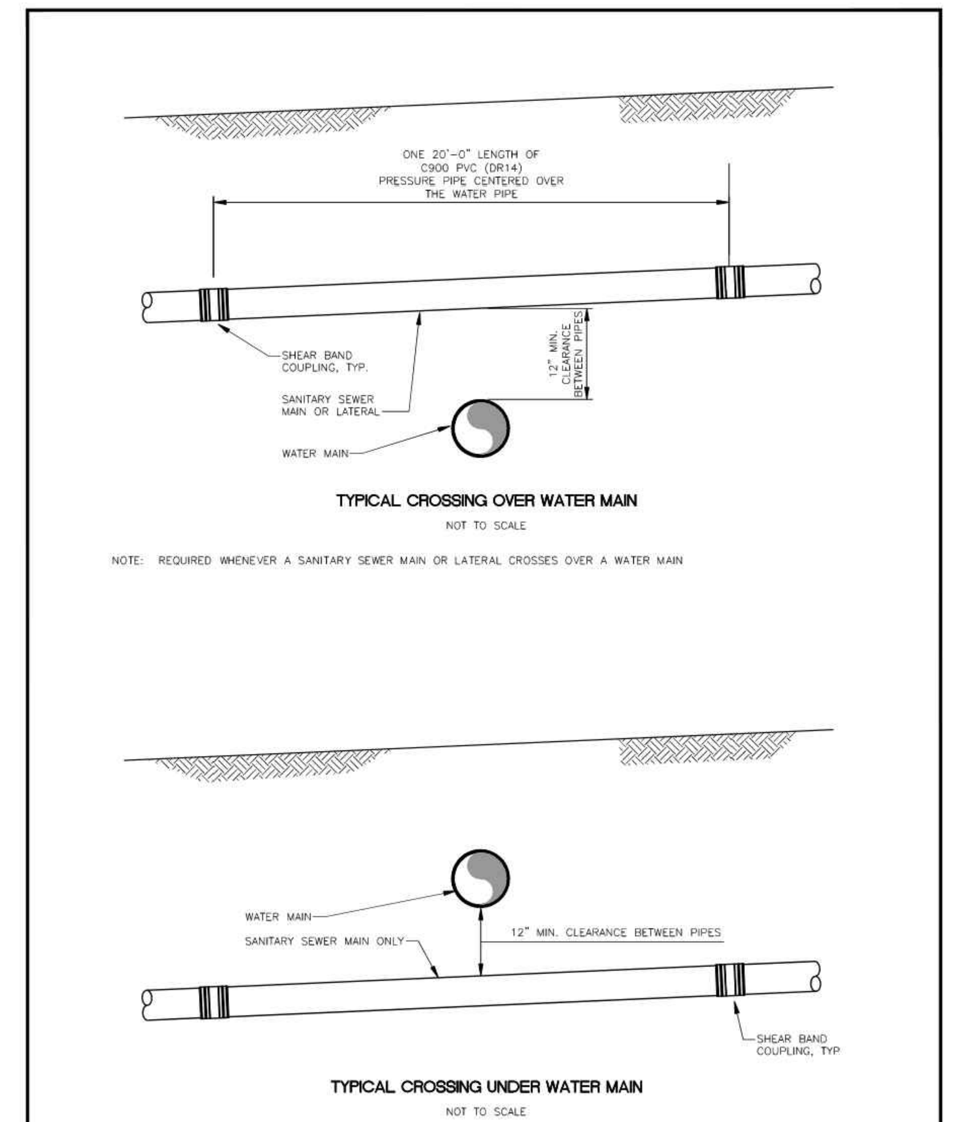
NOTES:
1. RECTANGULAR OR CIRCULAR BOXES ARE PERMITTED.
2. CLEANOUT CAPS SHALL CONSIST OF AN AIRTIGHT THREADED BODY AND CAP.
3. CIRCULAR BOXES INSTALLED IN SIDEWALK AND WALKWAY AREAS SHALL HAVE A SOLID METAL COVER WITHOUT HOLES.
4. APPROVED RECTANGULAR BOXES ARE:
   a) CHRISTY CONCRETE PRODUCTS: B3 BOX WITH A B3D CONCRETE LID OR A B3C METAL LID OR
   b) BROOKS PRODUCTS, INC.: No. 3 METER BOX WITH A No. 3 HEAVY DUTY CONCRETE LID OR A No. 3 CAST IRON TRAFFIC LID. OR AN APPROVED EQUAL.
5. CONCRETE LIDS ARE ACCEPTABLE FOR USE IN LANDSCAPE AREAS, WHILE METAL LIDS MUST BE USED ELSEWHERE.
6. ALL CLEANOUT BOX LIDS SHALL BE MARKED WITH A LETTER "S" OR THE WORD "SEWER".

Date 3/15/17 Detail No. 15 Approved By PAUL R. ELDREDGE, RCE 60211 | UNION SANITARY DISTRICT | STANDARD BUILDING SEWER CLEANOUT TO GRADE | 15



NOTES:
1. THE ABOVE DETAILS ARE TYPICAL FOR MAIN AND BUILDING SEWER WHEN VCP PIPE MATERIAL IS USED.
2. THIS TYPE OF CROSSING MAY BE REQUIRED BY UNION SANITARY DISTRICT WHEN CROSSING CERTAIN OTHER UTILITIES.
3. THE BOTTOM DETAIL IS TYPICAL FOR MAIN AND BUILDING SEWER WHEN PVC PIPE IS USED UNDER STORM SEWER PIPE 48 INCHES IN DIAMETER OR LARGER.

Date 3/15/17 Detail No. 16 Approved By PAUL R. ELDREDGE, RCE 60211 | UNION SANITARY DISTRICT | SANITARY SEWER/STORM DRAIN CROSSING | 16

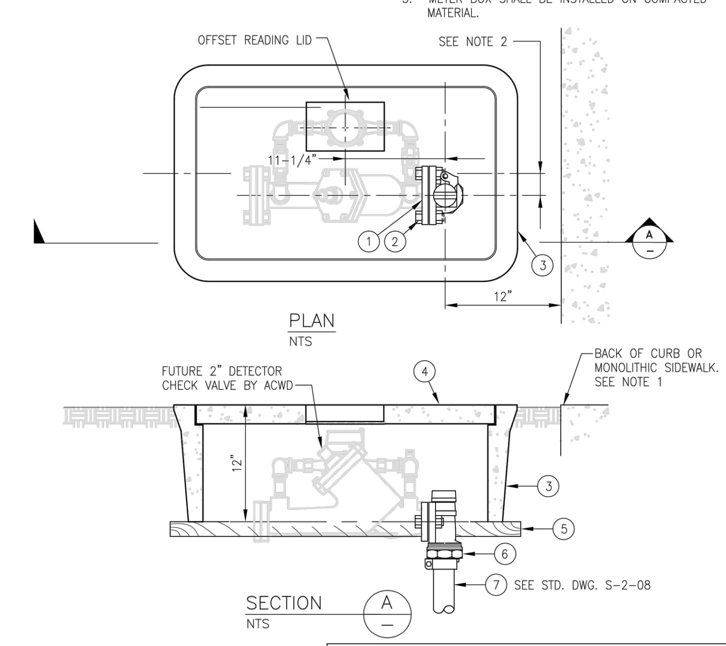


NOTE: REQUIRED WHENEVER A SANITARY SEWER MAIN OR LATERAL CROSSES OVER A WATER MAIN

Date 3/15/17 Detail No. 17 Approved By PAUL R. ELDREDGE, RCE 60211 | UNION SANITARY DISTRICT | SANITARY SEWER/WATER MAIN CROSSING | 17

ITEM	DESCRIPTION
1	2" BRASS BLIND METER FLANGE
2	3/4"x2-1/2" BRASS BOLTS WITH NUTS (2) (THREAD END TOWARD CURB)
3	CHRISTY B36 METER BOX (OR APPROVED EQUAL)
4	CHRISTY FL36GOC207 FIBRELYTE LID (OR APPROVED EQUAL)
5	2"x4"x36" REDWOOD OR PRESSURE-TREATED WOOD BOARDS (2)
6	2" ANGLE METER STOP WITH LOCK WINGS, COMPRESSION x FLANGE
7	2" POLYETHYLENE SERVICE LINE

NOTES:
1. WHERE MONOLITHIC SIDEWALK IS MORE THAN 10'-0" WIDE, ANGLE METER STOP SHALL BE 12" BEHIND BACK OF CURB, UNLESS OTHERWISE SHOWN ON THE PROJECT DRAWINGS OR APPROVED BY THE DISTRICT.
2. CENTERLINE OF METER BOX SHALL BE OFFSET 2-1/4" FROM CENTERLINE OF ANGLE METER STOP.
3. SEE STANDARD DRAWINGS CL-4-08 AND CL-5-08 FOR ADDITIONAL LOCATION AND CLEARANCE REQUIREMENTS.
4. ANY SEALS OR LOCKS PLACED ON A CLOSED ANGLE METER STOP OR CURB STOP SHALL NOT BE REMOVED EXCEPT BY ACWD.
5. METER BOX SHALL BE INSTALLED ON COMPACTED MATERIAL.



ACWD ALAMEDA COUNTY WATER DISTRICT
ALAMEDA COUNTY WATER DISTRICT
43885 SOUTH GRIMMER BOULEVARD
P.O. BOX 5110
FREMONT, CA 94537-5110
(510) 668-4200

STANDARD DRAWING

2" SERVICE LINE AND DETECTOR CHECK VALVE

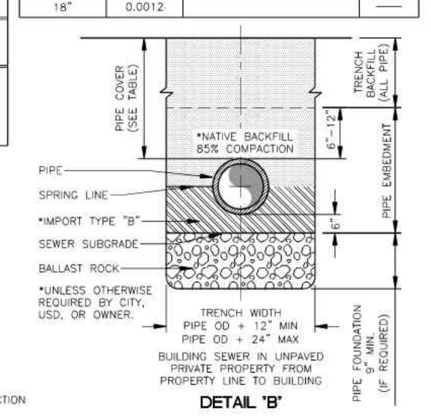
APPROVED [signature] ENGINEERING MANAGER 12/15/2008 DATE

NO.	DATE	REVISION	BY	APP.				
					DESIGNED	ACWD	DATE: DEC. 2008	
					DRAWN	DBB	SCALE: NONE	
0	12-08	NEW STD. DWG.	RMF	LJA	CHECKED	LJA	DWG. NO.	REV.
					DIV. MGR.	EHS	S-10-08	0

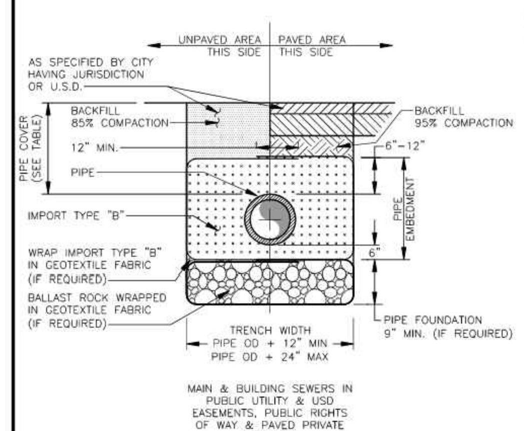
PIPE COVER LIMITATION TABLE			
PIPE SPECIFICATION - SEE SEC. 5		COVER IN FEET MIN - MAX**	
MATERIAL	TYPE AND MINIMUM CLASS	DETAIL A	DETAIL B
BUILDING SEWERS FROM PROPERTY LINE TO BUILDING IN UNPAVED PRIVATE PROPERTY			
4"-6" VCP***		-	2.0 - 30
4"-6" ABS	SOLID WALL	-	2.0 - 30
4"-6" DIP	DUCTILE (CLASS 50 & 51)	-	0.5 - 30
4"-6" PVC	SOLID WALL (C900-16 DR18)	-	1.0 - 30
4"-6" PVC	SOLID WALL (CLASS SDR26)	-	2.0 - 30
4"-6" HDPE	SOLID WALL (CLASS SDR17)	-	1.0 - 30
BUILDING SEWERS IN PUBLIC UTILITY & U.S.D. EASEMENTS, PUBLIC RIGHTS OF WAY & PAVED PRIVATE PROPERTY			
4"-6" VCP***		3.0 -19	-
4"-6" DIP	DUCTILE (CLASS 50 & 51)	0.5 -30	-
4"-6" ABS	SOLID WALL	3.0 -30	-
4"-6" PVC	SOLID WALL (CLASS SDR26)	3.0 -30	-
4"-6" PVC	SOLID WALL (C900-16 DR14)	1.0 -30	-
4"-6" HDPE	SOLID WALL (CLASS SDR17)	1.0 -30	-
MAIN SEWERS IN PUBLIC UTILITY & U.S.D. EASEMENTS, PUBLIC RIGHTS OF WAY & PAVED PRIVATE PROPERTY			
8"-Larger VCP***		3.0 -14	-
8"-Larger DIP	DUCTILE (CLASS 50 & 51)	0.5 -30	-
8"-Larger PVC	SOLID WALL (CLASS SDR26)	3.0 -30	-
8"-Larger PVC	SOLID WALL (C900-16 DR14)	1.0 -30	-

**WHEN MAXIMUM COVER IS EXCEEDED, APPROVAL BY U.S.D. OF SPECIAL BEDDING REQUIREMENTS IS NECESSARY.
***ONLY ALLOWED WITH SPECIAL PERMISSION FROM DISTRICT ENGINEER.

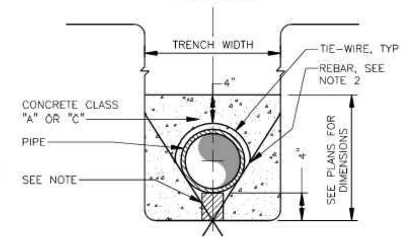
MINIMUM SIZE AND SLOPE LIMITATION TABLE			
SPECIFICATION - SEE SEC. 21 & 22			
PIPE DIAMETER	MINIMUM SLOPE (FT. PER FT.)	COMMENTS	MAXIMUM FIXTURE UNITS
BUILDING SEWER FROM SEWER MAIN TO BUILDING			
4"	0.020	IF MAIN IS NOT OF ADEQUATE DEPTH 0.01 FT/FT IS MINIMUM.	200
6"	0.005		600
6"	0.006		700
6"	0.007		800
6"	0.008		900
6"	0.009		1000
6"	0.010		1200
MAIN SEWERS			
8"	0.0034		—
10"	0.0026		—
12"	0.0020		—
15"	0.0015		—
18"	0.0012		—



DETAIL "B"
NOT TO SCALE



DETAIL "A"
NOT TO SCALE



CONCRETE ENCASEMENT DETAIL
NOT TO SCALE

NOTES:
1. CONCRETE BLOCK OR BRICK ON FIRM UNDISTURBED GROUND BEFORE CONCRETE ENCASEMENT IS POURED.
2. INSTALL REBAR AS NECESSARY TO PREVENT PIPE FLOTATION DURING CONCRETE POUR.

Date 3/15/17 Detail No. 18A Approved By PAUL R. ELDREDGE, RCE 60211 | UNION SANITARY DISTRICT | SEWER PIPE INSTALLATION (COVER, SLOPE, SPECIAL BEDDING AND ENCASEMENT REQUIREMENTS) | 18A

PIPE FOUNDATION (IF REQUIRED BY ENGINEER)

ROCK BALLAST:

ROCK BALLAST SHALL BE 1-½" BY ¾" GRAVEL CONFORMING TO THE FOLLOWING GRADATIONS:

SIEVE SIZE	PERCENT PASSING (BY WEIGHT)
2"	100
1-½"	95-100
¾"	5-30
⅜"	5-20
NO. 200	0-4

PIPE EMBEDMENT MATERIAL

IMPORT "TYPE A":

SHALL BE CREEK OR BANK GRAVEL, CRUSHED GRAVEL, CRUSHED ROCK, BANK RUN ROCK OR A MIXTURE OF THESE MATERIALS. RECLAIMED OR RECYCLED MATERIALS ARE NOT ACCEPTABLE.

THE MATERIAL SHALL BE FREE FROM ROOTS, VEGETABLE MATTER, OR OTHER DELETERIOUS SUBSTANCE AND SHALL BE OF SUCH NATURE AND SO GRADED THAT IT WILL BIND READILY WHEN WATERED AND COMPACTED TO THE REQUIREMENT SPECIFIED HEREIN.

THE MATERIAL SHALL BE OF SUCH SIZE THAT THE PERCENTAGE COMPOSITION BY WEIGHT, AS DETERMINED BY LABORATORY SIEVES, WILL CONFORM TO THE FOLLOWING GRADATIONS:

SIEVE SIZE	PERCENT PASSING (BY WEIGHT)
1"	100
¾"	90-100
NO. 4	35-100
NO. 30	10-30
NO. 200	2-9

THE MATERIAL SHALL ALSO HAVE A MINIMUM SAND EQUIVALENT OF 22 AND A MINIMUM RESISTENCE (R) VALUE OF 78.

IMPORT "TYPE B":

"TYPE B" IMPORT SHALL BE WASHED CRUSHED ROCK (CHIPS). THIS MATERIAL SHALL CONTAIN AT LEAST 75% OF THE PARTICLES HAVING ONE OR MORE FRACTURED FACES. NOT OVER 25% SHALL BE PIECES THAT SHOW NO SUCH FACES RESULTING FROM CRUSHING. ROCK WILL BE DESIGNATED BY NORMAL SIZE. RECLAIMED OR RECYCLED MATERIALS ARE NOT ACCEPTABLE.

THE MATERIAL SHALL BE OF SUCH SIZE THAT THE PERCENTAGE COMPOSITION BY WEIGHT, AS DETERMINED BY LABORATORY SIEVES WILL CONFORM TO THE FOLLOWING GRADATIONS:

SIEVE SIZE	PERCENT PASSING (BY WEIGHT)
1"	100
¾"	90-100
NO. 4	0-15
NO. 200	0-4

TRENCH EXCAVATION MATERIAL:

ACCEPTABLE TRENCH EXCAVATION MATERIAL SHALL BE THAT MATERIAL WHICH IS FREE FROM VEGETABLE MATTER AND REFUSE AND SHALL CONTAIN NO CONCRETE, STONES OR CLODS LARGER THAN ¾" IN DIAMETER AND SHALL CONTAIN SUFFICIENT FINES SO THAT ALL VOIDS WILL BE FILLED WHEN COMPACTED.

Date 3/15/17 Detail No. 18B Approved By PAUL R. ELDREDGE, RCE 60211 | UNION SANITARY DISTRICT | SEWER PIPE INSTALLATION (TRENCH BACKFILL MATERIALS) | 18B

UNION SANITARY DISTRICT 2017 STANDARD SANITARY SEWER NOTES

1. **MANHOLE ENTRY IS PROHIBITED – DUE TO POTENTIAL HAZARDS, CONTRACTORS SHALL NOT ENTER EXISTING USD MANHOLES IN THE COURSE OF THEIR WORK.** AN ENCROACHMENT PERMIT THAT SPECIFICALLY ALLOWS ENTRY INTO IDENTIFIED MANHOLES MUST FIRST BE OBTAINED FROM UNION SANITARY DISTRICT (USD).
2. **ACCESS TO EXISTING USD MANHOLES MUST BE MAINTAINED** – CONTRACTOR SHALL MAINTAIN ACCESS TO USD MANHOLES AT ALL TIMES. IF CONTRACTOR'S ACTIVITIES WILL LIMIT OR PREVENT USD MAINTENANCE PERSONNEL FROM ACCESSING A MANHOLE, THE USD INSPECTOR MUST IMMEDIATELY BE NOTIFIED. IF THE SITUATION OF LIMITED OR NO ACCESS TO A USD MANHOLE WILL PERSIST FOR MORE THAN THREE (3) WORKING DAYS WRITTEN AUTHORIZATION MUST BE REQUESTED FROM USD.
3. **HAZARD IDENTIFICATION** – CONTRACTORS ARE HEREBY ADVISED THAT THEY MAY BE EXPOSED TO HAZARDOUS CONDITIONS WHEN INSTALLING OR MODIFYING SANITARY SEWER PIPELINES AND STRUCTURES. SOME OF THESE HAZARDS INCLUDE BUT ARE NOT LIMITED TO: EXPOSURES TO HAZARDOUS GASSES COMMONLY FOUND IN SEWER SYSTEMS SUCH AS HYDROGEN SULFIDE, CARBON DIOXIDE, METHANE, OXYGEN DEFICIENT ENVIRONMENTS, AND OTHER FLAMMABLE OR EXPLOSIVE GASSES; EXPOSURE TO SEWAGE WHICH MAY CONTAIN BACTERIOLOGICAL, CHEMICAL AND OTHER CONSTITUENTS HARMFUL TO HUMANS; AND EXPOSURE TO AREAS WHICH HAVE LIMITED OR RESTRICTED ACCESS AND EGRESS, WHICH MAY BE CONSIDERED PERMITTED CONFINED SPACES BY STATE AND FEDERAL OSHA REQUIREMENTS.
4. **USA NOTIFICATION** – AT LEAST TWO WORKING DAYS BEFORE EXCAVATING, CONTRACTOR SHALL CONTACT UNDERGROUND SERVICE ALERT (USA NORTH) AT 811 OR 1-800-642-2444.
5. **COST OF INSTALLATION** – THE PRIVATE OR PUBLIC SANITARY SEWER SYSTEM TO SERVE THE DEVELOPMENT SHALL BE DESIGNED AND INSTALLED AT DEVELOPER'S EXPENSE IN ACCORDANCE WITH THE 2017 USD STANDARD SPECIFICATIONS AND DETAILS.
6. **USD JURISDICTION** – USD WILL PERMIT AND INSPECT ALL MAIN AND BUILDING SEWER INSTALLATIONS AND BEDDING IN ALL AREAS OUTSIDE OF THE BUILDING FOOTPRINT AT DEVELOPER'S EXPENSE.
7. **INDEMNIFICATION –** IN CONSIDERATION OF ISSUANCE OF THE PERMIT, DEVELOPER, OWNER OR CONTRACTOR SEEKING SUCH PERMIT HEREBY AGREES TO HOLD HARMLESS AND INDEMNIFY USD AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSE OF ACTION, COSTS INCLUDING ATTORNEY'S FEES, EXPENSES INCLUDING CONSULTANT'S FEES, OBLIGATIONS, LIABILITIES, DAMAGES, AND JUDGMENTS ARISING FROM ANY AND ALL BODILY INJURIES INCLUDING DEATH OF AN EMPLOYEE OF DEVELOPER, OWNER OR CONTRACTOR OR ANY OTHER PERSON, AND ANY AND ALL DAMAGES TO PROPERTY INCLUDING LOSS OF USE THAT RESULTS IN ANY WAY FROM THE PERMIT ISSUED BY USD.
8. **REMOVAL, ABANDONMENT, AND CAPPING** – ANY EXISTING SANITARY SEWER MAINS, LATERALS, MANHOLES AND APPURTENANCES, INCLUDING GREASE TRAPS/INTERCEPTORS/SEPARATORS, WITHIN THE SITE TO BE REMOVED, ABANDONED, OR CAPPED (TO BE REUSED OR NOT) SHALL BE CLEARLY NOTED ON THE PLANS AND ALL WORK PERFORMED IN ACCORDANCE WITH USD SPECIFICATIONS AND PERMIT CONDITIONS. FOR WORK ON SEWER LATERALS, A SEPARATE SEWER LATERAL DEMOLITION/CAPPING PERMIT MUST BE OBTAINED FROM USD PRIOR TO THE START OF ANY DEMOLITION OR GRADING OPERATIONS AND USD SHALL INSPECT THE WORK. USD WILL NOT ISSUE A SEWER CONSTRUCTION PERMIT UNTIL SUCH PERMIT IS CLOSED AND THE WORK ACCEPTED.
9. **SEWER CONSTRUCTION PERMIT & INSPECTION REQUIRED** – A SEWER CONSTRUCTION PERMIT MUST BE OBTAINED FROM USD PRIOR TO ANY EXCAVATION TO CONSTRUCT A SANITARY SEWER LATERAL, MAIN, MANHOLE, CLEANOUT OR APPURTENANCE AT ANY LOCATION TWO (2) FEET OR MORE OUTSIDE OF A BUILDING. ALL SANITARY SEWER CONSTRUCTION OUTSIDE OF A BUILDING MUST BE INSPECTED BY USD AND COMPLY WITH THE 2017 USD STANDARD SPECIFICATIONS AND DETAILS.
10. **NOTIFICATION FOR INSPECTION** – USD SHALL BE NOTIFIED AT LEAST 48 HOURS PRIOR TO START OF ANY SEWER CONSTRUCTION AND A REQUEST MADE FOR INSPECTION OF WORK (CALL YOUR ASSIGNED USD INSPECTOR OR 510-477-7500). THIS NOTIFICATION APPLIES NOT ONLY TO STARTING WORK, BUT ALSO TO RESTARTING WORK WHICH HAS BEEN TEMPORARILY HALTED.
11. **WORK BY USD FORCES** – ALL WORK TO BE DONE BY USD SHALL BE DONE AT DEVELOPER'S EXPENSE UNLESS OTHERWISE SPECIFIED. CONTRACTOR SHALL CALL USD TO SCHEDULE THIS WORK A MINIMUM OF 48 HOURS IN ADVANCE (CALL YOUR USD INSPECTOR OR 510-477-7500).

12. **ACCEPTABLE PIPE MATERIALS** – SANITARY SEWER MAINS AND LATERALS SHALL BE LIMITED TO THE FOLLOWING PIPE MATERIALS (SUBJECT TO MINIMUM COVER REQUIREMENTS) UNLESS OTHERWISE SPECIFIED (SEE 2017 USD STANDARD SPECIFICATIONS SECTION 5 FOR ADDITIONAL REQUIREMENTS, HIGHER GRADE/PRESSURE CLASS MATERIALS MAY BE SUBSTITUTED):
    - DUCTILE IRON PIPE (DIP), ANSI/AWWA C151/A21.51
    - ABS SOLID WALL PIPE, SCH 40/SDR 26, ASTM D-2661 (LATERALS ONLY)
    - PVC SOLID WALL PIPE, SDR 26/PS-115, ASTM D-3034/F-679
    - PVC PRESSURE PIPE, AWWA C-900, CLASS 150
    - HDPE, AWWA C906, ASTM D-3035 (SUBJECT TO PRIOR APPROVAL BY USD)
13. **SEWER SURVEY CUT SHEETS** – CUT SHEETS (STAKEOUT, GRADE SHEETS, ETC.) ARE REQUIRED BEFORE THE START OF SEWER CONSTRUCTION INVOLVING A PIPELINE 100 FEET LONG OR MORE, A PIPELINE WITH A SLOPE OF LESS THAN ONE PERCENT (<1%), OR WHEN REQUIRED BY USD. THREE (3) HARD COPIES OR ONE (1) DIGITAL COPY OF CUT SHEETS ON STANDARD USD FORM MUST BE SUBMITTED TO USD. A REGISTERED CIVIL ENGINEER OR LAND SURVEYOR ENGAGED BY DEVELOPER WILL BE RESPONSIBLE FOR SETTING STAKES AND PREPARING CUT SHEETS. CUT SHEETS WILL BE CHECKED BY USD, AND ONE (1) APPROVED COPY WILL BE FURNISHED TO CONTRACTOR FOR USE IN CONSTRUCTION. STAKES MUST NOT BE MARKED WITH CUTS PRIOR TO USD CUT SHEET APPROVAL.

    WHERE A CONNECTION IS TO BE MADE TO AN EXISTING SEWER OR STRUCTURE, SAID EXISTING SEWER OR STRUCTURE SHALL BE UNCOVERED AND CHECKED FOR LOCATION AND ELEVATION PRIOR TO SUBMITTING CUT SHEETS. ANY DISCREPANCY BETWEEN THE PLANS AND FIELD INFORMATION SHALL BE REPORTED IMMEDIATELY TO THE USD INSPECTOR.
14. **SEWER LATERAL (BUILDING SEWER) REQUIREMENTS** – ALL SANITARY SEWER LATERALS SHALL BE INSTALLED AS SHOWN ON THE PLANS.
    - THE LOCATION OF ALL SEWER LATERALS SHALL BE MARKED BY DEVELOPER'S ENGINEER.
    - ALL BUILDING LATERALS SHALL BE MINIMUM 4″ DIAMETER AND HAVE A MINIMUM SLOPE OF TWO PERCENT (2%), EXCEPT AS NOTED ON THE APPROVED PLANS.
    - CONTRACTOR SHALL PLACE AN "S" MARKING ON THE CURB FACE AT EACH LATERAL LOCATION.
    - ALL SEWER CLEANOUTS SHALL BE THE SAME SIZE AS THE LATERAL, INSTALLED IN AN APPROVED CLEANOUT BOX, AND SET FLUSH WITH THE FINISH GRADE.
15. **CONNECTION TO BUILDING DRAIN (PLUMBING KICK-OUT)** – AFTER A PERMIT FOR SEWER CONSTRUCTION HAS BEEN ISSUED, BUILDING SEWERS MAY BE CONSTRUCTED UP TO A POINT 5 FEET FROM THE BUILDING WALL. ACTUAL CONNECTION OF THE BUILDING SEWER TO THE BUILDING DRAIN WILL NOT BE PERMITTED UNTIL THE MAIN SEWER OR BUILDING SEWER TO WHICH IT CONNECTS HAS BEEN TESTED IN ACCORDANCE WITH USD'S SPECIFICATIONS AND ACCEPTED BY USD. DO NOT EXTEND BUILDING PLUMBING MORE THAN A FEW FEET BEYOND BUILDING WALL. THE ACTUAL CONNECTION MUST BE DONE BY A SEWER CONTRACTOR WITH A SEWER CONSTRUCTION PERMIT ISSUED BY USD THAT SPECIFIES THE BUILDING(S) BEING CONNECTED TO THE SEWER.
16. **CONNECTION TO EXISTING SEWERS** – WHERE A BUILDING SEWER/LATERAL CONNECTION IS TO BE MADE TO A MAIN SEWER, THE INVERT ELEVATION OF THE LATERAL SHALL BE EQUAL TO THE INSIDE TOP ELEVATION OF THE MAIN SEWER. 4″ LATERAL TO 8″ OR LARGER MAIN, AND 6″ LATERAL TO 10″ OR LARGER MAIN CONNECTIONS SHALL BE MADE WITH A WYE OR TAPPED WITH A "TAP-TITE" FITTING (OR APPROVED EQUAL) BY A USD APPROVED INSTALLER. 4″ LATERAL TO 6″ MAIN AND 6″ LATERAL TO 8″ MAIN CONNECTIONS SHALL BE MADE WITH A WYE. ALL WYES AND TAPS SHALL BE INSTALLED AT 22.5° TO 45° FROM HORIZONTAL (SEE USD DETAIL #14A). ONLY USD PERSONNEL SHALL MAKE CONNECTIONS TO LIVE SEWER MAINS UNLESS OTHERWISE NOTED ON THE PLANS OR SPECIFICALLY AUTHORIZED BY THE USD INSPECTOR.

    WHERE CONNECTION IS TO BE MADE TO A TERMINAL/DEAD-END MANHOLE, THE INSIDE TOP ELEVATIONS OF ALL THE PIPES IN THE MANHOLE BASE SHALL BE EQUAL (SEE USD DETAIL #4).
17. **OVERFLOW/BACKFLOW PREVENTION DEVICE** – CONTRACTOR SHALL INSTALL AN APPROVED OVERFLOW/BACKFLOW PREVENTION DEVICE WHERE THE FLOOR ELEVATION IS 6" OR LESS ABOVE THE NEAREST UPSTREAM MANHOLE RIM ELEVATION.

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MULBERRY RESIDENTIAL

36952 MULBERRY STREET

NEWARK - CALIFORNIA

JMH Weiss
Real Estate Development Consultants
Planning and Engineering
1731 Technology Drive, Suite 880 (408) 286-4555
San Jose, CA 95110 JMHWeiss.com

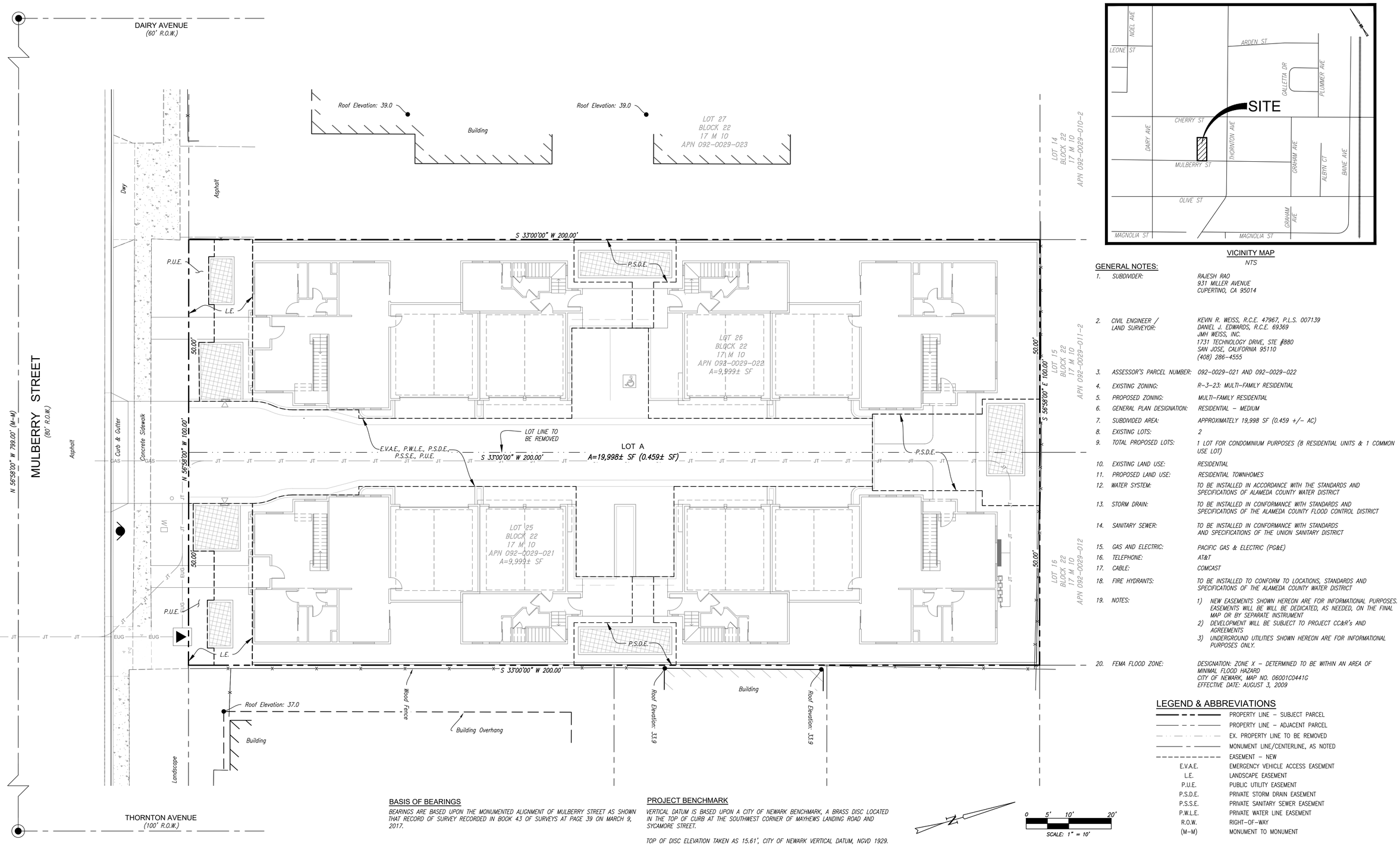
Date: 7-11-2022
Scale:
Revisions:

Drawing Title: USD & ACWD DETAILS

Sheet No: C-5.1

Sheet 7 of 8

LPMD Architects
1288 Kifer Road, Unit 206,
Sunnyvale, CA 94086
Telephone : 408-992-0280
Fax : 408-992-0281



VICINITY MAP
NTS

GENERAL NOTES:

1.	SUBDIVIDER:	RAJESH RAO 931 MILLER AVENUE CUPERTINO, CA 95014
2.	CIVIL ENGINEER / LAND SURVEYOR:	KEVIN R. WEISS, R.C.E. 47967, P.L.S. 007139 DANIEL J. EDWARDS, R.C.E. 69369 JMH WEISS, INC. 1731 TECHNOLOGY DRIVE, STE #880 SAN JOSE, CALIFORNIA 95110 (408) 286-4555
3.	ASSESSOR'S PARCEL NUMBER:	092-0029-021 AND 092-0029-022
4.	EXISTING ZONING:	R-3-23: MULTI-FAMILY RESIDENTIAL
5.	PROPOSED ZONING:	MULTI-FAMILY RESIDENTIAL
6.	GENERAL PLAN DESIGNATION:	RESIDENTIAL – MEDIUM
7.	SUBDIVIDED AREA:	APPROXIMATELY 19,998 SF (0.459 +/- AC)
8.	EXISTING LOTS:	2
9.	TOTAL PROPOSED LOTS:	1 LOT FOR CONDOMINIUM PURPOSES (8 RESIDENTIAL UNITS & 1 COMMON USE LOT)
10.	EXISTING LAND USE:	RESIDENTIAL
11.	PROPOSED LAND USE:	RESIDENTIAL TOWNHOMES
12.	WATER SYSTEM:	TO BE INSTALLED IN ACCORDANCE WITH THE STANDARDS AND SPECIFICATIONS OF ALAMEDA COUNTY WATER DISTRICT
13.	STORM DRAIN:	TO BE INSTALLED IN CONFORMANCE WITH STANDARDS AND SPECIFICATIONS OF THE ALAMEDA COUNTY FLOOD CONTROL DISTRICT
14.	SANITARY SEWER:	TO BE INSTALLED IN CONFORMANCE WITH STANDARDS AND SPECIFICATIONS OF THE UNION SANITARY DISTRICT
15.	GAS AND ELECTRIC:	PACIFIC GAS & ELECTRIC (PG&E)
16.	TELEPHONE:	AT&T
17.	CABLE:	COMCAST
18.	FIRE HYDRANTS:	TO BE INSTALLED TO CONFORM TO LOCATIONS, STANDARDS AND SPECIFICATIONS OF THE ALAMEDA COUNTY WATER DISTRICT
19.	NOTES:	1) NEW EASEMENTS SHOWN HEREON ARE FOR INFORMATIONAL PURPOSES. EASEMENTS WILL BE WILL BE DEDICATED, AS NEEDED, ON THE FINAL MAP OR BY SEPARATE INSTRUMENT 2) DEVELOPMENT WILL BE SUBJECT TO PROJECT CC&R'S AND AGREEMENTS 3) UNDERGROUND UTILITIES SHOWN HEREON ARE FOR INFORMATIONAL PURPOSES ONLY.
20.	FEMA FLOOD ZONE:	DESIGNATION: ZONE X – DETERMINED TO BE WITHIN AN AREA OF MINIMAL FLOOD HAZARD CITY OF NEWARK, MAP NO. 06001C0441G EFFECTIVE DATE: AUGUST 3, 2009

LEGEND & ABBREVIATIONS

———	PROPERTY LINE – SUBJECT PARCEL
— — —	PROPERTY LINE – ADJACENT PARCEL
·—·—·	EX. PROPERTY LINE TO BE REMOVED
——— — ———	MONUMENT LINE/CENTERLINE, AS NOTED
- - - - - -	EASEMENT – NEW
E.V.A.E.	EMERGENCY VEHICLE ACCESS EASEMENT
L.E.	LANDSCAPE EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
P.S.D.E.	PRIVATE STORM DRAIN EASEMENT
P.S.S.E.	PRIVATE SANITARY SEWER EASEMENT
P.W.L.E.	PRIVATE WATER LINE EASEMENT
R.O.W.	RIGHT-OF-WAY
(M-M)	MONUMENT TO MONUMENT

BASIS OF BEARINGS

BEARINGS ARE BASED UPON THE MONUMENTED ALIGNMENT OF MULBERRY STREET AS SHOWN THAT RECORD OF SURVEY RECORDED IN BOOK 43 OF SURVEYS AT PAGE 39 ON MARCH 9, 2017.

PROJECT BENCHMARK

VERTICAL DATUM IS BASED UPON A CITY OF NEWARK BENCHMARK, A BRASS DISC LOCATED IN THE TOP OF CURB AT THE SOUTHWEST CORNER OF MAYHEWS LANDING ROAD AND SYCAMORE STREET.

TOP OF DISC ELEVATION TAKEN AS 15.61', CITY OF NEWARK VERTICAL DATUM, NGVD 1929.

0 5' 10' 20'
SCALE: 1" = 10'

VESTING TENTATIVE TRACT 8603

FOR RESIDENTIAL CONDOMINIUM PURPOSES
MULBERRY RESIDENTIAL
NEWARK - CALIFORNIA

JMH Weiss
Real Estate Development Consultants
Planning and Engineering
1731 Technology Drive, Suite 880 (408) 286-4555
San Jose, CA 95110 JMHWeiss.com

Date: 7-11-2022
Scale:
Revisions:

Drawing Title: VESTING TENTATIVE TRACT MAP

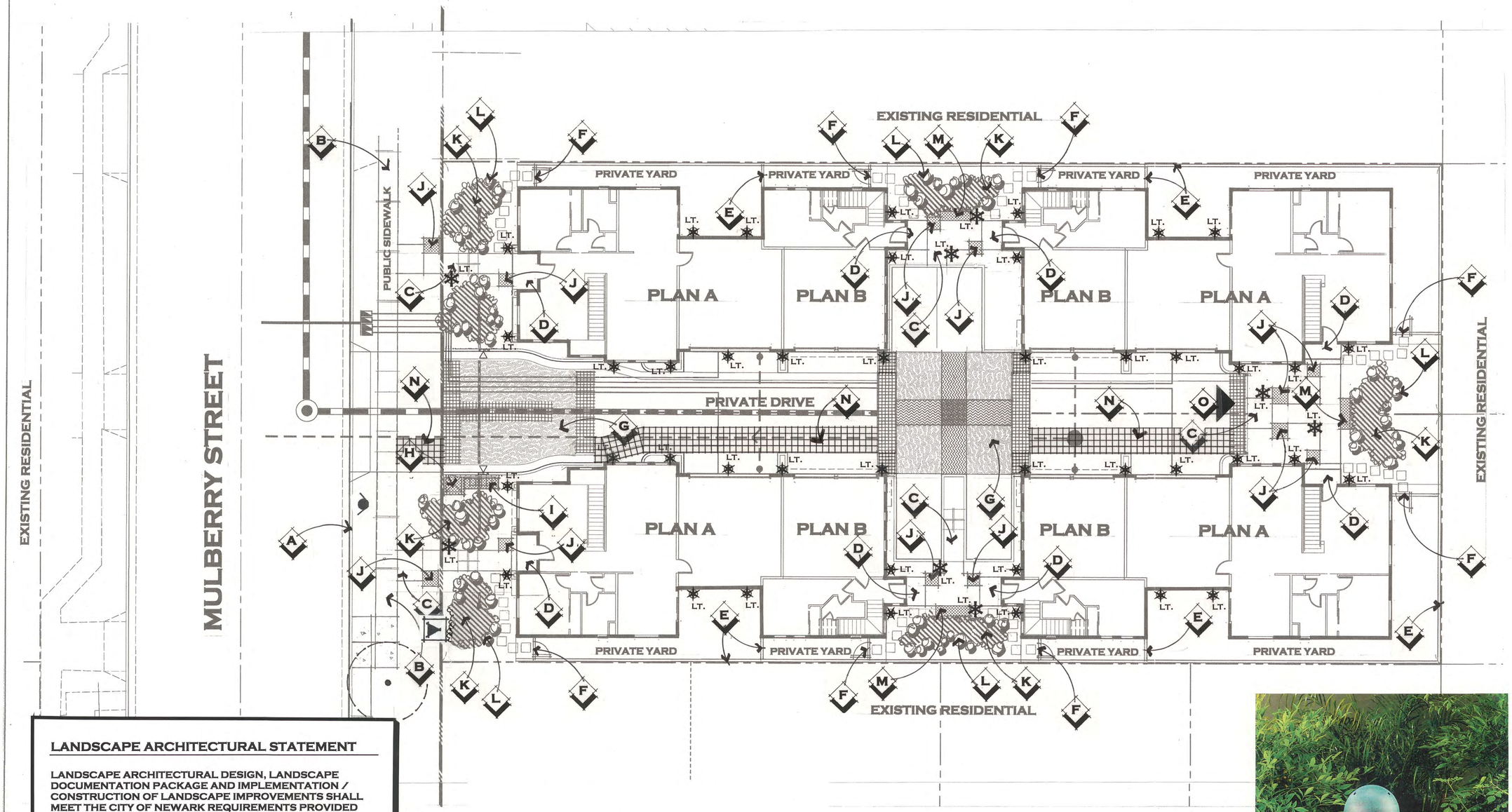
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Sheet 8 of 8

REVISIONS

#	DATE	DESCRIPTION

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LANDSCAPE ARCHITECTURAL STATEMENT

LANDSCAPE ARCHITECTURAL DESIGN, LANDSCAPE DOCUMENTATION PACKAGE AND IMPLEMENTATION / CONSTRUCTION OF LANDSCAPE IMPROVEMENTS SHALL MEET THE CITY OF NEWARK REQUIREMENTS PROVIDED UNDER CHAPTER 17.21 OF THE ZONING CODE AND COMPLY WITH THE WATER EFFICIENCY LANDSCAPE ORDINANCE (W.E.L.O.). THE LANDSCAPE ARCHITECT SHALL CONDUCT SITE OBSERVATIONS (AS REQUIRED) OF THE LANDSCAPE IMPROVEMENTS AND PROVIDE CERTIFICATION OF INSTALLATION ACCORDING TO THE APPROVED LANDSCAPE DOCUMENTATION PACKAGE.

LICENSED LANDSCAPE ARCHITECT JAY E. ISAACSON 1740 STATE OF CALIFORNIA
Signature Date 01.21.22
Renewal Date 01.21.23

JAY E. ISAACSON, ASLA — 01.21.22
CA LICENSE #1740 — DATE

CALLOUT LEGEND

A. CONCRETE CURB & GUTTER.
B. EXISTING PUBLIC SIDEWALK.
C. ENTRY WALKWAY.
D. FRONT PORCH.
E. WOOD FENCE.
F. WOOD GATE.
G. ENHANCED VEHICULAR PAVEMENT.
H. DECORATIVE MASONRY ENTRY FEATURE.(SEE DETAIL "C"; SHEET #L4)
I. GROUP MAILBOX. (SEE DETAIL "C"; SHEET #L4)
J. MASONRY LOW PEDESTAL WITH ACCENT POTTERY.(SEE DETAIL "A"; SHEET #L4)
K. STORMWATER MANAGEMENT AREA
L. BOULDER/ROCK OUTCROPPING.
M. MASONRY SEATWALL. (SEE DETAIL "B"; SHEET #L4)
N. PEDESTRIAN PATHWAY (ENHANCED PAVEMENT).
O. COMMON OPEN SPACE AREA. (SEE TYPICAL VIGNETTE "D"; SHEET #L4).

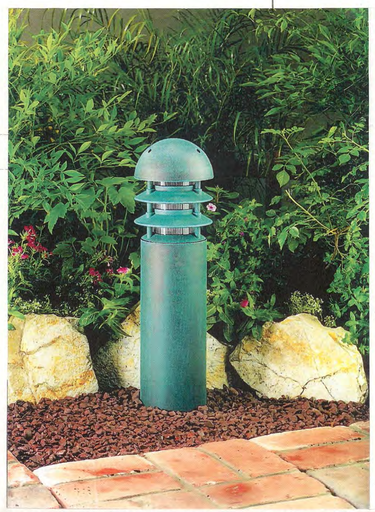
HARDSCAPE NOTE:
PEDESTRIAN WALKWAYS SHALL INCORPORATE ENHANCED PAVEMENT MATERIALS WHICH DEFINE THE PATH OF TRAVEL AND COMPLIMENT THE BUILDING ARCHITECTURE.

LANDSCAPE LIGHTING NOTE:
WALKWAYS, ENTRIES AND PARKING SPACES SHALL BE LIGHTED WITH ENERGY EFFICIENT LIGHT FIXTURES THAT COMPLIMENT BUILDING ARCHITECTURE. (SEE LIGHTING DETAILS).

LIGHTING LEGEND

WALL MOUNT FIXTURE. LT. (SEE ARCHITECT'S PLANS)

LANDSCAPE LIGHT FIXTURE LT. (SEE DETAIL "E"; SHEET #L1)



E LANDSCAPE LIGHT FIXTURE

ISAACSON, WOOD & ASSOCIATES
LANDSCAPE ARCHITECTURE
35802 HIBISCUS COURT, FREMONT, CA 94536
PHONE: (408) 838.2329
jay@isaacsonwood.com

MULBERRY RESIDENTIAL
36952 MULBERRY STREET
NEWARK, CALIFORNIA

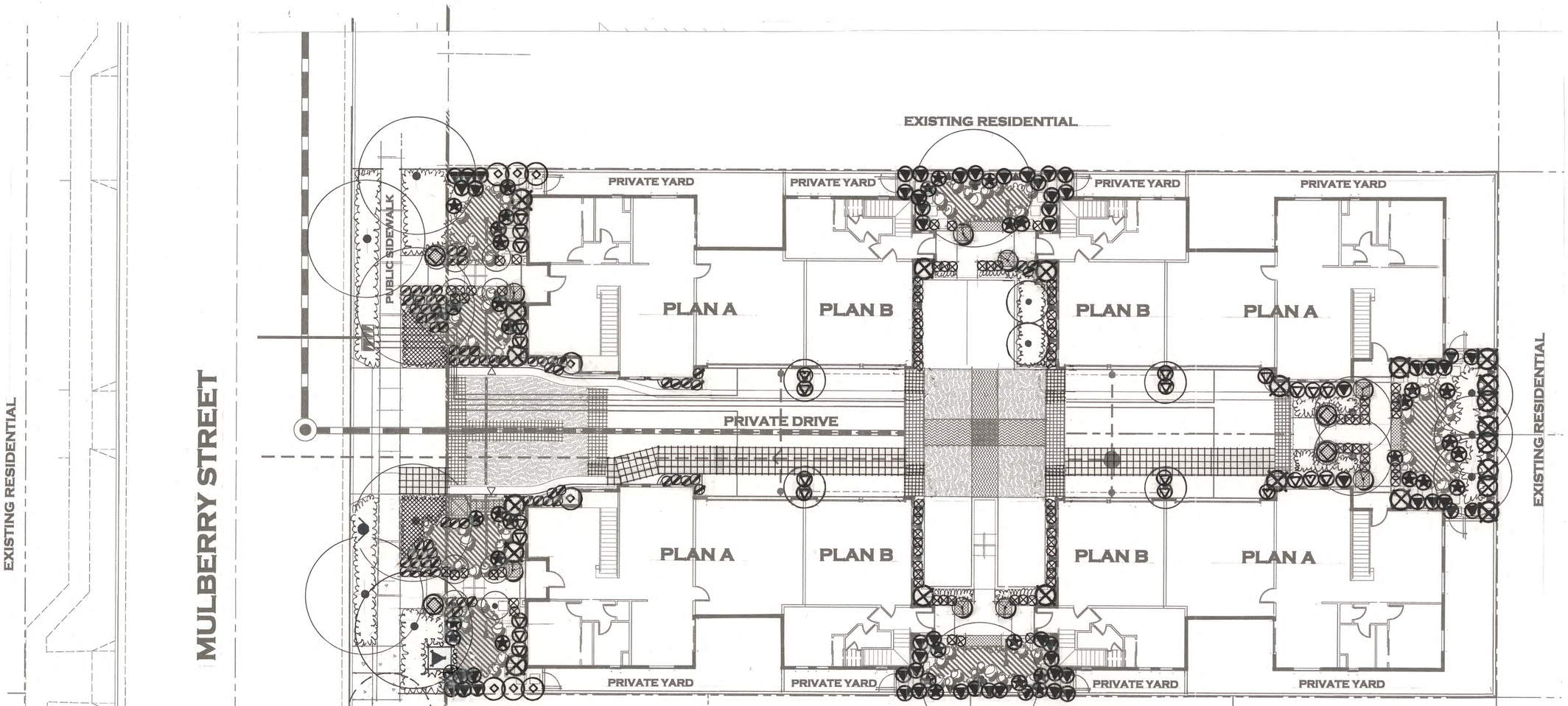
LANDSCAPE CALL OUT PLAN

JOB #	REVISIONS:
20002	02.24.21
DATE:	01.20.22
07.30.20	09.15.22

NORTH

0 10' SCALE: 1"=10'

SHEET L1 OF



PROPOSED PLANT PALETTE

SYMBOL	BOTANICAL NAME <COMMON NAME>	WELO
TREES		
	ERIOBOTRYA DEFLEXA (MULTI-TRUNK) <BRONZE LOQUAT>	M
	LAGERSTROEMIA INDICA "MUSKOGEE" <CRAPE MYRTLE>	L
	OLEA EUROPAEA "SWAN HILL" (MULTI-TRUNK) <FRUITLESS OLIVE>	VL
	PHOTINIA FRASERII – STANDARD <SCARLET TOYON>	M
	STREET TREE: BROADLEAF EVERGREEN <TO BE SELECTED BY CITY OF NEWARK>	L
SHRUBS & PERENNIALS		
	AGAVE "BLUE GLOW" <AGAVE>	L
	ANIGOZANTHUS HYBRID "BIG RED" <KANGAROO PAW>	M
	CITRUS "MEYER IMPROVED" <LEMON>	M
	CYCAS REVOLUTA <SAGO PALM>	M
	JUNIPERUS CHINENSIS "ROBUSTA GREEN" <COLUMNAR JUNIPER>	L
	PELARGONIUM HORTORUM <COMMON GERANIUM>	L
	PHORMIUM HYBRID "MAORI MAIDEN" <FLAX>	L
	PHORMIUM HYBRID "MAORI QUEEN" <FLAX>	L
	PHORMIUM HYBRID "MAORI SUNRISE" <FLAX>	L
	RHAPHIOLEPIS INDICA "BALLERINA" <INDIA HAWTHORN>	L
	STRELITZIA REGINAE <BIRD OF PARADISE>	M
	TULBAGHIA VIOLACEA <SOCIETY GARLIC>	M

ESPALIER SHRUBS

▼	BOUGAINVILLEA "SAN DIEGO RED" <BOUGAINVILLEA>	M

VINES

▼	DISTICTIS BUCCINATORIA <BLOOD-RED TRUMPET VINE>	M

GROUN COVERS

	ARCTOSTAPHYLOS "EMERALD CARPET" <DWARF MANZANITA>	L

GRASSES

	CAREX DIVULSA <SEDGE>	M

STORMWATER AREA PLANTS

	JUNCUS PATENS <CALIFORNIA GRAY RUSH>	M

SEASONAL ANNUALS

	TO BE SELECTED BY LANDSCAPE ARCHITECT

- TREES SHALL BE 24" BOX CONTAINER SIZE.
- SHRUBS, PERENNIALS, ESPALIER SHRUBS & VINES SHALL BE 5 GALLON CONTAINER SIZE.
- GROUND COVERS, GRASSES & STORMWATER AREA PLANTS SHALL BE 1 GALLON CONTAINER SIZE.
- SEASONAL ANNUALS SHALL BE 4" POTS.

PLANTING NOTES:

1. TOTAL NUMBER OF PROPOSED TREES= 21 (INCLUDES STREET TREES & STANDARD FORM TREES)
2. BROADLEAF EVERGREEN TREES = 16 (76%)
3. DECIDUOUS TREES = 5 (24%)
4. PROPOSED PLANT MATERIAL SHALL NOT BE LISTED BY CAL-IPC AS INVASIVE.
5. TREES SHALL NOT BE LOCATED WITHIN DESIGNATED STORMWATER MANAGEMENT AREAS.
6. TREE LOCATIONS SHALL CONFORM TO UTILITY MINIMUM SETBACK & CLEARANCE REQUIREMENTS.
7. PROPOSED LANDSCAPE IMPROVEMENTS SHALL CONFORM TO CITY OF NEWARK ZONING CODE, CHAPTER 17.21 REQUIREMENTS AND CALIFORNIA MODEL WATER EFFICIENT LANDSCAPE ORDINANCE (WELO).
8. ALL PLANT MATERIAL SHALL BE IRRIGATED BY A FULLY AUTOMATIC LOW WATER USE EFFICIENT SYSTEM.

WUCOLS:
WATER USE CLASSIFICATION OF LANDSCAPE SPECIES
GEOGRAPHICAL REGION: NORTH / CENTRAL COASTAL

CATAGORIES OF WATER REQUIREMENTS

H	HIGH WATER REQUIREMENT
M	MODERATE WATER REQUIREMENT
L	LOW WATER REQUIREMENT
VL	VERY LOW WATER REQUIREMENT

NOTE: PLANT WATER REQUIREMENT CATAGORIES / RATINGS ARE BASED ON WUCOLS IV; PUBLISHED JANUARY 2014.

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jay@isaacsonwood.com

MULBERRY RESIDENTIAL

36952 MULBERRY STREET
NEWARK, CALIFORNIA

PLANTING PLAN

JOB #	REVISIONS:
20002	02.24.21
DATE:	01.20.22
07.30.20	09.15.22

NORTH

0 10' SCALE: 1"=10'

SHEET
L2
OF

BOULDER / ROCK OUTCROPPING

F

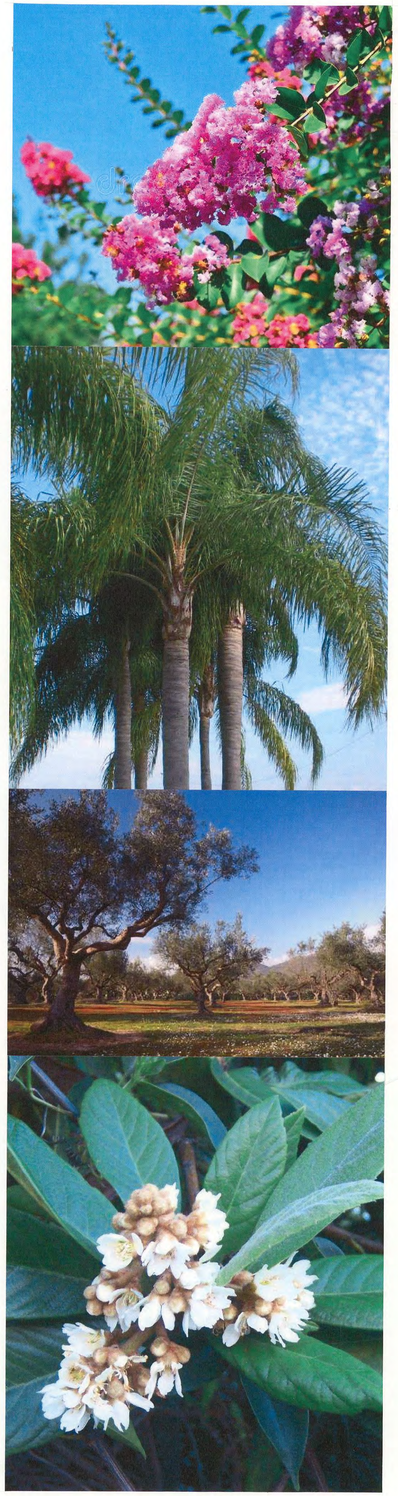
@ STORMWATER MANAGEMENT AREAS.



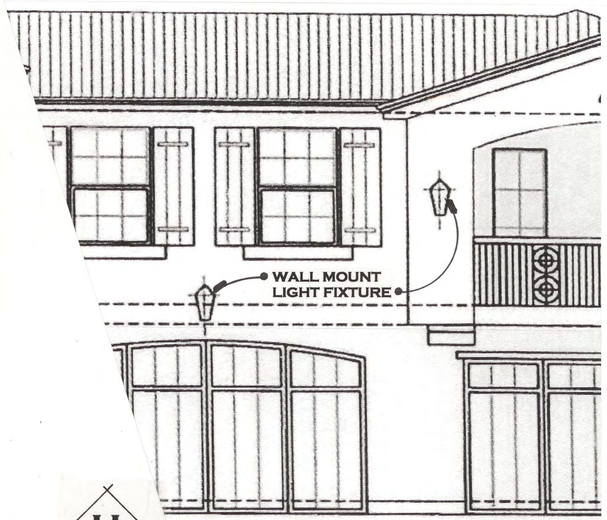


WOOD FENCE

G







WALL MOUNT LIGHT FIXTURE

H

NOTE: SEE ARCHITECT'S PLANS FOR DETAILS.



PLANT MATERAIL

I

SEE PROPOSED PLANT PALETTE (SHEET #L2) FOR SPECIFICATION.



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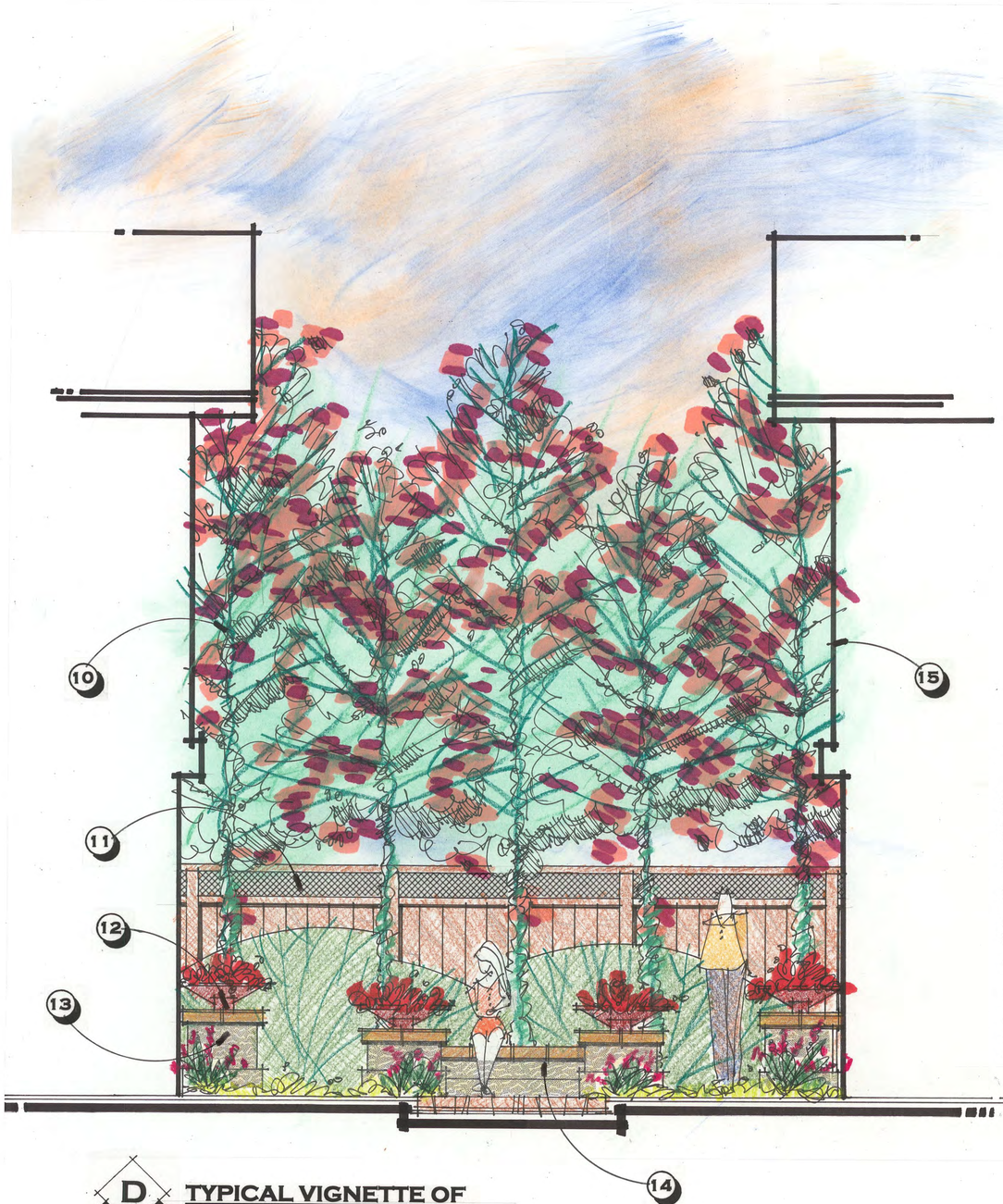
MULBERRY RESIDENTIAL

36952 MULBERRY STREET
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PHOTOGRAPHIC IMAGERY

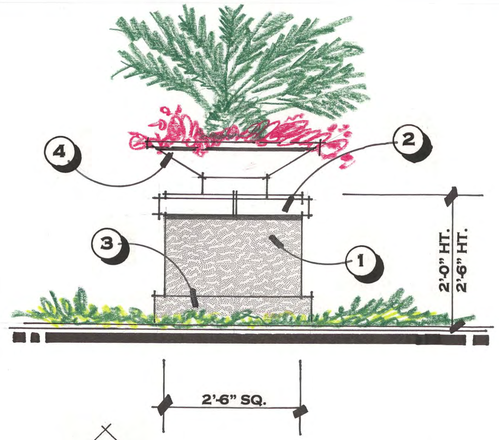
JOB #	REVISIONS:
DATE: 07.30.20	1 02.24.21 6
	2 01.20.22 7
	3 09.15.22 8
	4 9
	5 10

SHEET
L3
OF

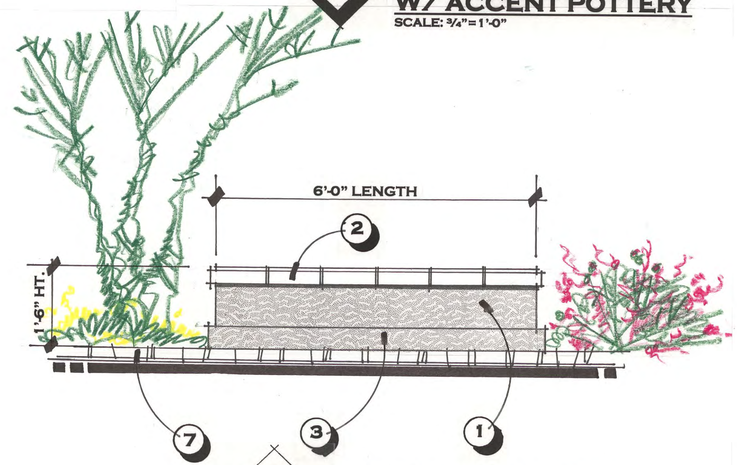


D **TYPICAL VIGNETTE OF COMMON OPEN SPACE**
SCALE: ½"=1'-0"

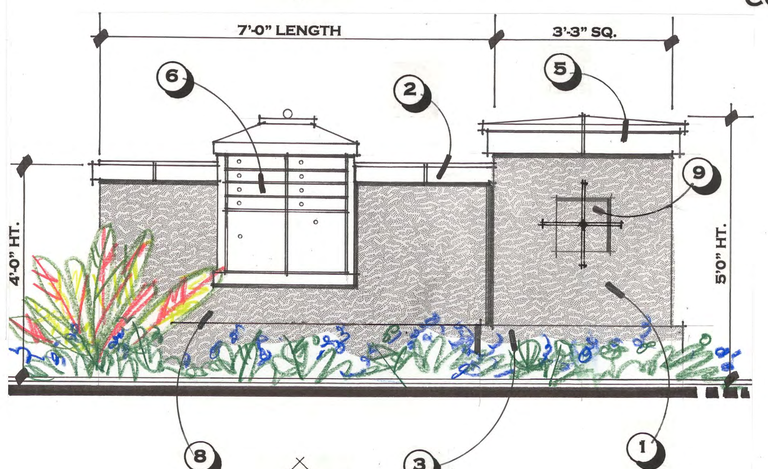
1. STUCCO (COLOR, TEXTURE & FINISH TO MATCH ARCHITECTURE)
2. PRECAST CONCRETE WALL CAP
3. STUCCO BASE
4. ACCENT POTTERY
5. PRECAST CONCRETE PILASTER CAP
6. GROUP MAILBOX UNIT (DARK GREEN METAL)
7. ENHANCED PEDESTRIAN PAVEMENT
8. LOW ACCENT PLANTING
9. ACCENT (TO MATCH ARCHITECTURE
10. TREE GROVE LAGERSTROEMIA
11. WOOD FENCE
12. ACCENT POTTERY
13. MASONRY PEDESTAL
14. MASONRY SEATWALL
15. BUILDING OUTLINE



A **MASONRY PEDESTAL W/ ACCENT POTTERY**
SCALE: ¾"=1'-0"



B **MASONRY SEATWALL**
SCALE: ¾"=1'-0"



C **MASONRY ENTRY FEATURE W/ GROUP MAILBOX**
SCALE: ¾"=1'-0"

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MULBERRY RESIDENTIAL
36952 MULBERRY STREET
NEWARK, CALIFORNIA

CONCEPTUAL DETAILS

JOB #	REVISIONS:
20002	1 02.24.21 6
DATE:	2 01.20.22 7
07.30.20	3 09.15.22 8
	4 9
	5 10

SHEET
L4
OF



Mulberry Residential Project (DR2021-006)

June 22, 2023
City Council Meeting
Joseph Balatbat, Associate Planner

Agenda

1. Project Summary
2. Site Information
3. Site Plan
4. Elevations
5. CEQA Exemption
6. Recommendation
7. Questions?

Project Summary

Applicant: Rajesh Rao

Architect: Anthony Ho, LPMD Architects

Request: City Council review and approval of the following entitlements:

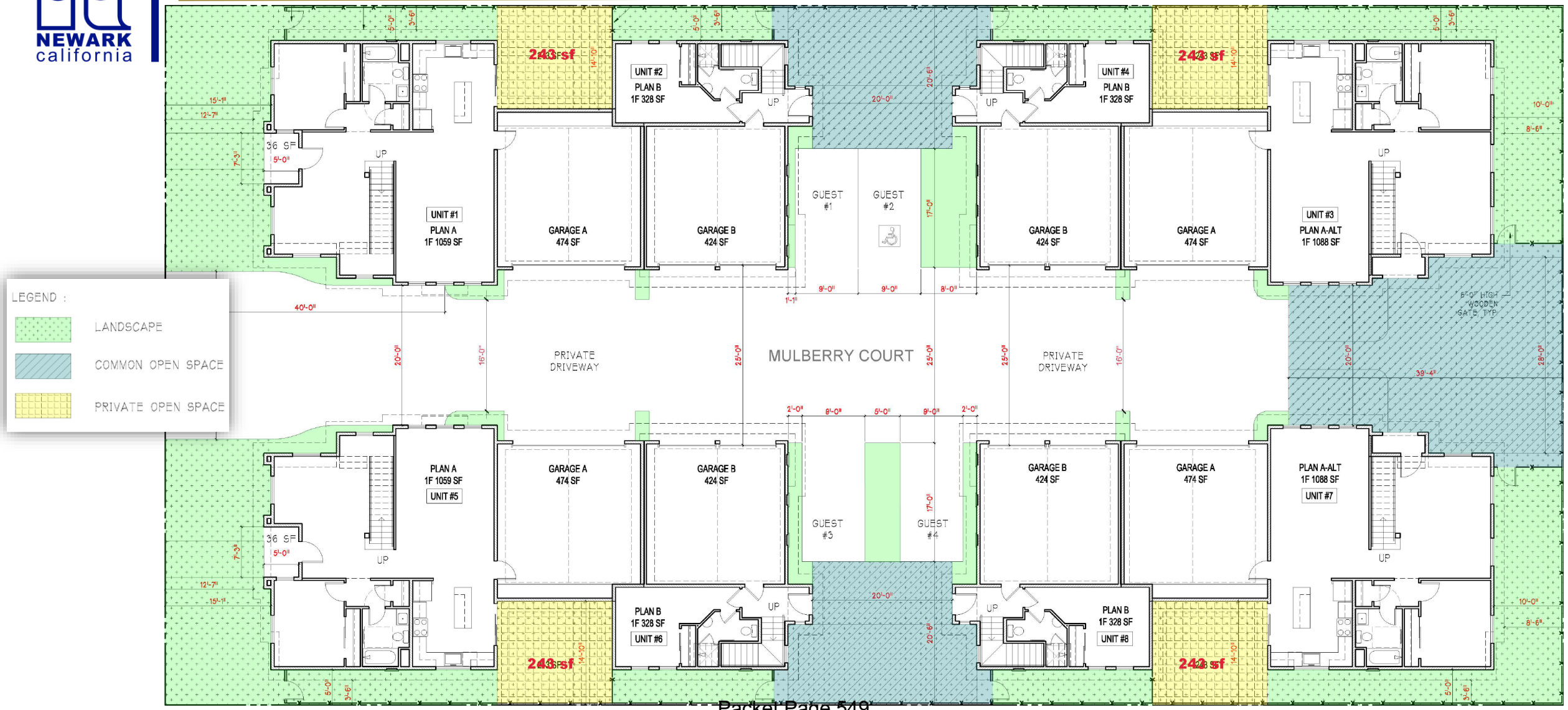
- Design Review for the construction of a new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings.
- Vesting Tentative Map to allow for the merger of the two existing lots for the new residential development to be on an approximately 0.46 acres (20,000 square feet) lot.



Site Information



Site Plan


LEGEND :
LANDSCAPE
COMMON OPEN SPACE
PRIVATE OPEN SPACE
UNIT #1
PLAN A
1F 1059 SF
GARAGE A
474 SF
GARAGE B
424 SF
UNIT #2
PLAN B
1F 328 SF
243 sf
GUEST
#1
GUEST
#2
UNIT #3
PLAN A-ALT
1F 1088 SF
UNIT #4
PLAN B
1F 328 SF
PRIVATE
DRIVEWAY
MULBERRY COURT
PRIVATE
DRIVEWAY
UNIT #5
PLAN A
1F 1059 SF
GUEST
#3
GUEST
#4
UNIT #6
PLAN B
1F 328 SF
UNIT #7
PLAN A-ALT
1F 1088 SF
UNIT #8
PLAN B
1F 328 SF
6'-0" HIGH
WOODEN
GATE TYP.

Site Plan (cont.)



PRIVATE OPEN SPACE | 148 SF TO 243 SF

LEGEND

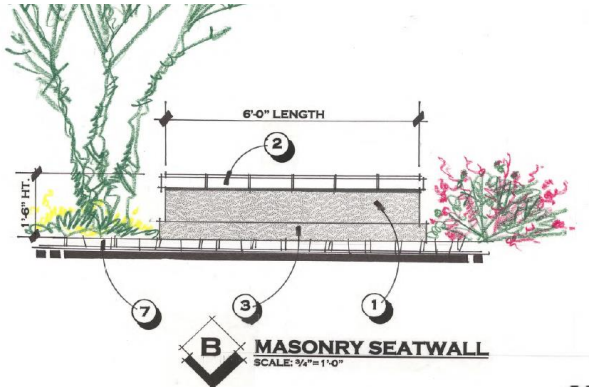
PRIVATE OPEN SPACE

1 FLOOR PLAN LEVEL 2

1/8" = 1'-0"

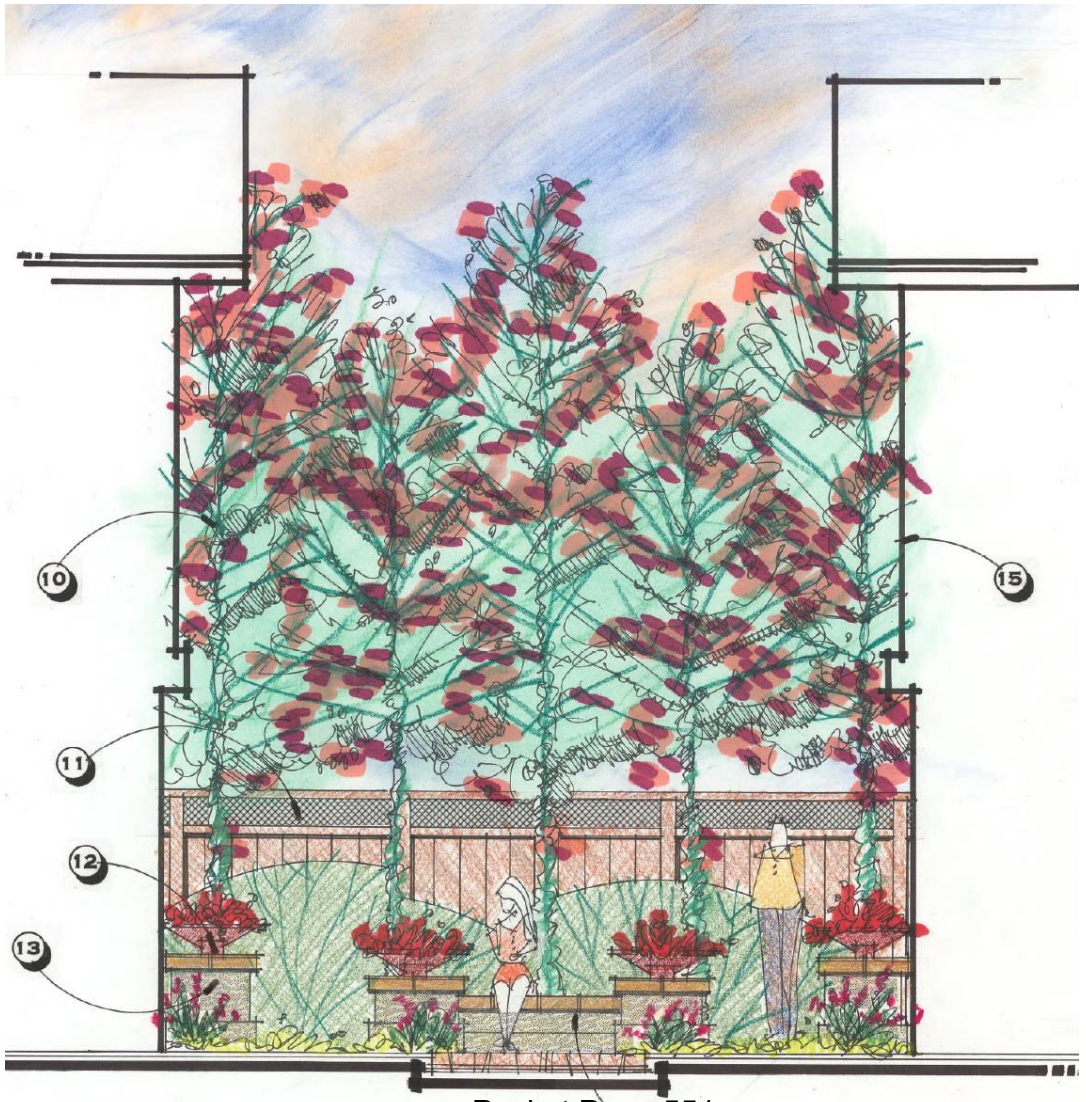
NORTH

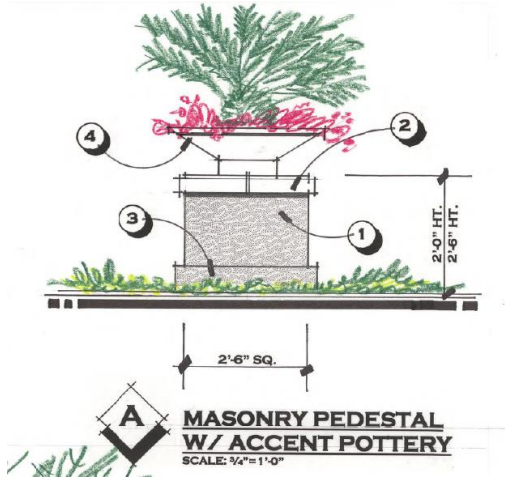
Site Plan (cont.)

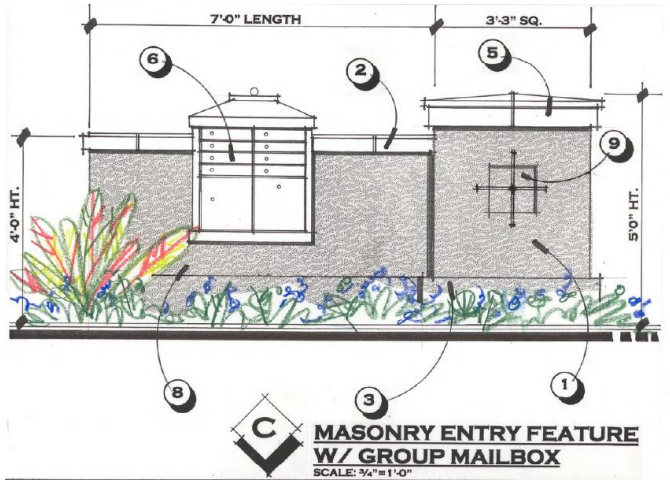












Elevations









Elevations



1

TERRA COTTA CONCRETE S-TILE, EAVE TILES BOOSTED WITH MUD STOPS



2

OFF-WHITE STUCCO SMOOTH FINISH
COLOR: KELLY MOORE KM 49



3

TERRA COTTA DECORATIVE TILE



4

VINYL WINDOWS
DEEP GREEN



5

42" TALL METAL RAILING PAINTED IN EBONY, WITH SANDBLAST GLASS BEHIND TO PROVIDE PRIVACY





6

WOOD GARAGE DOOR
COLOR: KELLY MOORE KM 49



7

DECORATIVE WOOD SHUTTERS
COLOR: KELLY MOORE KM 149



8

DECORATIVE WROUGHT IRON WINDOW (OR STUCCO RECESS) BARS
COLOR: KELLY MOORE AC255-5



9

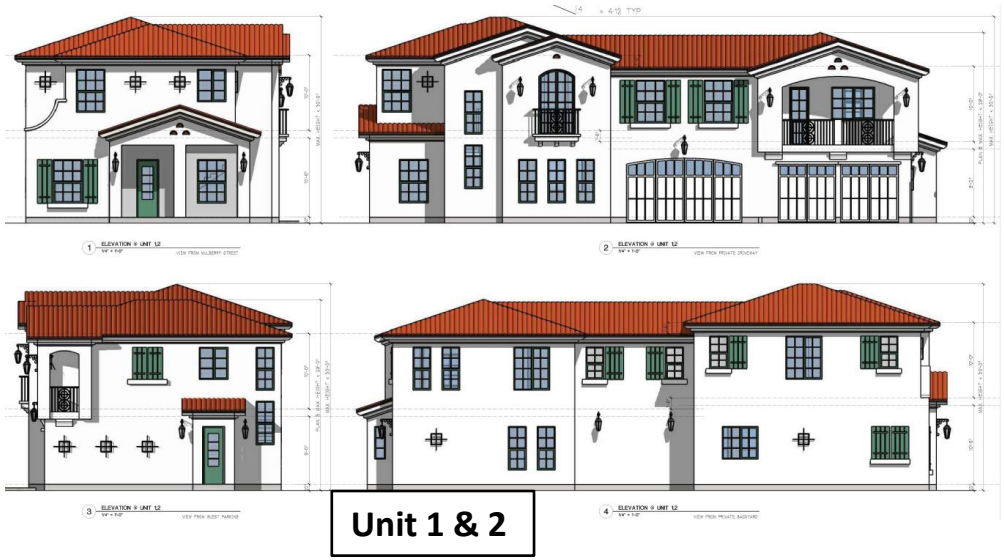
WOOD ENTRY DOOR
COLOR: KELLY MOORE KM 149



10

WALL LIGHTS

Elevations



Unit 1 & 2



Unit 5 & 6



Unit 3 & 4



Unit 7 & 8

CEQA Exemption

- Pursuant to CEQA Guidelines, Article 19, §15332 (In-fill Development Projects), the project qualifies for the Class 32 Categorical Exemption.
- The project meets the conditions for a Class 32 Categorical Exemption, in that:
  - The project would be consistent with the Medium Density Residential General Plan land use designation and RM: Residential Medium Density zoning district. Additionally, the proposed project would be consistent with all applicable General Plan policies and all applicable Zoning Code regulations.
  - The project would be developed on an approximately 0.46 acres (20,000 square feet) lot that would continue to be substantially surrounded by urban uses.
  - The project is not located within any special habitat area.
  - The project would not anticipate having any significant impact on traffic as it would generate less than 100 new traffic trips in a day. Therefore, a traffic analysis was not required. The proposed project would also not result in any significant impacts to noise, air quality, or water quality so as long as the conditions of approval in Attachment 1, Exhibit B are satisfied.
  - The project would be located in a developed urban area where all utilities are existing. The proposed project would be adequately served by all required utilities and public services so as long the conditions of approval in Attachment 1, Exhibit B are satisfied.

Recommendation

Staff recommends that the City Council approve DR2021-006, a Resolution of the following actions:

1. Design Review for the construction of a new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings; and,
2. Vesting Tentative Map to allow for the merger of the two existing lots for the new 8-unit for-sale condominium residential development comprised of (4) two-unit dwellings to be on an approximately 0.46 acres (20,000 square feet) lot.

Questions?

Thank you!

&

Questions?

STAFF REPORT

Item F. 1.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Soren Fajeau, Public Works Director
SUBJECT	Adopt resolutions for approval of Annual Engineer's Reports, intention to levy and collect assessments and setting a public hearing for July 13, 2023, for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 for Fiscal Year 2024 in accordance with the provisions of the Landscaping and Lighting Act of 1972

SUMMARY AND RECOMMENDATION

The City of Newark previously completed all necessary proceedings to establish Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 (collectively "Districts") to fund ongoing landscaping and lighting maintenance and improvements at various locations. For each upcoming fiscal year, it is necessary for the City Council to initiate proceedings for the levy and collection of assessments for the Districts, approve the Annual Engineer's Reports which detail the assessments for each of the Districts, and conduct a public hearing. The City Council adopted Resolution No. 11499 on April 27, 2023, to initiate proceedings to provide for the levy of assessments for Fiscal Year 2024 and to direct the City Engineer to prepare and file the Annual Engineer's Reports with the City Clerk. The Annual Engineer's Reports have been prepared and filed for City Council's consideration.

Staff recommends that the City Council: (1) by resolution, approve the Annual Engineer’s Reports; and, (2) by resolution, declare an intention to levy and collect assessments and set the date for the annual public hearing for July 13, 2023, for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 for Fiscal Year 2024 in accordance with the provisions of the Landscaping and Lighting Act of 1972.

BACKGROUND

The City Council previously established the Districts to provide for the annual operation and maintenance of certain landscaping and lighting improvements benefiting property within the Districts as summarized below.

Landscaping and Lighting District No. 1: Central Avenue between Filbert Street and Willow Street - Provides for the maintenance of median landscaping on Central Avenue between Filbert Street and Willow Street and buffer landscaping adjacent to the Alameda County Flood Control channel immediately west of Filbert Street, and for the maintenance and operation of median streetlights along this portion of Central Avenue.

Landscaping and Lighting District No. 2: Jarvis Avenue and Newark Boulevard adjacent to Dumbarton Technology Park and Four Corners shopping centers – Provides for the maintenance of Jarvis Avenue and Newark Boulevard median island and in-tract buffer landscaping and landscape irrigation systems adjacent to and within the boundaries of Tract 5232, the Dumbarton Industrial Park, and the Four Corners shopping centers.

Landscaping and Lighting District No. 4: Stevenson Boulevard and Cherry Street adjacent to New Technology Park - Provides for the maintenance of Stevenson Boulevard median island landscaping from the Nimitz Freeway to the railroad tracks west of Cherry Street and maintenance of median islands and up to 50 feet of greenbelt landscaping adjacent to Cherry Street and the interior loop streets within the boundaries of Stevenson Point Technology Park, the maintenance of landscaping across from the Newark Unified School District property on Cherry Street, and the street lighting maintenance, trash capture device maintenance, and neighborhood park maintenance related to Benefit Zone No. 2 (Sanctuary).

Landscaping and Lighting District No. 6: Cedar Boulevard and Duffel Redevelopment Area No. 2 – Authorized to provide for the maintenance of all street landscaping within the public right-of-way, and landscaping and landscape irrigation systems within easement areas and developed properties in Redevelopment Area No. 2 at Cedar Boulevard and Stevenson Boulevard, plus the Stevenson Station Shopping Center. The district is inactive at this time because all the improvements are privately maintained to City standards. Should the improvements not be maintained to City standards, the district may be activated, so funding is available for the City to maintain the improvements.

Landscaping and Lighting District No. 7: Newark Boulevard and Rosemont Square Shopping Center – Provides for the maintenance of buffer landscaping and the landscape irrigation system within the public right-of-way and easement areas for Rosemont Square Shopping Center.

Landscaping and Lighting District No. 10: Various locations throughout the City – Authorized to provide for the maintenance of street lighting, landscaping and landscape irrigation systems within public right-of-way and easement areas located throughout the City. A benefit zone has been established for each maintenance area. All benefit zones are inactive at this time because the improvements are privately maintained to City standards. Should the improvements not be maintained to City standards, the applicable benefit zone may be activated, so funding is available for the City to maintain the improvements.

Landscaping and Lighting District No. 11: Edgewater Drive - Provides for the maintenance of landscaped medians on Edgewater Drive.

Landscaping and Lighting District No. 13: Citation Homes and Bren developments on Thornton Avenue – Authorized to provide for maintenance of the landscaping and irrigation systems for Thornton Avenue, Cedar Boulevard, Willow Street, and other streets within these subdivisions. This district was relieved from the responsibility for maintenance of median landscaping on Thornton Avenue in May 1997. The district is

inactive at this time because all the improvements are privately maintained to City standards. Should the improvements not be maintained to City standards, the district may be activated, so funding is available for the City to maintain the improvements.

Landscaping and Lighting District No. 15: Robertson Avenue at Iris Court - Provides for the maintenance of the landscaping and irrigation systems on Robertson Avenue at Iris Court.

Landscaping and Lighting District No. 16: Kiote Drive in Tract 6671 – Provides for the maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement along the street frontage of Kiote Drive in Tract 6671, along with the landscaping, irrigation system, recreation facilities associated with the mini-park common area and any related appurtenant improvements.

Landscaping and Lighting District No. 17: Newark Boulevard and Mayhews Landing Road in Tract 7004 – Provides for the maintenance of landscaping and the landscape irrigation system within the public right-of-way of the Newark Boulevard and Mayhews Landing Road frontages of Tract 7004.

Landscaping and Lighting District No. 18: Cedar Boulevard along the frontage of Tract 8130 – Provides for the maintenance of landscaping and the landscape irrigation system within the Cedar Boulevard median area along the frontage of Tract 8130 between Central Avenue and Smith Avenue.

Landscaping and Lighting District No. 19: Willow Street and Enterprise Drive in the Bayside Newark Transit Oriented Development – Provides for the maintenance of landscaping and the landscape irrigation system within the Willow Street and Enterprise Drive medians and traffic circles, maintenance of public street lighting systems, and maintenance of other improvements related to each benefit zone associated with the Bayside Newark Transit Oriented Development.

Pursuant to Section 22620 of the Landscaping and Lighting Act of 1972, the City Council, with Resolution No. 11499 adopted on April 27, 2023, initiated proceedings to provide for the levy of assessments for Fiscal Year 2024 in order to provide for the necessary costs and expenses pertaining the maintenance of improvements with these districts and directed the City Engineer to prepare and file the Annual Engineer's Reports for each District with the City Clerk.

DISCUSSION/ANALYSIS

The Annual Engineer's Reports for all Districts have been filed with the City Clerk as directed. There are no new improvements or substantial changes to existing improvements associated with the Districts for Fiscal Year 2024. City staff is recommending Fiscal Year 2024 assessments for the Districts be levied in alignment with recent years at or below the respective authorized maximum rates to pay for operation and maintenance of landscaping and lighting improvements.

For Landscaping and Lighting District Nos. 1, 2, 4 (Benefit Zone 1), 7, 11, 15, 16, 17,

and 18, the authorized maximum assessment rates are recommended to be levied for Fiscal Year 2024. For Landscaping and Lighting District Nos. 6, 10, and 13, no assessments are proposed to be levied for Fiscal Year 2024. For Landscaping and Lighting District Nos. 4 (Benefit Zone No. 2) and 19 (All Benefit Zones), assessment rates below the authorized maximum are proposed to be levied for Fiscal Year 2024.

Upon conclusion of the annual public hearings, the assessments for the cost of the work would be added to the tax bills for those property owners included within the boundaries of active districts. Excess funds, or funds collected for which work was not completed, can be carried over from one year to the next.

FISCAL IMPACT

If assessments for the Districts are not levied, there would be a total revenue loss of approximately $392,500 for Fiscal Year 2024 to fund the annual operation and maintenance of certain landscaping and lighting improvements benefiting property within the Districts.

REVIEW AND APPROVAL

Prepared by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution Approving Annual Engineer's Reports
Resolution Declaring Intent to Levy Assessments and Setting Public Hearing Date
L&L No. 1 Annual Engineer's Report
L&L No. 2 Annual Engineer's Report
L&L No. 4 Annual Engineer's Report
L&L No. 6 Annual Engineer's Report
L&L No. 7 Annual Engineer's Report
L&L No. 10 Annual Engineer's Report
L&L No. 11 Annual Engineer's Report
L&L No. 13 Annual Engineer's Report
L&L No. 15 Annual Engineer's Report
L&L No. 16 Annual Engineer's Report
L&L No. 17 Annual Engineer's Report
L&L No. 18 Annual Engineer's Report
L&L No. 19 Annual Engineer's Report

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE ANNUAL ENGINEER'S REPORTS FOR LANDSCAPING AND LIGHTING DISTRICT NOS. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 AND 19, FOR FISCAL YEAR 2024 IN ACCORDANCE WITH THE PROVISIONS OF THE LANDSCAPING AND LIGHTING ACT OF 1972

WHEREAS, the City Council of the City of Newark previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (the "Act") to establish Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 (the "Districts") in order to fund ongoing maintenance and improvements authorized under the Act; and

WHEREAS, there are no new proposed improvements or any substantial changes to existing improvements in the Districts; and

WHEREAS, Section 22620, et seq. of the Act provides for the levy of annual assessments after formation of the Districts; and

WHEREAS, the City designates the City Engineer to prepare and file reports in accordance with Section 22565, et seq., of the Act (the "Annual Engineer's Reports"); and

WHEREAS, pursuant to Section 22622 of the Act, the City Council, with Resolution No. 11499 adopted on April 27, 2023, initiated proceedings to provide for the levy of assessments for Fiscal Year 2024 in order to provide for the necessary costs and expenses pertaining to the maintenance of the improvements within the Districts and ordered the City Engineer to prepare and file with the City Clerk the Annual Engineer's Reports.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the Annual Engineer's Reports for Fiscal Year 2024 submitted to the City Clerk pursuant to City Council Resolution No. 11499 are hereby approved as filed.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK DECLARING INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR LANDSCAPING AND LIGHTING DISTRICT NOS. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 AND 19, FOR FISCAL YEAR 2024 AND SETTING THE ANNNUAL PUBLIC HEARING DATE FOR JULY 13, 2023 IN ACCORDANCE WITH THE PROVISIONS OF THE LANDSCAPING AND LIGHTING ACT OF 1972

WHEREAS, the City Council of the City of Newark previously completed its proceedings in accordance with and pursuant to the Landscaping and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (the "Act") to establish Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 (the "Districts") in order to fund ongoing maintenance and improvements authorized under the Act; and

WHEREAS, there are no new proposed improvements or any substantial changes to existing improvements in the Districts; and

WHEREAS, Section 22620, et seq. of the Act provides for the levy of annual assessments after formation of the Districts; and

WHEREAS, the City designates the City Engineer to prepare and file reports in accordance with Section 22565, et seq., of the Act (the "Annual Engineer's Reports"); and

WHEREAS, pursuant to Section 22622 of the Act, the City Council, with Resolution No. 11499 adopted on April 27, 2023, initiated proceedings to provide for the levy of assessments for Fiscal Year 2024 in order to provide for the necessary costs and expenses pertaining to the maintenance of the improvements within the Districts and ordered the City Engineer to prepare and file with the City Clerk the Annual Engineer's Reports.

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

1. The City Council intends to levy and collect assessments within Landscaping and Lighting District Nos. 1, 2, 4, 6, 7, 10, 11, 13, 15, 16, 17, 18 and 19 during Fiscal Year 2024. The area of land to be assessed is located in the City of Newark, Alameda County.

2. The improvements to be made in these assessment districts are generally described as follows:

   Landscaping and Lighting District No. 1: Central Avenue between Filbert Street and Willow Street - Provides for the maintenance of median landscaping on Central Avenue between Filbert Street and Willow Street and buffer landscaping adjacent to the Alameda County Flood Control channel immediately west of Filbert Street, and for the maintenance and operation of median streetlights along this portion of Central Avenue.

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standards. Should the improvements not be maintained to City standards, the district may be activated, so funding is available for the City to maintain the improvements.

Landscaping and Lighting District No. 15: Robertson Avenue at Iris Court - Provides for the maintenance of the landscaping and irrigation systems on Robertson Avenue at Iris Court.

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There are no new improvements or substantial changes to existing improvements associated with the Districts for Fiscal Year 2024. City staff is recommending Fiscal Year 2024 assessments for the Districts be levied in alignment with recent years at or below the respective authorized maximum rates to pay for operation and maintenance of landscaping and lighting improvements.

3. In accordance with City Council Resolution No. 11499 directing the filing of annual Engineer's Reports, the City Engineer, Engineer of Work, has filed with the City Clerk the reports required by the Landscaping and Lighting Act of 1972. All interested persons are referred to that report for a full and detailed description of the improvements, the boundaries of the assessment district, and the proposed assessments upon assessable lots and parcels of land within the assessment district.

4. On Thursday, the 13th of July, 2023, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing on the question of levy and collection of the proposed annual assessments. The hearing will be held at the meeting place of the City Council located in the City Administration Building, 37101 Newark Boulevard, Newark, California.

5. The City Clerk is authorized and directed to give the notice of hearing as required by the Landscaping and Lighting Act of 1972.

NEWARK
california

Landscaping and Lighting District No. 1

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E – Assessment Roll 16

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 1
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 1 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of median-island and buffer landscaping and median-island streetlight improvements benefiting parcels within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties both fronting and adjacent to Central Avenue and between Filbert Street to the east and Willow Street to the west. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Compliance with the California Constitution

Assessments are levied annually within the District pursuant to the 1972 Act. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and are compliant with the provisions of the California Constitution Article XIIID ("Article XIIID"), which was enacted with the passage of Proposition 218 in November 1996. Pursuant to Article XIIID Section 5, certain existing assessments are exempt from the substantive and procedural requirements of Article XIIID Section 4. Specifically, Article XIIID Section 5(b) exempted:

> *"Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessment shall be subject to the procedures and approval process set forth in Section 4."*

The City determined that the annual assessments originally established for the District were established by a petition signed by the persons owning all the parcels subject to the assessment at the time the assessment was originally proposed. As such, pursuant to Article XIIID Section 5(b), the pre–existing assessment amount has been exempted from the procedural requirements of Article XIIID Section 4 since the amount of the assessment has not increased since the passage of Proposition 218.

Any future increase in the assessment rate or substantial changes in the services provided would require that the District be brought into compliance with all the requirements of Article XIIID and would require the approval of the property owners subject to the assessment based upon a mailed ballot which would be sent to each property owner.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 1 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: DESCRIPTION OF ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

> The maintenance and operation of median-island and buffer landscaping and the landscape irrigation system and median-island lighting located on Central Avenue between Filbert Street and Willow Street. Costs shall include all maintenance and operation costs including normal upkeep, operating expenses, management expenses, replanting costs, and power costs.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the District can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 1 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$41,547
Non-Assessment Revenues	$0
Total Projected Revenues	**$41,547**
Projected Expenses	
Contract Services	($18,082)
Utilities	($4,535)
Administration and Incidentals	($19,869)
County Collection Fees	($706)
Unforeseen Maintenance and Repairs[1]	($2,160)
Total Projected Expenses	**($45,351)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$184,969
Reserve Fund Collection Increase/(Decrease)	($3,804)
Ending Fund Balance - June 30, 2024	$181,165
Recommended Operating Reserves	$22,676
Available Operating Reserves	$22,676
Available Capital Reserves[2]	$158,490

[1]Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[2]Includes $126,850 for future Plant Replacement and $8,000 for future Streetlight Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

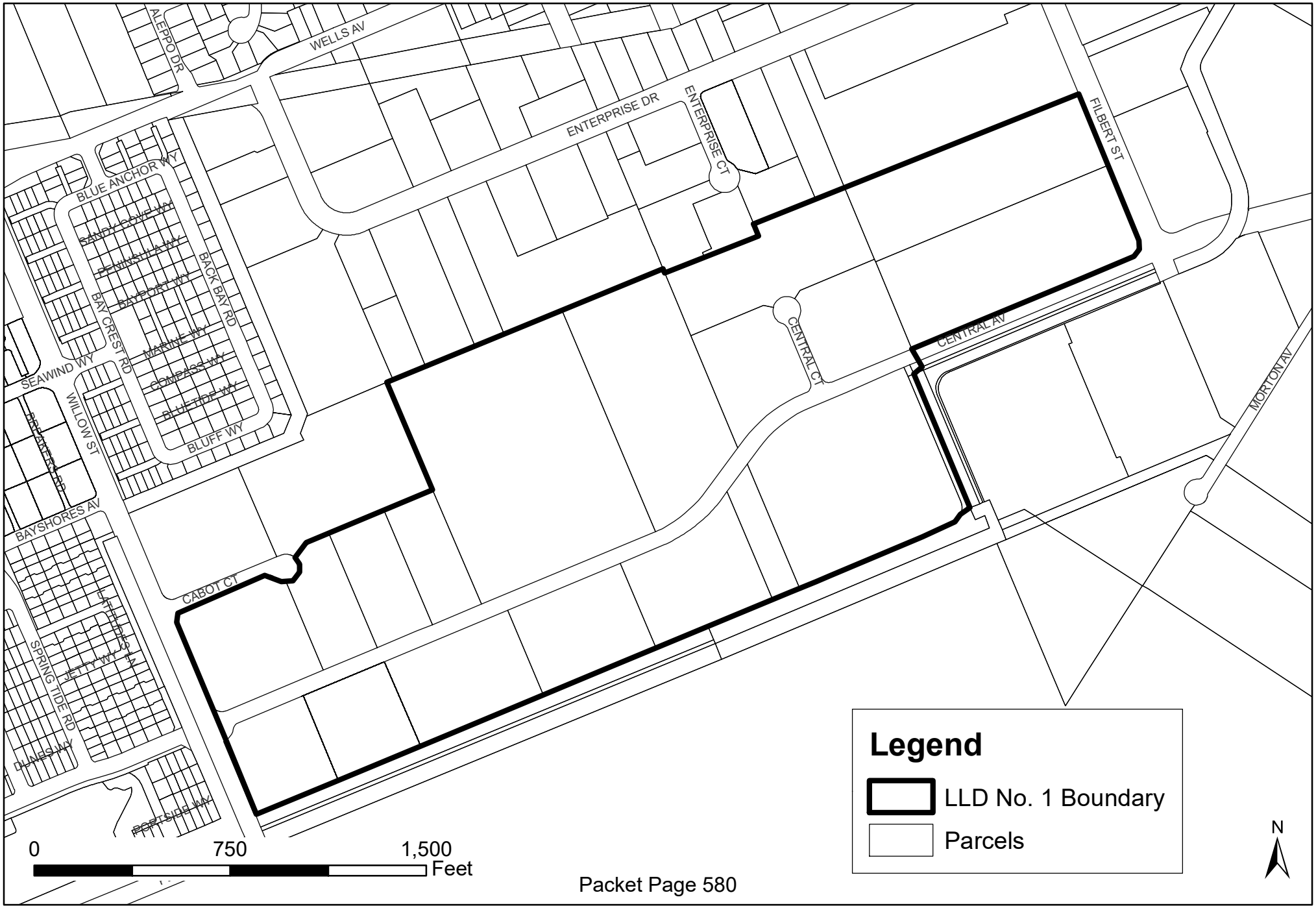
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 1
(CENTRAL AVENUE)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was established.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and

services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements can be summarized as follows:

- Improved aesthetics:
    - Well-maintained and attractive landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
    - Well-lit medians contribute to property visibility, especially during nighttime, benefiting businesses or properties seeking attention and attracting customers. It also adds to the visual appeal, attractiveness, and inviting nature of the area.
- Increased property values:
    - Attractive and well-maintained landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
    - Well-maintained and well-lit medians can have a positive impact on property values in the surrounding area. Adequate lighting is seen as a desirable feature, making properties more appealing to potential buyers or tenants.
- Safety:
    - Median and buffer landscaping helps calm traffic and reduce speeds, creating a safer environment for people traveling to and from properties within the District. It also acts as a physical buffer between roadways and properties within the District.
    - Well-lit medians contribute to improved safety for both motorists and pedestrians traveling to and from properties within the District. Adequate lighting enhances visibility, reducing the risk of accidents and improving overall traffic safety. It also facilitates easier access to adjacent properties.
- Noise reduction:
    - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
    - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in the District, specifically increase the utility of the property within the District. For example, the assessments provide funding to maintain the landscaping and lighting that improves safety and access to the property and provides visual and environmental benefits to the properties within the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. The City and Engineer of Work at the time of District formation determined that each property's linear foot of frontage along Willow Avenue receives a similar benefit from the improvements. Therefore, it was determined that the most appropriate method of apportioning costs was to assess properties based on a front footage basis for all parcels fronting Central Avenue between Filbert Street and Willow Street. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the City proposes to collect the maximum assessment revenue from the assessable parcels located in the District, which amounts to $6.01 per linear foot of frontage to be levied. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City

Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $41,547.08.

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 1
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092 -0116-035-03	$2,091.48
092 -0116-048-00	$4,303.16
092 -0116-049-00	$2,758.58
092 -0116-050-00	$1,364.26
092 -0116-055-00	$3,071.10
092 -0116-056-00	$2,776.62
092 -0116-057-00	$3,029.04
092 -0116-064-00	$1,358.26
092 -0116-065-00	$1,238.06
092 -0116-066-00	$2,686.46
092 -0116-068-00	$168.28
092 -0116-069-00	$168.28
092 -0116-070-00	$168.28
092 -0116-071-00	$168.28
092 -0116-072-00	$168.28
092 -0116-073-00	$168.28
092 -0116-074-00	$168.28
092 -0116-075-00	$168.28
092 -0116-076-00	$168.28
092 -0116-077-00	$168.28
092 -0116-078-00	$168.28
092 -0116-079-00	$168.28
092 -0251-012-00	$2,079.46
092 -0251-014-00	$2,019.36
092 -0252-011-00	$4,387.30
092 -0252-012-00	$727.20
092 -0252-015-00	$5,637.38
Total Parcels:	27
Total Assessment:	$41,547.08

NEWARK
california

Landscaping and Lighting District No. 2

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 15

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 2
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 2 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of landscaping improvements within the public right-of-way within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties west of Jarvis Avenue, north of the railroad tracks, east of California State Route 84, and south of the City owned parcel at the corner of Jarvis Avenue and Cardiff Street. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Compliance with the California Constitution

Assessments are levied annually within the District pursuant to the 1972 Act. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and are compliant with the provisions of the California Constitution Article XIIID ("Article XIIID"), which was enacted with the passage of Proposition 218 in November 1996. Pursuant to Article XIIID Section 5, certain existing assessments are exempt from the substantive and procedural requirements of Article XIIID Section 4. Specifically, Article XIIID Section 5(a) exempted:

> *"Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4."*

The City determined that the annual assessments originally established for the District were for the maintenance and operation of landscape and medians within the public street rights-of-way. As such, pursuant to Article XIIID Section 5(a), the pre–existing assessment amount has been exempted from the procedural requirements of Article XIIID Section 4 since the amount of the assessment has not increased since the passage of Proposition 218.

Any future increase in the assessment rate or substantial changes in the services provided would require that the District be brought into compliance with all the requirements of Article XIIID and would require the approval of the property owners subject to the assessment based upon a mailed ballot which would be sent to each property owner.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 2 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
  - The installation or planting of landscaping.
  - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
  - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
  - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
  - The installation of park or recreational improvements, including, but not limited to all the following:
    - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
    - Lights, playground equipment, play courts, and public restrooms.
  - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
  - The acquisition of land for park, recreational, or open space purposes.
  - The acquisition of any existing improvement otherwise authorized herein.
  - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

The maintenance of Jarvis Avenue median-island and buffer landscaping and landscape irrigation system, and lighting adjacent to and within the boundaries of Tract 5232 and the Dumbarton Industrial Park. Costs shall include all maintenance and operation costs including normal upkeep, operating expenses, management expenses, replanting costs, and power costs.

The maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas adjacent to the public right-of-way on Dumbarton Court, Jarvis Avenue and Newark Boulevard, and the 10-foot wide landscape easement in lots 6 and 7 of Tract 5232 adjoining the property within Parcel Map 5618.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the Districts can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 2 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$26,678
Non-Assessment Revenues	$0
Total Projected Revenues	**$26,678**
Projected Expenses	
Contract Services	($5,733)
Utilities	($3,797)
Administration and Incidentals	($12,986)
County Collection Fees	($454)
Unforeseen Maintenance and Repairs[1]	($1,148)
Total Projected Expenses	**($24,118)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$169,971
Reserve Fund Collection Increase/(Decrease)	$2,560
Ending Fund Balance - June 30, 2024	$172,531
Recommended Operating Reserves	$12,059
Available Operating Reserves	$12,059
Available Capital Reserves[2]	$160,471

[1] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[2] Includes $97,000 for future Plant Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures that are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

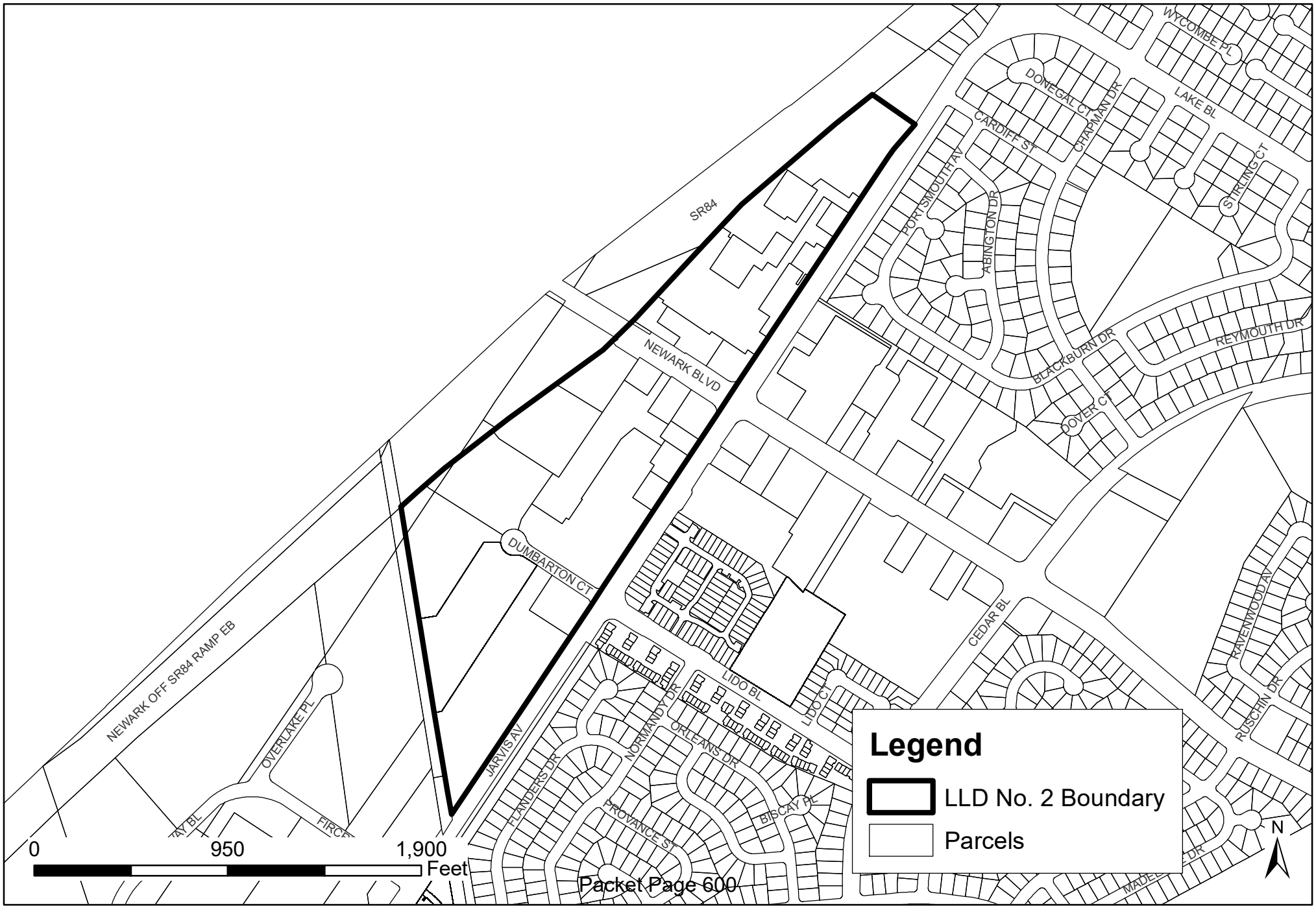
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 2
(NEWARK BOULEVARD AT JARVIS AVENUE)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was established.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements can be summarized as follows:

- Improved aesthetics:
    - Well-maintained and attractive landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
- Increased property values:
    - Attractive and well-maintained landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
- Safety:
    - Median landscaping helps calm traffic and reduce speeds, creating a safer environment for people traveling to and from properties within the District. It also acts as a physical buffer between roadways and properties within the District.
- Noise reduction:
    - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
    - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in the District, specifically increase the utility of the property within the District. For example, the assessments provide funding to maintain the landscaping that improves safety and access to the property and provides visual and environmental benefits to the properties within the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer of Work at the time of District formation determined the project costs related to Jarvis Avenue west of Dumbarton Court and for Dumbarton Court, including a proportionate share of the incidental expenses will be spread on the basis of area to lots which front Jarvis Avenue and Dumbarton Court. Project costs related to improvements on Jarvis Avenue east of Dumbarton Court and on Newark Boulevard, including a proportionate share of incidental expenses will be spread to properties fronting this segment of Jarvis Avenue and Newark Boulevard on the basis of area, but after buildings are constructed, these costs are to be spread on the basis of building square footage, with costs allocated to undeveloped property based on the maximum building size permitted on the parcel. This methodology distributes assessments in proportion to the estimated special benefit conferred to property and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the maximum allowable assessment for each assessable parcel within the District is needed to cover the annual costs. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $26,678.00.

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 2
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-2596-001-00	$134.00
092A-2596-002-00	$44.00
092A-2596-003-00	$77.00
092A-2596-004-00	$797.00
092A-2596-005-00	$74.00
092A-2596-006-00	$83.00
092A-2596-007-00	$66.00
092A-2596-008-00	$202.00
092A-2596-009-00	$796.00
092A-2596-010-00	$377.00
092A-2596-011-00	$161.00
537 -0521-014-00	$1,643.00
537 -0521-015-00	$198.00
537 -0521-023-02	$25.00
537 -0521-024-02	$55.00
537 -0521-025-00	$99.00
537 -0521-026-00	$38.00
537 -0521-027-00	$73.00
537 -0521-028-00	$78.00
537 -0521-036-00	$631.00
537 -0521-037-00	$820.00
537 -0521-038-00	$14,308.00
537 -0521-039-00	$2,306.00
537 -0521-045-00	$743.00
537 -0521-046-00	$57.00
537 -0521-047-00	$304.00
537 -0521-048-00	$195.00
537 -0855-001-00	$114.70
537 -0855-002-00	$114.70
537 -0855-003-00	$114.70
537 -0855-004-00	$114.70
537 -0855-005-00	$114.70
537 -0855-006-00	$114.70
537 -0855-007-00	$114.70
537 -0855-008-00	$114.70
537 -0855-009-00	$114.70
537 -0855-010-00	$114.70
537 -0855-011-00	$114.70
537 -0855-012-00	$114.70
537 -0855-013-00	$114.70
537 -0855-014-00	$114.70
537 -0855-015-00	$114.70
537 -0855-016-00	$114.70
537 -0855-017-00	$114.70
537 -0855-018-00	$114.70
537 -0855-019-00	$114.70
537 -0855-020-00	$114.70
Total Parcels:	47
Total Assessment:	$26,678.00

NEWARK
california

Landscaping and Lighting District No. 4

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 9

Part C – Assessment District Diagram 11

Part D – Method of Apportionment of Assessments 13

Part E - Assessment Roll 20

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 4
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 4 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of median-island and buffer landscape, streetlight, and park improvements benefiting parcels within the boundaries of the District. Since formation, an additional zone of benefit was created on September 14, 2017.

Following annexation of the zone of benefit referenced above, the District consists of the following two (2) zones of benefit:

- Zone 1 (New Technology Park and Stevenson Point Techpark)
  The area includes office, commercial, and institutional establishments in the City known as the New Technology Park and the Stevenson Point Techpark.

- Zone 2 (Sanctuary)
  The Sanctuary development includes Tract 8270 and is comprised of 386 single family homes and private roads.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed and the additional zone of benefit was established.

The District generally consists of those properties south of Cherry Street, west of Stevenson Boulevard, north of the railroad tracks and east of Mowry Avenue. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District and each zone of benefit is provided in Part C of this Report.

Impacts of Proposition 218

On November 5, 1996 California voters approved Proposition 218 entitled "Right to Vote on Taxes Act" which added Articles XIIIC and XIIID to the California Constitution. While its title refers only to taxes, Proposition 218 established new procedural requirements for the formation and administration of assessment districts.

These new procedures stipulate that even if assessments are initially exempt from Proposition 218, future increases in assessments must comply with the provisions of Proposition 218. However, if the increase in assessments were anticipated in the assessment formula (e.g., CPI increase or assessment cap) then the assessment would comply with the intent and provisions of Proposition 218.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District and each benefit zone, (2) a cost estimate for the District and each benefit zone, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District and each benefit zone.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 4 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
  - The installation or planting of landscaping.
  - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
  - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
  - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
  - The installation of park or recreational improvements, including, but not limited to all the following:
    - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
    - Lights, playground equipment, play courts, and public restrooms.
  - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
  - The acquisition of land for park, recreational, or open space purposes.
  - The acquisition of any existing improvement otherwise authorized herein.
  - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

- The Landscape Improvements include, but are not limited to landscaping, planting, turf, trees, irrigation systems, and fixtures in parks, public street and sidewalk rights-of-way, including medians, traffic circles, parkways and other easements dedicated to the City within, and adjacent to, the zones.
- Street Lighting Improvements include, but are not limited to poles, fixtures, bulbs, conduits, conductors, equipment including guys, anchors, posts and pedestals, metering devices and appurtenant facilities as required to provide lighting in public street and sidewalk rights-of-way and other easements dedicated to the City within, and adjacent to, the zones.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of these diagrams is on file with the City's Public Works Department.

A more detailed description of the facilities which either have or will be constructed, operated, maintained, and serviced within each of the District benefit zones follows.

Zone 1 (New Technology Park and Stevenson Point Techpark)

Landscape Improvements

The Landscape Improvements include streetscapes and medians, specifically:

- The maintenance of Stevenson Boulevard median-island landscaping from the Nimitz Freeway to Cherry Street.
- The Maintenance of median-island and up to 50-feet of green belt landscaping and street lighting adjacent to Cherry street and the interior loop street within the boundaries of New Technology Park.
- The maintenance of landscaping across the Newark Unified School District parcel on Cherry Street.

Zone 2 (Sanctuary)

Park and Landscape Improvements

Zone 2 is responsible for maintaining the existing District improvements identified previously in Zone 1, as well as additional maintenance and servicing of a neighborhood park and trash capture devices as listed below. Park maintenance includes turf, trees, and irrigation.

- Neighborhood Park located north of Dragonfly Street, between Sea Turtle and Brush Rabbit.
- 6 trash capture devices on Cherry Street.
- 2 trash capture devices on Stevenson Boulevard.
- 3 trash capture devices on Tom Cod Street.

All other improvements associated with Zone 2 including landscaping, sidewalk rights-of-way, medians, parkways, and other easements dedicated to the City will be maintained by a Homeowner's Association and will not be assessed to parcels within the District.

Street Lighting Improvements

The Street Lighting Improvements include fifty-one (51) streetlights located throughout Tract 8270 located along streets within the zone.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the District can also be included.

Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 4
Fiscal Year 2023-24 Cost Estimate

	Zone 1	Zone 2	Total Amount
Projected Revenues			
Assessment Revenue	$37,082	$74,907	$111,989
Non-Assessment Revenues[1]	$497	$5,916	$6,413
Total Projected Revenues	**$37,579**	**$80,823**	**$118,401**
Projected Expenses			
Contract Services	($9,887)	($19,973)	($29,860)
Utilities	($4,694)	($9,481)	($14,175)
Administration and Incidentals	($5,727)	($11,570)	($17,297)
County Collection Fees	($630)	($1,273)	($1,904)
Landscape Replacement	$0	$0	$0
Total Projected Expenses	**($21,985)**	**($44,412)**	**($66,397)**
Projected Fund Balance			
Beginning Fund Balance - July 1, 2023	$297,286	$480,427	$777,713
Reserve Fund Collection Increase/(Decrease)	$15,593	$36,411	$52,004
Ending Fund Balance - June 30, 2024	$312,879	$516,838	$829,717
Recommended Operating Reserves	$10,993	$22,206	$33,199
Available Operating Reserves	$10,993	$22,206	$33,199
Available Capital Reserves[3]	$301,886	$494,632	$796,518

[1] Non-Assessment Revenues equate to the City contribution in the amount of $1,551 for General Benefits and $4,912 for Special Benefits conferred to property not in the District.

[2] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[3] Includes $156,000 for future Plant Replacement and $5,000 for future Streetlight Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

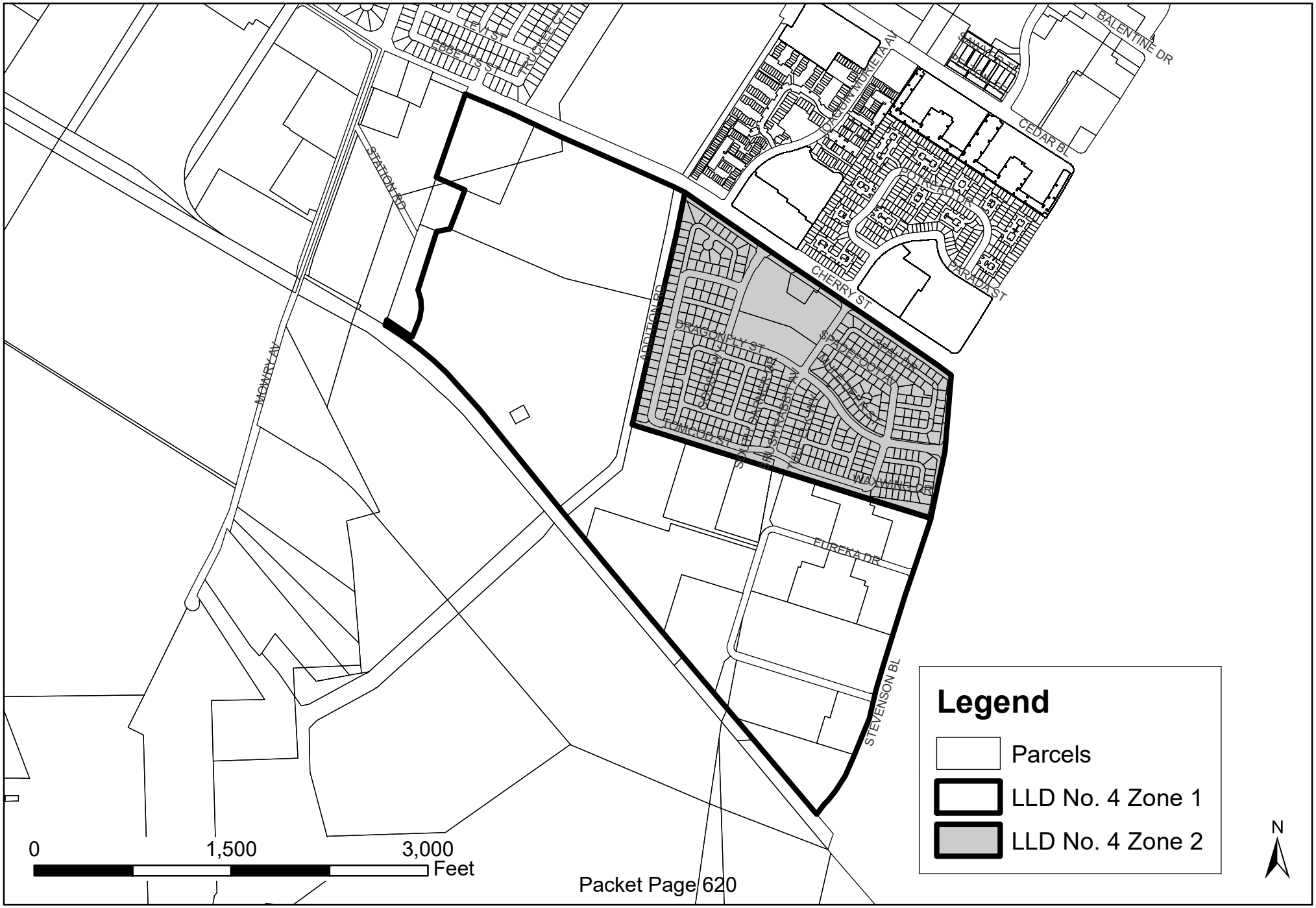
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District and each zone of benefit are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 4 ZONE 1 AND 2 (NEW TECHNOLOGY PARK AND STEVENSON POINT TECHPARK) ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of streetlights, landscaping, parks, trails, open space, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore needs to reflect the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, Article XIIID, of the California Constitution limits the amount of any assessment to the proportional "special benefit" conferred on the property. Article XIIID provides that only special benefits are assessable, and the City must separate the general benefits from the special benefits conferred on a parcel. There is no widely accepted or statutory formula for determining general and special benefit. However, the constitution states that a special benefit is different from a general benefit in that it is "particular and distinct" and "over and above" general benefits received by other properties.

The 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Article XIIID provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public

easements and rights-of-ways, public greenbelts and public parkways, utility easements, and that portion of public property that is not developed and used for business purposes similar to private residential, commercial, industrial, and institutional activities.

The amount to be assessed may be apportioned by any formula or method which fairly distributes the amount among all assessable lots or parcels. In order for the City to separate out the general and special benefits for each improvement type, an analysis of each improvement was conducted. The analysis reviewed the purpose and users of each improvement, and then identified the properties that may benefit from the improvement both within and outside the City and within and outside each zone of benefit, and then allocated the costs to maintain, service, and replace each improvement type to each identified property.

Because general benefits are not assessable, any costs associated with general benefits or special benefits assigned to properties within and outside the City and not in a District zone of benefit are to be paid for by the City. Only the costs associated with the special benefits conferred on property within each zone of benefit from the authorized improvements are assessable, and therefore assessed herein. A full analysis showing the quantification and separation of special and general benefits performed by the City and Assessment Engineer at the time of the establishment of Benefit Zone 2 (Sanctuary) can be found in the Engineer's Report prepared at the time of establishing Zone 2 (Sanctuary). A summary of the analysis by improvement type funded by District assessments is described below.

Special Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District and the subsequent zone of benefit was established.

The District consists of all Assessor Parcels within the boundaries of a zone of benefit. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services within each zone of benefit to the properties within the boundaries of the District's zones of benefit. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In determining the proportionate special benefit derived by each identified parcel, the proximity of the parcel to the public improvements detailed in Part A above, and the capital, maintenance, and operating costs of said public improvements, was considered and analyzed. Due to the close proximity of the parcels to the improvements detailed in Part A above, it has been demonstrated and determined that the parcels are uniquely benefited by, and receive a direct advantage from, and are conferred a particular and distinct special benefit over and above general benefits by said public improvements in a way that is

particular and distinct from its effect on other parcels, and that real property in general and the public at large do not share.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by each zone of benefit within the District. These special benefits are not dependent on any one property owner's use of each zone of benefit's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements are summarized as follows.

Special Benefit from Landscape Maintenance

All parcels within the District, specifically, Zone 1 (New Technology Park and Stevenson Point Techpark) and Zone 2 (Sanctuary), receive special benefit from Landscape Maintenance. Trees, landscaping, hardscapes, ornamental structures, and appurtenant facilities, if well maintained, confer a particular and distinct special benefit upon real property within the zones of benefit by providing beautification, shade and positive enhancement of the community character, attractiveness, and desirability of the surroundings. In addition, all the aforementioned contributes to a specific increase in property desirability and a specific enhancement of the property value of each parcel within each zone of benefit within the District.

In Parkways and Land Values, written by John Nolan and Henry V. Hubbard in 1937, it is stated:

> " ... there is no lack of opinion, based on general principles and experience and common sense, that parkways do in fact add value to property, even though the amount cannot be determined exactly .... Indeed, in most cases where public money has been spent on parkways the assumption has been made that the proposed parkway will show a provable financial profit to the City. It has been believed that the establishment of parkways causes a rise in real estate values throughout the City, or in parts of the City, ... "

It should be noted that the definition of "parkways" above may include the roadway as well as the landscaping alongside the roadway.

Special Benefit from Street Lighting Maintenance

All parcels within Zone 2 of the District receive special benefit from Street Lighting Maintenance. The special benefit from street lighting can be measured by increased safety to people and property, as well as the increased availability of lighting. The safety to people results in a special benefit to residential parcels because street lighting improves traffic safety during ingress and egress to the property and creates a deterrent to crime on the property. The safety to property results in a special benefit to both residential and vacant and undeveloped parcels because street lighting operation, maintenance and servicing

provides for the protection of buildings and personal property against crimes such as theft and vandalism.

Special Benefit from Park Maintenance

All parcels within Zone 2 (Sanctuary) receive special benefit from Park Maintenance. The overall quality of life and desirability of an area is enhanced, when public parks and recreational facilities are in place, improved, operable, safe, clean, and properly maintained. Conversely, property desirability decreases when park and recreational facilities are unsafe or destroyed by the elements or vandalism.

Property desirability in an area also increases when there is an increase in the number of parks, recreation centers and sports facilities. These park and recreational facilities enable property owners to participate in sporting events, leisure activities, picnics, organized social events, and other miscellaneous activities.

Studies in several communities, including counties and cities throughout the United States, have indicated that recreation areas and facilities, if well maintained and wisely administered, have caused a marked increase in the property values of parcels in the community. Consequently, such recreation and park facilities have proved a potent factor in maintaining a sound economic condition and a high standard of livability in the community. These studies confirm the opinion, long held by planning authorities, as to the economic value of parks and recreational facilities in a community.

> *"The recreation value is realized as a rise in the value of land and other property in or near the recreation area, and is of both private interest to the landowner and others, holding an economic stake in the area, and of public interest to the taxpayers, who have a stake ...." (National Recreation and Park Association, June 1985)*

> *"Recreation and park amenities are central components in establishing the quality of life in a community. ... [Businesses'] main resource is their employees for whom quality of life is an important issue… The availability and attractiveness of local parks and programs influences some companies' relocation decisions. ... the presence of a park encourages real estate development around it.... ". (California Parks & Recreation, Winter 1997)*

The benefit of parks and other recreational facilities to residential and the surrounding commercial/industrial properties in Zone 1 (New Technology Park and Stevenson Point TechPark) is supported and has been summarized by several studies. The United States Department of the Interior, National Park Service, in a publication of June 1984, concluded the following:

- Parks and recreation stimulate business and generate tax revenues
- Parks and recreation help conserve land, energy, and resources
- An investment in parks and recreation helps reduce pollution and noise, makes communities more livable, and increases property values

- Public recreation benefits all employers by providing continuing opportunities to maintain a level of fitness throughout one's working life, and through helping individuals cope with the stress of a fast-paced and demanding life

Proper maintenance and operation of the parks within the City benefits those properties within the service areas of the parks by providing environmental quality and recreational enhancement.

Special Benefit to Parcels Outside of the District

There are parcels outside Zone 2 (Sanctuary) that receive special benefit from some of the improvements (e.g., parks, etc.). Based on the analysis performed at the time of the establishment of Zone 2 (Sanctuary), it was determined that 11.06% of the annual costs from the improvements associated with Zone 2 (Sanctuary) are attributable to special benefits to parcels outside of Zone 2 (Sanctuary).

The share of cost attributable to special benefits conferred to parcels outside of Zone 2 (Sanctuary) cannot be assessed to properties within the specific zone, but are required to be paid by some other source, such as the City's General Fund.

General Benefit

In the context of assessments, a general benefit is a benefit enjoyed by the community, or the public at large rather than a special benefit that is specifically conferred to individual properties. The Assessment Engineer at the time of establishing Zone 2 (Sanctuary) performed an analysis and determined there are general benefits conferred from the District improvements to the public at large. Based on this analysis performed by the Assessment Engineer, 2.26% of annual costs associated with the District and related improvements are attributable to general benefits received by the public at large.

The share of costs attributable to the general benefits of each zone of benefit cannot be assessed to properties within each specific zone, but are required to be paid by some other source, such as the City's General Fund.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Since the assessment will be levied against parcels of property as shown on the tax roll, the final charges must be assigned by Assessor's Parcel Number. If assessments were to be spread just by parcel, not considering land use or parcel size, a single family parcel would be paying the same as a 50 unit apartment parcel or a large commercial establishment and this would not be equitable.

Therefore, the City and Engineer of Work at the time of formation of Zone 1 (New Technology Park and Stevenson Point Techpark) determined that the most appropriate method of apportioning costs was to segregate the costs associated with New Technology Park from the Stevenson Point Techpark and then spread the specific costs on an acreage basis to the parcels adjacent and in proximity to the improvements.

Furthermore, the City and Engineer at the time of establishing Zone 2 (Sanctuary) determined the most appropriate method of apportioning costs was to spread all Zone 2 (Sanctuary) specific costs equally to all single-family residential homes.

Publicly owned properties within the District must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the improvements. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts, public parkways, public property designated open space, and any portion of public property that is not used for business purposes similar to private residential, commercial, industrial, and institutional activities. Also exempted from the assessments are private streets, utility easements, Homeowner's Association common areas (except club houses, community centers, parking lots, etc.) and any other parcels that do not receive a special and direct benefit from the improvements.

Parcels within each zone may be assessed once it is anticipated that improvements will need to be maintained or reserve funds will need to be collected for the ensuing fiscal year(s).

The table below summarizes both the maximum and applied assessment rates for each zone for Fiscal Year 2023-24.

LLD No. 4 Benefit Zone	Maximum Assessment Rate	Applied Assessment Rate
Zone 1 - New Technology Park	$192.50	$192.50
Zone 1 - Stevenson Point Techpark	$130.00	$130.00
Zone 2 - Sanctuary	$228.05	$194.06

Maximum Assessment Rate Increases

The maximum assessment rates for Zone 1 (New Technology Park and Stevenson Point Techpark) may not be increased annually without property owner approval through a successful Proposition 218 proceeding. However, the maximum annual assessment rate for Zone 2 (Sanctuary) may be adjusted annually by the greater of the annual increase in the Bureau of Labor Statistics, Consumer Price Index for the month of February, All Urban Consumers for the San Francisco/Oakland/San Jose area, or 3%.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $111,988.92**.**

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 4
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
901 -0185-033-00	1	$4,337.62
901 -0185-039-00	1	$259.28
901 -0185-040-00	1	$1,298.70
901 -0185-041-00	1	$1,869.20
901 -0185-042-00	1	$2,819.94
901 -0185-043-00	1	$2,316.52
901 -0110-068-00	1A	$1,341.72
901 -0110-069-00	1A	$342.46
901 -0185-013-08	1A	$15,425.02
901 -0185-014-00	1A	$270.66
901 -0185-044-00	1B	$758.54
901 -0185-049-00	1B	$1,589.24
901 -0185-051-00	1B	$476.70
901 -0185-052-00	1B	$631.80
901 -0185-053-00	1B	$491.40
901 -0185-054-00	1B	$510.38
901 -0185-055-00	1B	$523.38
901 -0185-056-00	1B	$374.26
901 -0185-057-00	1B	$102.82
901 -0185-059-03	1B	$966.42
901 -0185-060-01	1B	$375.70
901 -0200-028-00	2	$194.06
901 -0200-029-00	2	$194.06
901 -0200-030-00	2	$194.06
901 -0200-031-00	2	$194.06
901 -0200-032-00	2	$194.06
901 -0200-033-00	2	$194.06
901 -0200-034-00	2	$194.06
901 -0200-035-00	2	$194.06
901 -0200-036-00	2	$194.06
901 -0200-037-00	2	$194.06
901 -0200-038-00	2	$194.06
901 -0200-039-00	2	$194.06
901 -0200-040-00	2	$194.06
901 -0200-041-00	2	$194.06
901 -0200-042-00	2	$194.06
901 -0200-043-00	2	$194.06
901 -0200-044-00	2	$194.06
901 -0200-045-00	2	$194.06
901 -0200-046-00	2	$194.06
901 -0200-047-00	2	$194.06
901 -0200-048-00	2	$194.06
901 -0200-049-00	2	$194.06
901 -0200-050-00	2	$194.06
901 -0200-051-00	2	$194.06
901 -0200-052-00	2	$194.06
901 -0200-053-00	2	$194.06
901 -0200-054-00	2	$194.06
901 -0200-055-00	2	$194.06
901 -0200-056-00	2	$194.06
901 -0200-057-00	2	$194.06
901 -0200-058-00	2	$194.06
901 -0200-059-00	2	$194.06
901 -0200-060-00	2	$194.06
901 -0200-061-00	2	$194.06
901 -0200-062-00	2	$194.06
901 -0200-063-00	2	$194.06
901 -0200-064-00	2	$194.06
901 -0200-065-00	2	$194.06
901 -0200-066-00	2	$194.06
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901 -0200-068-00	2	$194.06
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901 -0200-079-00	2	$194.06
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901 -0200-134-00	2	$194.06
901 -0200-135-00	2	$194.06
901 -0201-016-00	2	$194.06
901 -0201-017-00	2	$194.06
901 -0201-018-00	2	$194.06
901 -0201-019-00	2	$194.06
901 -0201-020-00	2	$194.06
901 -0201-021-00	2	$194.06
901 -0201-022-00	2	$194.06
901 -0201-023-00	2	$194.06
901 -0201-024-00	2	$194.06
901 -0201-025-00	2	$194.06
901 -0201-026-00	2	$194.06
901 -0201-027-00	2	$194.06
901 -0201-028-00	2	$194.06
901 -0201-029-00	2	$194.06
901 -0201-030-00	2	$194.06
901 -0201-031-00	2	$194.06
901 -0201-032-00	2	$194.06
901 -0201-033-00	2	$194.06
901 -0201-034-00	2	$194.06
901 -0201-035-00	2	$194.06
901 -0201-036-00	2	$194.06
901 -0201-037-00	2	$194.06
901 -0201-038-00	2	$194.06
901 -0201-039-00	2	$194.06
901 -0201-040-00	2	$194.06
901 -0201-041-00	2	$194.06
901 -0201-042-00	2	$194.06

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 4
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount	Assessor's Parcel Number	Zone	Assessment Amount	Assessor's Parcel Number	Zone	Assessment Amount
901 -0201-043-00	2	$194.06	901 -0201-095-00	2	$194.06	901 -0202-042-00	2	$194.06
901 -0201-044-00	2	$194.06	901 -0201-096-00	2	$194.06	901 -0202-043-00	2	$194.06
901 -0201-045-00	2	$194.06	901 -0201-097-00	2	$194.06	901 -0202-044-00	2	$194.06
901 -0201-046-00	2	$194.06	901 -0201-098-00	2	$194.06	901 -0202-045-00	2	$194.06
901 -0201-047-00	2	$194.06	901 -0201-099-00	2	$194.06	901 -0202-046-00	2	$194.06
901 -0201-048-00	2	$194.06	901 -0201-100-00	2	$194.06	901 -0202-047-00	2	$194.06
901 -0201-049-00	2	$194.06	901 -0201-101-00	2	$194.06	901 -0202-048-00	2	$194.06
901 -0201-050-00	2	$194.06	901 -0201-102-00	2	$194.06	901 -0202-049-00	2	$194.06
901 -0201-051-00	2	$194.06	901 -0201-103-00	2	$194.06	901 -0202-050-00	2	$194.06
901 -0201-052-00	2	$194.06	901 -0201-104-00	2	$194.06	901 -0202-051-00	2	$194.06
901 -0201-053-00	2	$194.06	901 -0201-105-00	2	$194.06	901 -0202-052-00	2	$194.06
901 -0201-054-01	2	$194.06	901 -0201-106-00	2	$194.06	901 -0202-053-00	2	$194.06
901 -0201-055-03	2	$194.06	901 -0201-107-00	2	$194.06	901 -0202-054-00	2	$194.06
901 -0201-056-00	2	$194.06	901 -0201-108-00	2	$194.06	901 -0202-055-00	2	$194.06
901 -0201-057-00	2	$194.06	901 -0201-109-00	2	$194.06	901 -0202-056-00	2	$194.06
901 -0201-058-00	2	$194.06	901 -0201-110-00	2	$194.06	901 -0202-057-00	2	$194.06
901 -0201-059-00	2	$194.06	901 -0201-111-00	2	$194.06	901 -0202-058-00	2	$194.06
901 -0201-060-02	2	$194.06	901 -0202-007-00	2	$194.06	901 -0202-059-00	2	$194.06
901 -0201-061-00	2	$194.06	901 -0202-008-00	2	$194.06	901 -0202-060-00	2	$194.06
901 -0201-062-00	2	$194.06	901 -0202-009-00	2	$194.06	901 -0202-061-00	2	$194.06
901 -0201-063-00	2	$194.06	901 -0202-010-00	2	$194.06	901 -0202-062-00	2	$194.06
901 -0201-064-00	2	$194.06	901 -0202-011-00	2	$194.06	901 -0202-063-00	2	$194.06
901 -0201-065-00	2	$194.06	901 -0202-012-00	2	$194.06	901 -0202-064-00	2	$194.06
901 -0201-066-00	2	$194.06	901 -0202-013-00	2	$194.06	901 -0202-065-00	2	$194.06
901 -0201-067-00	2	$194.06	901 -0202-014-00	2	$194.06	901 -0202-066-00	2	$194.06
901 -0201-068-00	2	$194.06	901 -0202-015-00	2	$194.06	901 -0202-067-00	2	$194.06
901 -0201-069-00	2	$194.06	901 -0202-016-00	2	$194.06	901 -0202-068-00	2	$194.06
901 -0201-070-00	2	$194.06	901 -0202-017-00	2	$194.06	901 -0202-069-00	2	$194.06
901 -0201-071-00	2	$194.06	901 -0202-018-00	2	$194.06	901 -0202-070-00	2	$194.06
901 -0201-072-00	2	$194.06	901 -0202-019-00	2	$194.06	901 -0202-071-00	2	$194.06
901 -0201-073-00	2	$194.06	901 -0202-020-00	2	$194.06	901 -0202-072-00	2	$194.06
901 -0201-074-00	2	$194.06	901 -0202-021-00	2	$194.06	901 -0202-073-00	2	$194.06
901 -0201-075-00	2	$194.06	901 -0202-022-00	2	$194.06	901 -0202-074-00	2	$194.06
901 -0201-076-00	2	$194.06	901 -0202-023-00	2	$194.06	901 -0202-075-00	2	$194.06
901 -0201-077-00	2	$194.06	901 -0202-024-00	2	$194.06	901 -0202-076-00	2	$194.06
901 -0201-078-00	2	$194.06	901 -0202-025-00	2	$194.06	901 -0202-077-00	2	$194.06
901 -0201-079-00	2	$194.06	901 -0202-026-00	2	$194.06	901 -0202-078-00	2	$194.06
901 -0201-080-00	2	$194.06	901 -0202-027-00	2	$194.06	901 -0202-079-00	2	$194.06
901 -0201-081-00	2	$194.06	901 -0202-028-00	2	$194.06	901 -0202-080-00	2	$194.06
901 -0201-082-00	2	$194.06	901 -0202-029-00	2	$194.06	901 -0202-081-00	2	$194.06
901 -0201-083-00	2	$194.06	901 -0202-030-00	2	$194.06	901 -0202-082-00	2	$194.06
901 -0201-084-00	2	$194.06	901 -0202-031-00	2	$194.06	901 -0202-083-00	2	$194.06
901 -0201-085-00	2	$194.06	901 -0202-032-00	2	$194.06	901 -0202-084-00	2	$194.06
901 -0201-086-00	2	$194.06	901 -0202-033-00	2	$194.06	901 -0202-085-00	2	$194.06
901 -0201-087-00	2	$194.06	901 -0202-034-00	2	$194.06	901 -0202-086-00	2	$194.06
901 -0201-088-00	2	$194.06	901 -0202-035-00	2	$194.06	901 -0202-087-00	2	$194.06
901 -0201-089-00	2	$194.06	901 -0202-036-00	2	$194.06	901 -0202-088-00	2	$194.06
901 -0201-090-00	2	$194.06	901 -0202-037-00	2	$194.06	901 -0202-089-00	2	$194.06
901 -0201-091-00	2	$194.06	901 -0202-038-00	2	$194.06	901 -0202-090-00	2	$194.06
901 -0201-092-00	2	$194.06	901 -0202-039-00	2	$194.06	901 -0202-091-00	2	$194.06
901 -0201-093-00	2	$194.06	901 -0202-040-00	2	$194.06	901 -0203-005-00	2	$194.06
901 -0201-094-00	2	$194.06	901 -0202-041-00	2	$194.06	901 -0203-006-00	2	$194.06

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 4
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
901 -0203-007-00	2	$194.06
901 -0203-008-00	2	$194.06
901 -0203-009-00	2	$194.06
901 -0203-010-00	2	$194.06
901 -0203-011-00	2	$194.06
901 -0203-012-00	2	$194.06
901 -0203-013-00	2	$194.06
901 -0203-014-00	2	$194.06
901 -0203-015-00	2	$194.06
901 -0203-016-00	2	$194.06
901 -0203-017-00	2	$194.06
901 -0203-018-00	2	$194.06
901 -0203-019-00	2	$194.06
901 -0203-020-00	2	$194.06
901 -0203-021-00	2	$194.06
901 -0203-022-00	2	$194.06
901 -0203-023-00	2	$194.06
901 -0203-024-00	2	$194.06
901 -0203-025-00	2	$194.06
901 -0203-026-00	2	$194.06
901 -0203-027-00	2	$194.06
901 -0203-028-00	2	$194.06
901 -0203-029-00	2	$194.06
901 -0203-030-00	2	$194.06
901 -0203-031-00	2	$194.06
901 -0203-032-00	2	$194.06
901 -0203-033-00	2	$194.06
901 -0203-034-00	2	$194.06
901 -0203-035-00	2	$194.06
901 -0203-036-00	2	$194.06
901 -0203-037-00	2	$194.06
901 -0203-038-00	2	$194.06
901 -0203-039-00	2	$194.06
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901 -0203-041-00	2	$194.06
901 -0203-042-00	2	$194.06
901 -0203-043-00	2	$194.06
901 -0203-044-00	2	$194.06
901 -0203-045-00	2	$194.06
901 -0203-046-00	2	$194.06
901 -0203-047-00	2	$194.06
901 -0203-048-00	2	$194.06
901 -0203-049-00	2	$194.06
901 -0203-050-00	2	$194.06
901 -0203-051-00	2	$194.06
901 -0203-052-00	2	$194.06
901 -0203-053-00	2	$194.06
901 -0203-054-00	2	$194.06
901 -0203-055-00	2	$194.06
901 -0203-056-00	2	$194.06
901 -0203-057-00	2	$194.06
901 -0203-058-00	2	$194.06
901 -0203-059-00	2	$194.06
901 -0203-060-00	2	$194.06
901 -0203-061-00	2	$194.06
901 -0203-062-00	2	$194.06
901 -0203-063-00	2	$194.06
901 -0203-064-00	2	$194.06
901 -0203-065-00	2	$194.06
901 -0203-066-00	2	$194.06
901 -0203-067-00	2	$194.06
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901 -0203-070-00	2	$194.06
901 -0203-071-00	2	$194.06
901 -0203-072-00	2	$194.06
901 -0203-073-00	2	$194.06
901 -0203-074-00	2	$194.06
901 -0203-075-00	2	$194.06
901 -0203-076-00	2	$194.06
901 -0203-077-00	2	$194.06
901 -0203-078-00	2	$194.06
901 -0203-079-00	2	$194.06
901 -0203-080-00	2	$194.06
901 -0203-081-00	2	$194.06
901 -0203-082-00	2	$194.06
901 -0203-083-00	2	$194.06
901 -0203-084-00	2	$194.06
901 -0203-085-00	2	$194.06
901 -0203-086-00	2	$194.06
901 -0203-087-00	2	$194.06
901 -0203-088-00	2	$194.06
901 -0203-089-00	2	$194.06
901 -0203-090-00	2	$194.06
901 -0203-091-00	2	$194.06
901 -0203-092-00	2	$194.06
901 -0203-093-00	2	$194.06
901 -0203-094-00	2	$194.06
901 -0203-095-00	2	$194.06
901 -0203-096-00	2	$194.06
901 -0203-097-00	2	$194.06
901 -0203-098-00	2	$194.06
901 -0203-099-00	2	$194.06
901 -0203-100-00	2	$194.06
901 -0203-101-00	2	$194.06
Total Parcels:		407
Total Assessment:		$111,988.92

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 4
ASSESSMENT ROLL
Fiscal Year 2023-24

SUMMARY

Zone	Parcel	Assessment
Zone No. 1	21	$ 37,081.76
Zone No. 2	386	$ 74,907.16
Total	407	$ 111,988.92

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Landscaping and Lighting District No. 6

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
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Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 16

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 6
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") may levy and collect special assessments on parcels within the City of Newark Landscaping and Lighting District No. 6 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of streetlights and landscaping improvements within the public right-of-way benefiting parcels within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties north of Cedar Boulevard, east of Balentine Drive, south of Interstate 880, and west of Stevenson Boulevard. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Compliance with the California Constitution

Assessments are levied annually within the District pursuant to the 1972 Act. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and are compliant with the provisions of the California Constitution Article XIIID ("Article XIIID"), which was enacted with the passage of Proposition 218 in November 1996. Pursuant to Article XIIID Section 5, certain existing assessments are exempt from the substantive and procedural requirements of Article XIIID Section 4. Specifically, Article XIIID Section 5(b) exempted:

> *"Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessment shall be subject to the procedures and approval process set forth in Section 4."*

The City determined that the annual assessments originally established for the District were established by a petition signed by the persons owning all the parcels subject to the assessment at the time the assessment was originally proposed. As such, pursuant to Article XIIID Section 5(b), the pre–existing assessment amount has been exempted from the procedural requirements of Article XIIID Section 4 since the amount of the assessment has not increased since the passage of Proposition 218.

Any future increase in the assessment rate or substantial changes in the services provided would require that the District be brought into compliance with all the requirements of Article XIIID and would require the approval of the property owners subject to the assessment based upon a mailed ballot which would be sent to each property owner.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 6 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced are generally described as follows:

The maintenance of street lighting and median and buffer landscaping within the public right-of-way and the landscape irrigation system within the easement areas along Cedar Boulevard, Balentine Drive, John Muir Drive and Mowry School Road, as well as the Stevenson Boulevard frontages of properties within the District. In addition, the District funds the art element at the corner of Stevenson Boulevard and Balentine Drive. Costs shall include all maintenance and operation costs including normal upkeep, operating expenses, management expenses, and replacement and replanting costs.

The maintenance of medians on Stevenson Boulevard is funded by the assessments from another City assessment district (Landscaping and Lighting District No. 4). In addition, all frontage maintenance is performed by the property owners, excluding those areas noted above along Stevenson Boulevard.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the Districts can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 6 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$0
Non-Assessment Revenues	$0
Total Projected Revenues	**$0**
Projected Expenses	
Contract Services	$0
Utilities	$0
Administration and Incidentals	$0
County Collection Fees	$0
Unforeseen Maintenance and Repairs[1]	$0
Total Projected Expenses	**$0**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	($48,426)
Reserve Fund Collection Increase/(Decrease)	$0
Ending Fund Balance - June 30, 2024	($48,426)
Recommended Operating Reserves	$0
Available Operating Reserves	($48,426)
Available Capital Reserves	$0

[1] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures that are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

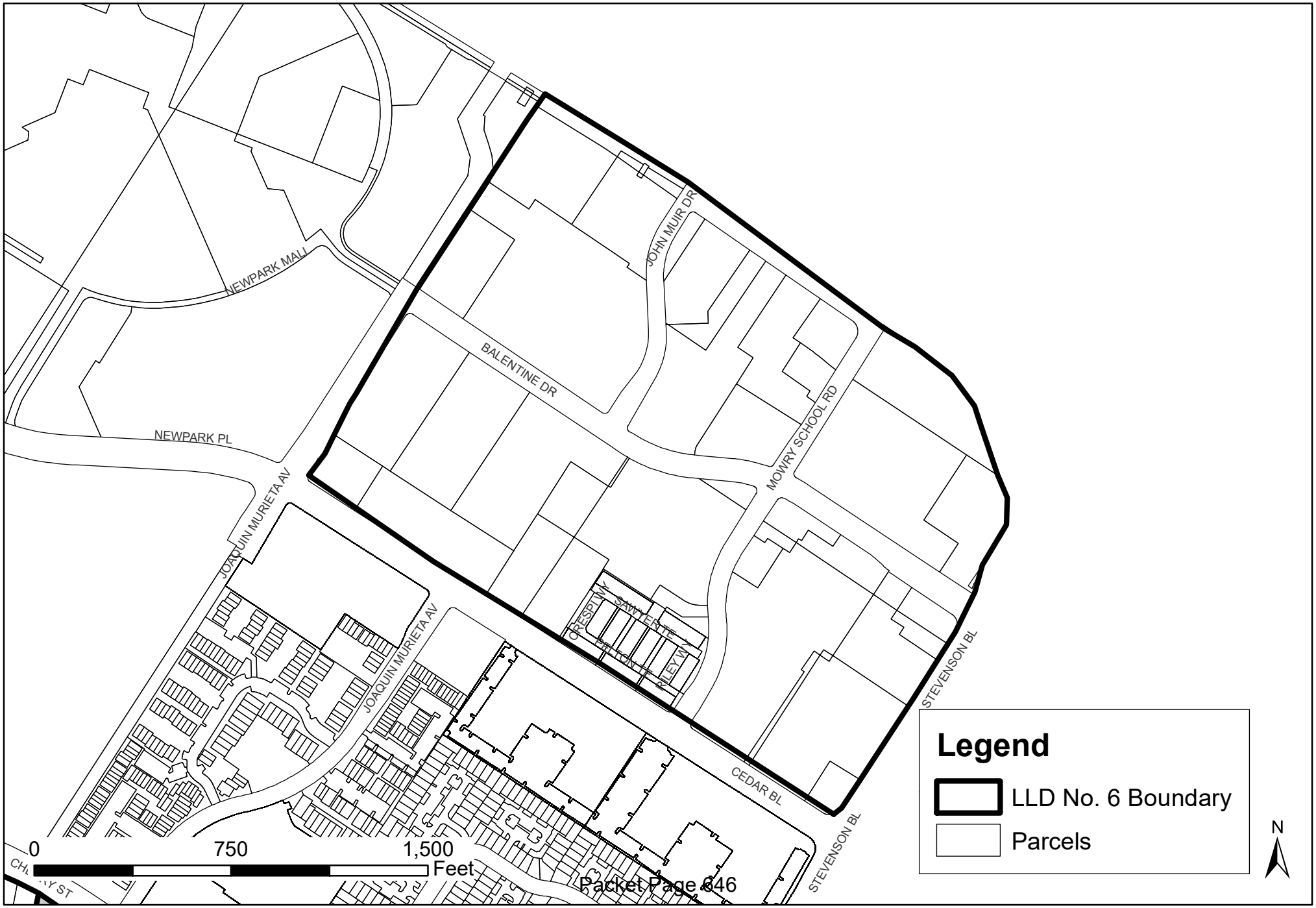
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 6
(CEDAR BLVD., BALENTINE DRIVE, MOWRY SCHOOL ROAD)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was established.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of the District. The apportioning of special benefit is a two-step process: the

first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements can be summarized as follows:

- Improved aesthetics:
    - Well-maintained and attractive landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
    - Well-lit areas contribute to property visibility, especially during nighttime, benefiting businesses or properties seeking attention and attracting customers. It also adds to the visual appeal, attractiveness, and inviting nature of the area.
- Increased property values:
    - Attractive and well-maintained landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
    - Well-maintained and well-lit areas can have a positive impact on property values in the surrounding area. Adequate lighting is seen as a desirable feature, making properties more appealing to potential buyers or tenants.
- Safety:
    - Landscaping helps calm traffic and reduce speeds, creating a safer environment for people traveling to and from properties within the District. It also acts as a physical buffer between roadways and properties within the District.
    - Well-lit areas contribute to improved safety for both motorists and pedestrians traveling to and from properties within the District. Adequate lighting enhances visibility, reducing the risk of accidents and improving overall traffic safety. It also facilitates easier access to adjacent properties.
- Noise reduction:
    - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
    - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in the District, specifically increase the utility of the property within the District. For example, the assessments provide funding to maintain the landscaping and lighting that improves safety and access to the property and provides visual and environmental benefits to the properties within the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer of Work at the time of District formation determined the costs of maintaining medians on Cedar Boulevard was to be spread to each property fronting Cedar Boulevard on a front footage basis. All other District costs are spread on an acreage basis to all parcels within the District. This methodology distributes assessments in proportion to the estimated special benefit conferred to property and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

However, the City is not proposing to levy any assessments on property within the District in Fiscal Year 2023-24. Should costs arise that require the need to levy an assessment in the future, the costs of maintaining the medians on Cedar Boulevard would be apportioned to assessable property within the District on a front footage basis to all property with frontage along Willow Avenue, and all other costs would be apportioned to assessable property on an acreage basis.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of

any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

The City is not proposing to levy any assessments on property within the District for Fiscal Year 2023-24. Therefore, the total proposed assessment for Fiscal Year 2023-24 is $0.00.

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Landscaping and Lighting District No. 7

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
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Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 15

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 7
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 7 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of streetlights and landscaping improvements within the public right-of-way benefiting parcels within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties along and adjacent to Newark Boulevard between Jarvis Avenue and Cedar Boulevard. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Compliance with the California Constitution

Assessments are levied annually within the District pursuant to the 1972 Act. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and are compliant with the provisions of the California Constitution Article XIIID ("Article XIIID"), which was enacted with the passage of Proposition 218 in November 1996. Pursuant to Article XIIID Section 5, certain existing assessments are exempt from the substantive and procedural requirements of Article XIIID Section 4. Specifically, Article XIIID Section 5(a) exempted:

> *"Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4."*

The City determined that the annual assessments originally established for the District were for the maintenance and operation of landscape and medians within the public street rights-of-way. As such, pursuant to Article XIIID Section 5(a), the pre–existing assessment amount has been exempted from the procedural requirements of Article XIIID Section 4 since the amount of the assessment has not increased since the passage of Proposition 218.

Any future increase in the assessment rate or substantial changes in the services provided would require that the District be brought into compliance with all the requirements of Article XIIID and would require the approval of the property owners subject to the assessment based upon a mailed ballot which would be sent to each property owner.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 7 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

> The maintenance of buffer landscaping and the irrigation system within the public right-of-way and easement areas along Jarvis Avenue, Newark Boulevard, and the Cedar Boulevard frontages of the Rosemont Shopping Center.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the Districts can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 7 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$25,592
Non-Assessment Revenues	$0
Total Projected Revenues	**$25,592**
Projected Expenses	
Contract Services	($6,751)
Utilities	($12,521)
Administration and Incidentals	($4,693)
County Collection Fees	($435)
Unforeseen Maintenance and Repairs	$0
Total Projected Expenses	**($24,400)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	($3,875)
Reserve Fund Collection Increase/(Decrease)	$1,192
Ending Fund Balance - June 30, 2024	($2,683)
Recommended Operating Reserves	$12,200
Available Operating Reserves	($2,683)
Available Capital Reserves[1]	$0

[1] $1,100 will be needed for future Plant Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures that are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 7
(NEWARK BOULEVARD AT JARVIS AVENUE)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance, and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was established.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and

services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements can be summarized as follows:

- Improved aesthetics:
  - Well-maintained and attractive landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
- Increased property values:
  - Attractive and well-maintained landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
- Safety:
  - Landscaping helps calm traffic and reduce speeds, creating a safer environment for people traveling to and from properties within the District. It also acts as a physical buffer between roadways and properties within the District.
- Noise reduction:
  - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
  - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in the District, specifically increase the utility of the property within the District. For example, the assessments provide funding to maintain the landscaping that improves safety and access to the property and provides visual and environmental benefits to the properties within the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer at the time of formation determined the costs of maintaining landscaping was to be spread proportionately based on each property’s gross square footage of the buildings, or on a building square footage basis. Costs will be apportioned to any undeveloped or vacant parcels based on the maximum building size

permitted by the City on the parcel. This methodology distributes assessments in proportion to the estimated special benefit conferred to property and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the City proposes to collect the maximum assessment revenue from the assessable parcels located in the District, which amounts to $0.187 per building square foot to be levied. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $25,591.66.

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 7
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0720-007-00	$7,192.02
092A-0720-009-00	$4,527.64
092A-0720-010-00	$673.94
092A-0720-012-00	$1,069.64
092A-0720-013-00	$1,825.12
092A-0720-014-00	$1,870.00
092A-0720-018-00	$943.22
092A-0720-019-00	$2,315.80
092A-0720-020-00	$391.02
092A-0720-021-00	$391.02
092A-0720-024-00	$1,400.26
092A-0720-025-00	$1,647.46
092A-0720-026-00	$1,344.52
Total Parcels:	13
Total Assessment:	$25,591.66

NEWARK
california

Landscaping and Lighting District No. 10

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 13

Part C – Assessment District Diagram 15

Part D – Method of Apportionment of Assessments 16

Part E - Assessment Roll 20

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 10
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") may levy and collect special assessments on parcels within the City of Newark Landscaping and Lighting District No. 10 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of median-island and buffer landscaping and streetlight improvements within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties within multiple developments located at various locations throughout the City. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Impacts of Proposition 218

On November 5, 1996 California voters approved Proposition 218 entitled "Right to Vote on Taxes Act" which added Articles XIIIC and XIIID to the California Constitution. While its title refers only to taxes, Proposition 218 established new procedural requirements for the formation and administration of assessment districts.

These new procedures stipulate that even if assessments are initially exempt from Proposition 218, future increases in assessments must comply with the provisions of Proposition 218. However, if the increase in assessments were anticipated in the assessment formula (e.g., CPI increase or assessment cap) then the assessment would comply with the intent and provisions of Proposition 218.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District and each benefit zone, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District and each benefit zone.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 10 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

> The maintenance and operation of median-island and buffer landscaping and the landscape irrigation system and streetlights located within the zones of benefit in the District. Costs shall include all maintenance and operation costs including normal upkeep, operating expenses, management expenses, replanting costs, and power costs.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

A more detailed description of the facilities which either have or will be constructed, operated, maintained, and serviced within each of the benefit zones follows.

- 10a. The maintenance of Jarvis Avenue and Lido Boulevard median-island and street landscaping, and lighting adjacent to the boundaries of Tract 5318, Lexington Square.

- 10b. Maintenance of landscaping and the landscape irrigation system within easement areas adjacent to the public right-of-way on the north side of Central Avenue between the Nimitz Freeway and Timber Street.

- 10c. Maintenance of landscaping and the landscape irrigation system within easement areas adjacent to the public right-of-way on Morton Avenue for Geomax.

- 10d. Maintenance of landscaping and the landscape irrigation system within easement areas adjacent to the public right-of-way on Enterprise Court and Enterprise Drive for Parcel 1 of Tentative Parcel Map 5109.

- 10e. Maintenance of landscaping and the landscape irrigation system adjacent to Cedar Boulevard south of Mowry Avenue for Jiffy Lube.

- 10f. Maintenance of landscaping and the landscape irrigation system for the apartment complex at the intersection of Rich Avenue and Magnolia Street.

- 10g. Maintenance of landscaping and the landscape irrigation system within easement areas on Smith Avenue and Cedar Boulevard for the Cedar Boulevard Neighborhood Church.

- 10h. Maintenance of landscaping and the landscape irrigation system within easement areas for the parcel adjacent to Eucalyptus Grove Park.

- 10i. Maintenance of landscaping and the landscape irrigation system within easement areas and the public right-of-way on Cherry Street for Thoro Systems.

- 10j. Maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas for the King & Lyons development at Thornton Avenue and Willow Street.

- 10k. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Central Avenue for Bay Mirror.

- 10l. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas on Cedar Boulevard near Moores Avenue for Empire Tractor.

- 10m. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Mowry Avenue for the property at the northeast corner of Mowry Avenue and Cedar Boulevard.

- 10n. The maintenance of street lighting within the public right-of-way and landscaping and the landscape irrigation system within the public right-of-way and easement areas adjacent to the public right-of-way on Cedar Boulevard and Balentine Drive for TJ Maxx.

- 10o. The maintenance of street lighting within the public right-of-way and landscaping and the landscape irrigation system within the public right-of-way and the easement areas adjacent to the public right-of-way on Newark Boulevard and Cedar Boulevard for Lido Faire Shopping Center.

- 10p. The maintenance of street lighting within the public right-of-way and landscaping and the landscape irrigation system within the public right-of-way on Sycamore Street for B.K. Mills.

- 10q. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Magnolia Street for the Moose Lodge.

- 10r. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Central Avenue at the Southern Pacific Railroad right-of-way for Leslie Salt Company.

- 10s. The maintenance of landscaping and the landscape irrigation system within landscape easement areas on Cedar Boulevard at Central Avenue for Parcel 1 of Parcel Map 4073.

- 10t. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard north of Lake Boulevard for Lot 5 of Tract 5361.

- 10u. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Magnolia Street south of Graham Avenue for Parcel 1 of Parcel Map 6178.

- 10v. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Smith Avenue west of Cherry Street for Parcel 4 of Parcel Map 1427.

- 10w. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard and Mowry Avenue for Parcels 1, 2, 3, and 6 of Parcel Map 3028.

- 10x. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on the cul-de-sac of Enterprise Court at 37569 Enterprise Court.

- 10y. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Magnolia Street and Graham Avenue at 37088 Magnolia Street (formerly 6963 Graham Avenue).

- 10z. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on the Thornton Avenue and Locust Street frontage of 37010 Locust Street.

- 10aa. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Enterprise Drive and Hickory Street at 8610 Enterprise Drive.

- 10ac. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Thornton Avenue and Sycamore Street at 7275 Thornton Avenue.

- 10ad. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Thornton Avenue at 6152 Thornton Avenue.

- 10ae. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard south of Mowry Avenue.

- 10af. The maintenance of landscaping, the landscape irrigation system, and the concrete block wall within the public right-of-way and adjacent easement areas on Mowry Avenue and Cedar Boulevard for the shopping center that includes 5789 Mowry Avenue.

- 10ag. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Hickory Street at 37137 Hickory Street.

- 10ah. The maintenance of median-island landscaping and lighting, and street frontage landscaping up to 30 feet in width along all streets within the boundaries of Bridgeway Technology Park on Fircrest Street.

- 10ai. The maintenance of lighting within public right-of-way and landscaping and landscape irrigation system within easement areas adjacent to the public right-of-way along Dairy Avenue, Newark Boulevard, and Thornton Avenue for the Foxwood condominium project.

- 10aj. The maintenance of lighting within public right-of-way and landscaping and landscape irrigation system within easement areas adjacent to the public right-of-way on Magnolia Street, Graham Avenue, and Sycamore Street for the Summerhill Apartments.

- 10ak. The maintenance of lighting within public right-of-way and landscaping and landscape irrigation system within easement areas adjacent to the public right-of-way on Cherry Street and Dairy Avenue for the Summerhill Apartments.

- 10al. Maintenance of landscaping, landscape irrigation and lighting within the entire street right-of-way of Potrero Avenue; the easterly portion of Cherry Street, Buena Vista Drive and Parada Street contiguous to Tract 5869; and the easterly portion of Parada Street contiguous to Tract 5810; and the northerly portion of Stevenson Boulevard contiguous to Tract 5810, excluding the median islands within Cherry Street and Stevenson Boulevard.

- 10am. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas on Smith Avenue for the Oatey Company.

- 10an. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Thornton Avenue at Cedar Boulevard for Newark Square shopping center.

- 10ao. The maintenance and/or construction of landscaping and the irrigation system within the public right-of-way and adjacent easement areas on the Mowry School Road frontage of the property to the rear of Fremont Ford.

- 10ap. The construction and maintenance of landscaping and an irrigation system within the public right-of-way and adjacent easement areas on Morton Avenue for Morton Salt.

- 10aq. Construction and maintenance of landscaping and the landscape irrigation system within the public right-of-way and easement areas on the Cedar Boulevard frontage of the shopping center on the northwest corner of Newark Boulevard and Cedar Boulevard.

- 10ar. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Central Avenue and on Clark Avenue for Matheson Gas.

- 10as. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Smith Avenue at 6565 Smith Avenue.

- 10at. The construction and/or maintenance of the Art in Public Places Element required in accordance with Newark City Council Resolution No. 5682 within the public right-of-way and/or adjacent easement areas on Parcels 1 and 2 of Tract 5343.

- 10au. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Newark Boulevard at 35193 Newark Boulevard.

- 10av. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cedar Boulevard at 37300 Cedar Boulevard.

- 10aw. The maintenance and/or construction of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Fircrest Street at Assessor's Parcel No. 537-460-12-3.

- 10ax. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Enterprise Drive and Willow Street at 8400 Enterprise Drive.

- 10ay. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Mowry Avenue and Cherry Street.

- 10az. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Balentine Drive at Parcel 1 of Parcel Map 6692.

- 10ba. The maintenance and/or construction of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cherry Street north of Thornton Avenue.

- 10bb. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Jarvis Avenue and Newark Boulevard.

- 10bc. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Cherry Street south of Robertson Avenue.

- 10bd. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement areas on Filbert Street and Central Avenue.

- 10be. The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement along the street frontage on Balentine Drive.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the District can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 10 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues[1]	
Assessment Revenue	$0
Non-Assessment Revenues	$0
Total Projected Revenues	**$0**
Projected Expenses[1]	
Contract Services	$0
Utilities	$0
Administration and Incidentals	$0
County Collection Fees	$0
Unforeseen Maintenance and Repairs	$0
Total Projected Expenses	**$0**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$0
Reserve Fund Collection Increase/(Decrease)	$0
Ending Fund Balance - June 30, 2024	$0
Recommended Operating Reserves	$0
Available Operating Reserves	$0
Available Capital Reserves	$0

[1] There are no proposed expenses for the District or any of the zones because all the maintenance is being performed by the property owners within each zone of benefit. For this reason, there will be no assessments levied in Fiscal Year 2023-24.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures that are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

PART C

ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. The Diagram is on file in the Public Works Department of the City. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Article XIIID provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways, utility easements, and that portion of public property that is not developed and used for business purposes similar to private residential, commercial, industrial, and institutional activities.

The amount to be assessed may be apportioned by any formula or method which fairly distributes the amount among all assessable lots or parcels. In order for the City to separate out the general and special benefits for each improvement type, an analysis of

each improvement was conducted. The analysis reviewed the purpose and users of each improvement, and then identified the properties that may benefit from the improvement both within and outside the City and within and outside each zone of benefit, and then allocated the costs to maintain, service, and replace each improvement type to each identified property.

Because general benefits are not assessable, any costs associated with general benefits or special benefits assigned to properties within and outside the City and not in a District zone of benefit are to be paid for by the City. Only the costs associated with the special benefits conferred on property within each zone of benefit from the authorized improvements are assessable, and therefore assessed herein.

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District and each benefit zone was established.

In reviewing each of the District's zone improvements, the proximity of those improvements to both properties within the District's zones and those outside the District's zones, as well as the reasons for installing and constructing such improvements, it is evident that the improvements are solely the result of developing properties within the District's benefit zones and the ongoing maintenance and operation of these improvements will directly affect the properties within the District. Although the improvements include public areas, easements, rights-of-way, and other amenities available or visible to the public at large, the construction and installation of these improvements were only necessary for the development of properties within the District's benefit zones and were not required, nor necessarily desired by any properties or developments outside each benefit zone's boundary and any public access or use of the improvements by others is incidental. Therefore, it has been determined that the improvements and the ongoing maintenance, servicing and operation of those improvements provide no measurable general benefit to properties outside the District's benefit zones or to the public at large, but clearly provide distinct and special benefits to properties within the District.

The District consists of all Assessor Parcels within the boundaries of the benefit zones within the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of each benefit zone within the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District and associated benefit zones. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such landscape and lighting improvements. The identified special benefits conferred to property from the improvements can be summarized as follows:

- Improved aesthetics:
  - Well-maintained and attractive landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
  - Well-lit areas contribute to property visibility, especially during nighttime, benefiting businesses or properties seeking attention and attracting customers. It also adds to the visual appeal, attractiveness, and inviting nature of the area.
- Increased property values:
  - Attractive and well-maintained landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
  - Well-maintained and well-lit areas can have a positive impact on property values in the surrounding area. Adequate lighting is seen as a desirable feature, making properties more appealing to potential buyers or tenants.
- Safety:
  - Landscaping helps calm traffic and reduce speeds, creating a safer environment for people traveling to and from properties within the District. It also acts as a physical buffer between roadways and properties within the District.
  - Well-lit areas contribute to improved safety for both motorists and pedestrians traveling to and from properties within the District. Adequate lighting enhances visibility, reducing the risk of accidents and improving overall traffic safety. It also facilitates easier access to adjacent properties.
- Noise reduction:
  - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
  - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in each of the zones of benefit within the District, specifically increase the utility of the property within each of the zones in the District. For example, the assessments provide funding to maintain the landscaping and lighting that improves safety and access to the property and provides visual and environmental benefits to the properties within each zone of the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of

the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer at the time of formation determined that each zone of benefits costs should be spread on the basis of frontage to each property in each zone that front the work and areas to be serviced and maintained. Therefore, it was determined that the most appropriate method of apportioning costs was to assess properties based on a front footage basis. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

However, the City is not proposing to levy any assessments on property within the District or any of the zones of benefit in Fiscal Year 2023-24. Should costs arise that require the need to levy an assessment in the future, the costs of maintaining each zone's improvements would be apportioned to assessable property within the zone on a front footage basis to all property fronting the work and areas to be service and maintained.

Should an assessment be levied in the future, publicly owned properties within the District must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the improvements. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts, public parkways, public property designated open space, and any portion of public property that is not used for business purposes similar to private residential, commercial, industrial, and institutional activities. Also exempted from the assessments are private streets, utility easements, Homeowner's Association common areas (except club houses, community centers, parking lots, etc.) and any other parcels that do not receive a special and direct benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

The City is not proposing to levy any assessments on property within the District for Fiscal Year 2023-24. Therefore, the total proposed assessment for Fiscal Year 2023-24 is $0.00.

NEWARK
california

Landscaping and Lighting District No. 11

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 15

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 11
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 11 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of median-landscape improvements within and adjacent to the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties south of Interstate 880, west of Elmwood Avenue and Blackwood Drive, north of Cedar Boulevard and those properties along and north of Lake Boulevard, and east of State Route 84. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Compliance with the California Constitution

Assessments are levied annually within the District pursuant to the 1972 Act. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and are compliant with the provisions of the California Constitution Article XIIID ("Article XIIID"), which was enacted with the passage of Proposition 218 in November 1996. Pursuant to Article XIIID Section 5, certain existing assessments are exempt from the substantive and procedural requirements of Article XIIID Section 4. Specifically, Article XIIID Section 5(a) exempted:

> *"Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4."*

The City determined the annual assessments originally established for the District were for the maintenance and operation of landscape and medians within the public street rights-of-way. As such, pursuant to Article XIIID Section 5(a), the pre–existing assessment amount has been exempted from the procedural requirements of Article XIIID Section 4 since the amount of the assessment has not increased since the passage of Proposition 218.

Any future increase in the assessment rate or substantial changes in the services provided would require that the District be brought into compliance with all the requirements of Article XIIID and would require the approval of the property owners subject to the assessment based upon a mailed ballot which would be sent to each property owner.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 11 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

> The maintenance and operation of medians on Edgewater Drive, Lake Boulevard, and Parkshore Drive. Costs include all maintenance and operational costs including normal upkeep, operating expenses, management expenses, replacement, and replanting costs.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the Districts can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 11 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$28,175
Non-Assessment Revenues	$0
Total Projected Revenues	**$28,175**
Projected Expenses	
Contract Services	($18,002)
Utilities	($473)
Administration and Incidentals	($8,903)
County Collection Fees	($479)
Unforeseen Maintenance and Repairs[1]	($1,393)
Total Projected Expenses	**($29,249)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$80,511
Reserve Fund Collection Increase/(Decrease)	($1,074)
Ending Fund Balance - June 30, 2024	$79,437
Recommended Operating Reserves	$13,928
Available Operating Reserves	$13,928
Available Capital Reserves[2]	$65,509

[1] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[2] Includes $51,850 for future Plant Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

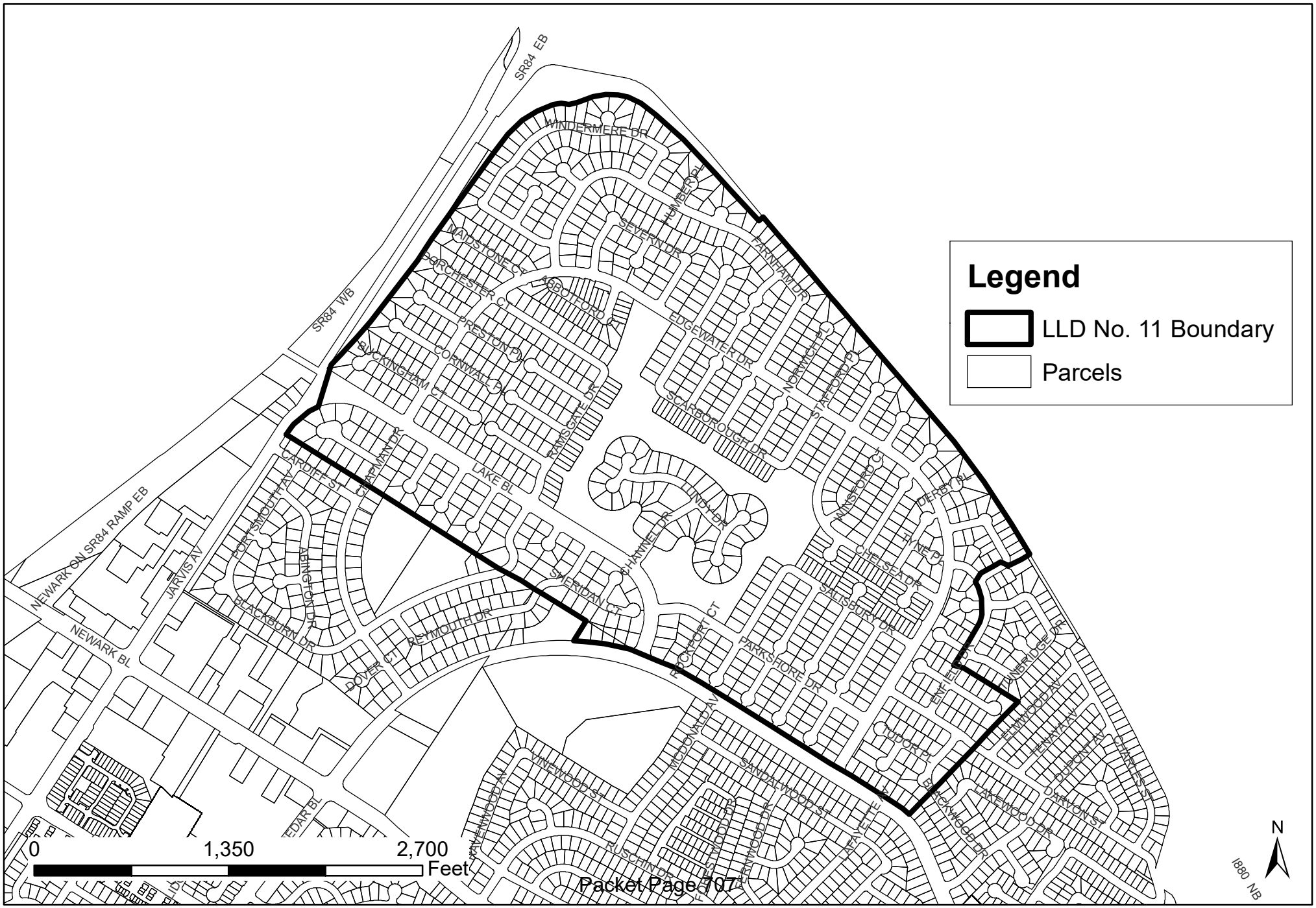
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 11
(EDGEWATER DRIVE/LAKE AREA)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was established.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of the District. The apportioning of special benefit is a two-step process:

the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the median landscape improvements can be summarized as follows:

- Improved aesthetics:
    - Well-maintained and attractive median landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
- Increased property values:
    - Attractive and well-maintained median landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
- Safety:
    - Median landscaping helps calm traffic and reduce speeds, creating a safer environment for people traveling to and from properties in the District. It also acts as a physical buffer between roadways and properties within the District.
- Noise reduction:
    - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
    - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in the District, specifically increase the utility of the property within the District. For example, the assessments provide funding to maintain the median landscaping that improves safety and provides visual and environmental benefits to the properties within the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer of Work at the time of formation determined that each parcel within the boundaries of the District receives a similar benefit from the improvements. Therefore, the most appropriate method of apportioning costs was

determined to be spreading all District costs equally to each parcel in the District. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the City proposes to collect the maximum assessment revenue from the assessable parcels located in the District, which amounts to $25.00 per parcel to be levied. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $28,175.00.

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0712-002-00	$25.00
092A-0712-003-00	$25.00
092A-0712-004-00	$25.00
092A-0712-005-00	$25.00
092A-0712-006-00	$25.00
092A-0712-007-00	$25.00
092A-0712-008-00	$25.00
092A-0712-009-00	$25.00
092A-0712-010-00	$25.00
092A-0712-011-00	$25.00
092A-0712-012-00	$25.00
092A-0712-013-00	$25.00
092A-0712-014-00	$25.00
092A-0712-015-00	$25.00
092A-0712-016-00	$25.00
092A-0712-017-00	$25.00
092A-0712-018-00	$25.00
092A-0712-019-00	$25.00
092A-0712-020-00	$25.00
092A-0712-021-00	$25.00
092A-0712-022-00	$25.00
092A-0712-023-00	$25.00
092A-0712-024-00	$25.00
092A-0712-025-00	$25.00
092A-0712-026-00	$25.00
092A-0712-027-00	$25.00
092A-0712-028-00	$25.00
092A-0712-029-00	$25.00
092A-0712-030-00	$25.00
092A-0712-031-00	$25.00
092A-0712-032-00	$25.00
092A-0712-033-00	$25.00
092A-0712-034-00	$25.00
092A-0712-035-00	$25.00
092A-0712-036-00	$25.00
092A-0712-037-00	$25.00
092A-0712-038-00	$25.00
092A-0712-039-00	$25.00
092A-0712-040-00	$25.00
092A-0712-041-00	$25.00
092A-0712-042-00	$25.00
092A-0712-043-00	$25.00
092A-0712-044-00	$25.00
092A-0712-045-00	$25.00
092A-0712-046-00	$25.00
092A-0712-047-00	$25.00
092A-0712-048-00	$25.00
092A-0712-049-00	$25.00
092A-0712-050-00	$25.00
092A-0712-051-00	$25.00
092A-0712-052-00	$25.00
092A-0712-053-00	$25.00
092A-0712-054-00	$25.00
092A-0712-055-00	$25.00
092A-0712-056-00	$25.00
092A-0712-057-00	$25.00
092A-0712-058-00	$25.00
092A-0712-059-00	$25.00
092A-0712-060-00	$25.00
092A-0712-061-00	$25.00
092A-0712-062-00	$25.00
092A-0712-063-00	$25.00
092A-0712-064-00	$25.00
092A-0712-065-00	$25.00
092A-0712-066-00	$25.00
092A-0712-067-00	$25.00
092A-0712-068-00	$25.00
092A-0712-069-00	$25.00
092A-0712-070-00	$25.00
092A-0712-071-00	$25.00
092A-0712-072-00	$25.00
092A-0712-073-00	$25.00
092A-0712-074-00	$25.00
092A-0712-075-00	$25.00
092A-0712-076-00	$25.00
092A-0712-077-00	$25.00
092A-0712-078-00	$25.00
092A-0712-079-00	$25.00
092A-0713-001-00	$25.00
092A-0713-002-00	$25.00
092A-0713-003-00	$25.00
092A-0713-004-00	$25.00
092A-0713-005-00	$25.00
092A-0713-006-00	$25.00
092A-0713-007-00	$25.00
092A-0713-008-00	$25.00
092A-0713-009-00	$25.00
092A-0713-010-00	$25.00
092A-0713-011-00	$25.00
092A-0713-012-00	$25.00
092A-0713-013-00	$25.00
092A-0713-014-00	$25.00
092A-0713-015-00	$25.00
092A-0713-016-00	$25.00
092A-0713-017-00	$25.00
092A-0713-018-00	$25.00
092A-0713-019-00	$25.00
092A-0713-020-00	$25.00
092A-0713-021-00	$25.00
092A-0713-022-00	$25.00
092A-0713-023-00	$25.00
092A-0713-024-00	$25.00
092A-0713-025-00	$25.00
092A-0713-026-00	$25.00
092A-0713-027-00	$25.00
092A-0713-028-00	$25.00
092A-0713-029-00	$25.00
092A-0713-030-00	$25.00
092A-0713-031-00	$25.00
092A-0713-032-00	$25.00
092A-0713-033-00	$25.00
092A-0713-034-00	$25.00
092A-0713-035-00	$25.00
092A-0713-036-00	$25.00
092A-0713-037-00	$25.00
092A-0713-038-00	$25.00
092A-0713-039-00	$25.00
092A-0713-040-00	$25.00
092A-0713-041-00	$25.00
092A-0713-042-00	$25.00
092A-0713-043-00	$25.00
092A-0713-044-00	$25.00
092A-0713-045-00	$25.00
092A-0713-046-00	$25.00
092A-0713-047-00	$25.00
092A-0713-048-00	$25.00
092A-0713-049-00	$25.00
092A-0713-050-00	$25.00
092A-0713-051-00	$25.00
092A-0713-052-00	$25.00
092A-0713-053-00	$25.00
092A-0715-001-00	$25.00
092A-0715-002-00	$25.00
092A-0715-003-00	$25.00
092A-0715-004-00	$25.00
092A-0715-005-00	$25.00
092A-0715-006-00	$25.00
092A-0715-007-00	$25.00
092A-0715-008-00	$25.00
092A-0715-009-00	$25.00
092A-0715-010-00	$25.00
092A-0715-011-00	$25.00
092A-0715-012-00	$25.00
092A-0715-013-00	$25.00
092A-0715-014-00	$25.00
092A-0715-015-00	$25.00
092A-0715-016-00	$25.00
092A-0715-017-01	$25.00
092A-0715-018-02	$25.00
092A-0715-019-00	$25.00
092A-0715-020-00	$25.00
092A-0715-021-00	$25.00
092A-0715-022-00	$25.00
092A-0715-023-00	$25.00
092A-0715-024-00	$25.00
092A-0715-025-00	$25.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0715-026-00	$25.00
092A-0715-027-00	$25.00
092A-0715-028-00	$25.00
092A-0715-029-00	$25.00
092A-0715-030-00	$25.00
092A-0715-031-00	$25.00
092A-0715-032-00	$25.00
092A-0715-033-00	$25.00
092A-0715-034-00	$25.00
092A-0715-035-00	$25.00
092A-0715-036-00	$25.00
092A-0715-037-00	$25.00
092A-0715-038-00	$25.00
092A-0715-040-00	$25.00
092A-0715-041-00	$25.00
092A-0715-042-00	$25.00
092A-0715-043-00	$25.00
092A-0715-044-00	$25.00
092A-0715-045-00	$25.00
092A-0715-046-00	$25.00
092A-0715-047-00	$25.00
092A-0715-048-00	$25.00
092A-0715-049-00	$25.00
092A-0715-050-00	$25.00
092A-0715-051-00	$25.00
092A-0715-052-00	$25.00
092A-0715-053-00	$25.00
092A-0715-054-00	$25.00
092A-0715-055-00	$25.00
092A-0715-056-00	$25.00
092A-0715-057-00	$25.00
092A-0715-058-00	$25.00
092A-0715-059-00	$25.00
092A-0715-060-00	$25.00
092A-0715-061-00	$25.00
092A-0715-062-00	$25.00
092A-0715-063-00	$25.00
092A-0715-065-00	$25.00
092A-0715-066-00	$25.00
092A-0715-067-00	$25.00
092A-0715-068-00	$25.00
092A-0715-069-00	$25.00
092A-0715-070-00	$25.00
092A-0715-071-00	$25.00
092A-0715-072-00	$25.00
092A-0715-073-00	$25.00
092A-0715-074-00	$25.00
092A-0715-075-00	$25.00
092A-0715-076-00	$25.00
092A-0715-077-00	$25.00
092A-0715-078-00	$25.00
092A-0715-079-00	$25.00

Assessor's Parcel Number	Assessment Amount
092A-0715-080-00	$25.00
092A-0715-081-00	$25.00
092A-0715-082-00	$25.00
092A-0715-083-00	$25.00
092A-0715-084-00	$25.00
092A-0715-085-00	$25.00
092A-0715-086-00	$25.00
092A-0715-087-00	$25.00
092A-0715-088-00	$25.00
092A-0715-089-00	$25.00
092A-0715-090-00	$25.00
092A-0715-091-00	$25.00
092A-0715-092-00	$25.00
092A-0715-093-00	$25.00
092A-0715-094-00	$25.00
092A-0715-095-00	$25.00
092A-0715-096-00	$25.00
092A-0715-097-00	$25.00
092A-0715-098-00	$25.00
092A-0715-099-00	$25.00
092A-0715-100-00	$25.00
092A-0715-101-00	$25.00
092A-0715-102-00	$25.00
092A-0715-103-00	$25.00
092A-0715-104-00	$25.00
092A-0715-105-00	$25.00
092A-0715-106-00	$25.00
092A-0715-107-00	$25.00
092A-0715-108-00	$25.00
092A-0716-001-00	$25.00
092A-0716-002-00	$25.00
092A-0716-003-00	$25.00
092A-0716-004-00	$25.00
092A-0716-005-00	$25.00
092A-0716-006-00	$25.00
092A-0716-007-00	$25.00
092A-0716-008-00	$25.00
092A-0716-009-00	$25.00
092A-0716-010-00	$25.00
092A-0716-011-00	$25.00
092A-0716-012-00	$25.00
092A-0716-013-00	$25.00
092A-0716-014-00	$25.00
092A-0716-015-00	$25.00
092A-0716-016-00	$25.00
092A-0716-017-00	$25.00
092A-0716-018-00	$25.00
092A-0716-019-00	$25.00
092A-0716-020-00	$25.00
092A-0716-021-00	$25.00
092A-0716-022-00	$25.00
092A-0716-024-00	$25.00

Assessor's Parcel Number	Assessment Amount
092A-0716-025-00	$25.00
092A-0716-026-00	$25.00
092A-0716-028-00	$25.00
092A-0716-029-00	$25.00
092A-0716-030-00	$25.00
092A-0716-031-00	$25.00
092A-0716-032-00	$25.00
092A-0716-033-00	$25.00
092A-0716-034-00	$25.00
092A-0716-035-00	$25.00
092A-0716-036-00	$25.00
092A-0716-037-00	$25.00
092A-0716-038-00	$25.00
092A-0716-039-00	$25.00
092A-0716-040-00	$25.00
092A-0716-041-00	$25.00
092A-0716-042-00	$25.00
092A-0716-043-00	$25.00
092A-0716-044-00	$25.00
092A-0716-045-00	$25.00
092A-0716-046-00	$25.00
092A-0716-047-00	$25.00
092A-0716-048-00	$25.00
092A-0716-049-00	$25.00
092A-0716-050-00	$25.00
092A-0716-051-00	$25.00
092A-0716-052-00	$25.00
092A-0716-053-00	$25.00
092A-0716-054-00	$25.00
092A-0716-055-00	$25.00
092A-0716-056-00	$25.00
092A-0716-057-00	$25.00
092A-0716-058-00	$25.00
092A-0716-059-00	$25.00
092A-0716-060-00	$25.00
092A-0716-061-00	$25.00
092A-0716-062-00	$25.00
092A-0716-063-02	$25.00
092A-0716-064-01	$25.00
092A-0716-065-00	$25.00
092A-0716-066-00	$25.00
092A-0716-067-00	$25.00
092A-0716-068-00	$25.00
092A-0716-069-00	$25.00
092A-0716-071-00	$25.00
092A-0716-072-00	$25.00
092A-0716-073-00	$25.00
092A-0716-074-00	$25.00
092A-0716-075-00	$25.00
092A-0716-076-00	$25.00
092A-0716-077-00	$25.00
092A-0716-078-00	$25.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0716-079-00	$25.00
092A-0716-080-00	$25.00
092A-0716-081-00	$25.00
092A-0716-082-00	$25.00
092A-0716-083-00	$25.00
092A-0716-084-00	$25.00
092A-0716-085-00	$25.00
092A-0716-086-00	$25.00
092A-0716-087-00	$25.00
092A-0716-088-00	$25.00
092A-0716-089-00	$25.00
092A-0716-090-00	$25.00
092A-0716-091-00	$25.00
092A-0716-092-00	$25.00
092A-0716-093-00	$25.00
092A-0716-094-00	$25.00
092A-0716-095-00	$25.00
092A-0716-096-00	$25.00
092A-0716-097-00	$25.00
092A-0716-098-00	$25.00
092A-0716-099-00	$25.00
092A-0716-100-00	$25.00
092A-0716-101-00	$25.00
092A-0716-102-00	$25.00
092A-0716-103-00	$25.00
092A-0716-104-00	$25.00
092A-0716-105-00	$25.00
092A-0716-106-00	$25.00
092A-0716-107-00	$25.00
092A-0716-108-00	$25.00
092A-0716-109-00	$25.00
092A-0716-110-00	$25.00
092A-0716-111-00	$25.00
092A-0716-112-00	$25.00
092A-0716-113-00	$25.00
092A-0716-114-00	$25.00
092A-0716-115-00	$25.00
092A-0716-116-00	$25.00
092A-0716-117-00	$25.00
092A-0716-118-00	$25.00
092A-0716-119-00	$25.00
092A-0716-120-00	$25.00
092A-0716-121-00	$25.00
092A-0716-122-00	$25.00
092A-0716-123-00	$25.00
092A-0716-124-00	$25.00
092A-0716-125-00	$25.00
092A-0716-126-00	$25.00
092A-0716-127-00	$25.00
092A-0716-128-00	$25.00
092A-0716-129-00	$25.00
092A-0716-130-00	$25.00
092A-0716-131-00	$25.00
092A-0716-132-00	$25.00
092A-0716-133-00	$25.00
092A-0716-134-00	$25.00
092A-0716-135-00	$25.00
092A-0717-001-00	$25.00
092A-0717-002-00	$25.00
092A-0717-003-00	$25.00
092A-0717-004-00	$25.00
092A-0717-005-00	$25.00
092A-0717-006-00	$25.00
092A-0717-007-00	$25.00
092A-0717-008-00	$25.00
092A-0717-009-00	$25.00
092A-0717-010-00	$25.00
092A-0717-011-00	$25.00
092A-0717-013-00	$25.00
092A-0717-014-00	$25.00
092A-0717-015-00	$25.00
092A-0717-016-00	$25.00
092A-0718-001-00	$25.00
092A-0718-002-00	$25.00
092A-0718-003-00	$25.00
092A-0718-004-00	$25.00
092A-0718-005-00	$25.00
092A-0718-006-00	$25.00
092A-0718-007-00	$25.00
092A-0718-008-00	$25.00
092A-0718-009-00	$25.00
092A-0718-010-00	$25.00
092A-0718-011-00	$25.00
092A-0718-012-00	$25.00
092A-0718-013-00	$25.00
092A-0718-014-00	$25.00
092A-0718-015-00	$25.00
092A-0718-016-00	$25.00
092A-0718-017-00	$25.00
092A-0718-018-00	$25.00
092A-0718-019-00	$25.00
092A-0718-020-00	$25.00
092A-0718-021-00	$25.00
092A-0718-022-00	$25.00
092A-0718-023-00	$25.00
092A-0718-024-00	$25.00
092A-0718-025-00	$25.00
092A-0718-026-00	$25.00
092A-0718-027-00	$25.00
092A-0718-028-00	$25.00
092A-0718-029-00	$25.00
092A-0718-030-00	$25.00
092A-0718-031-00	$25.00
092A-0718-032-00	$25.00
092A-0718-033-00	$25.00
092A-0718-034-00	$25.00
092A-0718-035-00	$25.00
092A-0718-036-00	$25.00
092A-0718-037-00	$25.00
092A-0718-038-00	$25.00
092A-0718-039-00	$25.00
092A-0718-040-00	$25.00
092A-0718-041-00	$25.00
092A-0718-042-00	$25.00
092A-0718-043-00	$25.00
092A-0718-044-00	$25.00
092A-0718-045-00	$25.00
092A-0718-046-00	$25.00
092A-0718-047-00	$25.00
092A-0718-048-00	$25.00
092A-0718-049-00	$25.00
092A-0718-050-00	$25.00
092A-0718-051-00	$25.00
092A-0718-052-00	$25.00
092A-0718-053-00	$25.00
092A-0718-054-00	$25.00
092A-0718-055-00	$25.00
092A-0718-056-00	$25.00
092A-0718-057-00	$25.00
092A-0718-059-00	$25.00
092A-0718-060-00	$25.00
092A-0718-061-00	$25.00
092A-0718-062-00	$25.00
092A-0718-063-00	$25.00
092A-0718-064-00	$25.00
092A-0718-065-00	$25.00
092A-0718-066-00	$25.00
092A-0718-067-00	$25.00
092A-0718-068-00	$25.00
092A-0718-069-00	$25.00
092A-0718-070-00	$25.00
092A-0718-071-00	$25.00
092A-0718-072-00	$25.00
092A-0718-073-00	$25.00
092A-0718-074-00	$25.00
092A-0718-075-00	$25.00
092A-0718-076-00	$25.00
092A-0718-077-00	$25.00
092A-0718-078-00	$25.00
092A-0718-079-00	$25.00
092A-0718-080-00	$25.00
092A-0724-007-00	$25.00
092A-0724-008-00	$25.00
092A-0724-009-00	$25.00
092A-0724-010-00	$25.00
092A-0724-011-00	$25.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0724-012-00	$25.00
092A-0724-013-00	$25.00
092A-0724-014-00	$25.00
092A-0724-015-00	$25.00
092A-0724-016-00	$25.00
092A-0724-017-00	$25.00
092A-0724-018-00	$25.00
092A-0724-019-00	$25.00
092A-0724-020-00	$25.00
092A-0724-021-00	$25.00
092A-0724-022-00	$25.00
092A-0724-023-00	$25.00
092A-0724-024-00	$25.00
092A-0724-025-00	$25.00
092A-0724-026-00	$25.00
092A-0724-027-00	$25.00
092A-0724-028-00	$25.00
092A-0724-029-00	$25.00
092A-0724-030-00	$25.00
092A-0724-031-00	$25.00
092A-0724-032-00	$25.00
092A-0724-033-00	$25.00
092A-0724-034-00	$25.00
092A-0724-035-00	$25.00
092A-0724-036-00	$25.00
092A-0724-037-00	$25.00
092A-0724-038-00	$25.00
092A-0724-039-00	$25.00
092A-0724-040-00	$25.00
092A-0724-041-00	$25.00
092A-0724-042-00	$25.00
092A-0724-043-00	$25.00
092A-0724-044-00	$25.00
092A-0724-045-00	$25.00
092A-0724-046-00	$25.00
092A-0724-047-00	$25.00
092A-0724-048-00	$25.00
092A-0724-049-00	$25.00
092A-0724-050-00	$25.00
092A-0724-051-00	$25.00
092A-0724-052-00	$25.00
092A-0724-053-00	$25.00
092A-0724-054-00	$25.00
092A-0724-055-00	$25.00
092A-0724-056-00	$25.00
092A-0724-057-00	$25.00
092A-0724-058-00	$25.00
092A-0724-059-00	$25.00
092A-0724-060-00	$25.00
092A-0724-061-00	$25.00
092A-0724-062-00	$25.00
092A-0724-063-00	$25.00
092A-0724-064-00	$25.00
092A-0724-066-00	$25.00
092A-0724-067-00	$25.00
092A-0724-068-00	$25.00
092A-0724-069-00	$25.00
092A-0724-070-00	$25.00
092A-0724-071-00	$25.00
092A-0724-072-00	$25.00
092A-0724-073-00	$25.00
092A-0724-074-00	$25.00
092A-0724-075-00	$25.00
092A-0724-076-00	$25.00
092A-0724-077-00	$25.00
092A-0724-078-00	$25.00
092A-0724-079-00	$25.00
092A-0724-080-00	$25.00
092A-0724-081-00	$25.00
092A-0724-082-00	$25.00
092A-0724-083-00	$25.00
092A-0724-084-00	$25.00
092A-0724-085-00	$25.00
092A-0724-086-00	$25.00
092A-0724-087-00	$25.00
092A-0724-088-00	$25.00
092A-0724-089-00	$25.00
092A-0724-090-00	$25.00
092A-0724-091-00	$25.00
092A-0724-092-00	$25.00
092A-0724-093-00	$25.00
092A-0724-094-00	$25.00
092A-0725-005-00	$25.00
092A-0725-006-00	$25.00
092A-0725-007-00	$25.00
092A-0725-008-00	$25.00
092A-0725-009-00	$25.00
092A-0725-010-00	$25.00
092A-0725-011-00	$25.00
092A-0725-012-00	$25.00
092A-0725-013-00	$25.00
092A-0725-014-00	$25.00
092A-0725-015-00	$25.00
092A-0725-016-00	$25.00
092A-0725-017-00	$25.00
092A-0725-018-00	$25.00
092A-0725-019-00	$25.00
092A-0725-020-00	$25.00
092A-0725-021-00	$25.00
092A-0725-022-00	$25.00
092A-0725-023-00	$25.00
092A-0725-024-00	$25.00
092A-0725-025-00	$25.00
092A-0725-026-00	$25.00
092A-0725-027-00	$25.00
092A-0725-028-00	$25.00
092A-0725-029-00	$25.00
092A-0725-030-00	$25.00
092A-0725-031-00	$25.00
092A-0725-032-00	$25.00
092A-0725-034-00	$25.00
092A-0725-035-00	$25.00
092A-0725-036-00	$25.00
092A-0725-038-00	$25.00
092A-0725-039-00	$25.00
092A-0725-040-00	$25.00
092A-0725-041-00	$25.00
092A-0725-042-00	$25.00
092A-0725-043-00	$25.00
092A-0725-044-00	$25.00
092A-0725-045-00	$25.00
092A-0725-046-00	$25.00
092A-0725-047-00	$25.00
092A-0725-048-00	$25.00
092A-0725-049-00	$25.00
092A-0725-050-00	$25.00
092A-0725-051-00	$25.00
092A-0725-052-00	$25.00
092A-0725-059-00	$25.00
092A-0725-060-00	$25.00
092A-0725-063-00	$25.00
092A-0725-065-00	$25.00
092A-0725-066-00	$25.00
092A-0726-003-00	$25.00
092A-0726-004-00	$25.00
092A-0726-005-00	$25.00
092A-0726-006-00	$25.00
092A-0726-007-00	$25.00
092A-0726-008-00	$25.00
092A-0726-009-00	$25.00
092A-0726-010-00	$25.00
092A-0726-011-00	$25.00
092A-0726-012-00	$25.00
092A-0726-013-00	$25.00
092A-0726-014-00	$25.00
092A-0726-015-00	$25.00
092A-0726-016-00	$25.00
092A-0726-017-00	$25.00
092A-0726-018-00	$25.00
092A-0726-019-00	$25.00
092A-0726-020-00	$25.00
092A-0726-021-00	$25.00
092A-0726-022-00	$25.00
092A-0726-023-00	$25.00
092A-0726-024-00	$25.00
092A-0726-025-00	$25.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0726-026-00	$25.00
092A-0726-027-00	$25.00
092A-0726-028-00	$25.00
092A-0726-029-00	$25.00
092A-0726-030-00	$25.00
092A-0726-031-00	$25.00
092A-0726-032-00	$25.00
092A-0726-033-00	$25.00
092A-0726-034-00	$25.00
092A-0726-035-00	$25.00
092A-0726-036-00	$25.00
092A-0726-037-00	$25.00
092A-0726-038-00	$25.00
092A-0726-039-00	$25.00
092A-0726-040-00	$25.00
092A-0726-041-00	$25.00
092A-0726-042-00	$25.00
092A-0726-043-00	$25.00
092A-0726-044-00	$25.00
092A-0726-045-00	$25.00
092A-0726-046-00	$25.00
092A-0726-047-00	$25.00
092A-0726-048-00	$25.00
092A-0726-049-00	$25.00
092A-0726-050-00	$25.00
092A-0726-051-00	$25.00
092A-0726-052-00	$25.00
092A-0726-053-00	$25.00
092A-0726-054-00	$25.00
092A-0726-055-00	$25.00
092A-0726-056-00	$25.00
092A-0726-057-00	$25.00
092A-0726-058-00	$25.00
092A-0726-059-00	$25.00
092A-0726-060-00	$25.00
092A-0726-061-00	$25.00
092A-0726-062-00	$25.00
092A-0726-063-00	$25.00
092A-0726-064-00	$25.00
092A-0726-065-00	$25.00
092A-0726-066-00	$25.00
092A-0726-067-00	$25.00
092A-0726-068-00	$25.00
092A-0726-069-00	$25.00
092A-0726-070-00	$25.00
092A-0726-071-00	$25.00
092A-0726-072-00	$25.00
092A-0726-073-00	$25.00
092A-0726-074-00	$25.00
092A-0726-075-00	$25.00
092A-0726-076-00	$25.00
092A-0726-077-00	$25.00
092A-0726-078-00	$25.00
092A-0726-079-00	$25.00
092A-0726-080-00	$25.00
092A-0726-081-00	$25.00
092A-0726-082-00	$25.00
092A-0726-083-00	$25.00
092A-0726-084-00	$25.00
092A-0726-085-00	$25.00
092A-0726-086-00	$25.00
092A-0726-087-00	$25.00
092A-0726-088-00	$25.00
092A-0726-089-00	$25.00
092A-0726-090-00	$25.00
092A-0726-091-00	$25.00
092A-0726-092-00	$25.00
092A-0727-003-00	$25.00
092A-0727-004-00	$25.00
092A-0727-005-00	$25.00
092A-0727-006-00	$25.00
092A-0727-007-00	$25.00
092A-0727-008-00	$25.00
092A-0727-009-00	$25.00
092A-0727-010-00	$25.00
092A-0727-011-00	$25.00
092A-0727-012-00	$25.00
092A-0727-013-00	$25.00
092A-0727-014-00	$25.00
092A-0727-015-00	$25.00
092A-0727-016-00	$25.00
092A-0727-017-00	$25.00
092A-0727-018-00	$25.00
092A-0727-019-00	$25.00
092A-0727-020-00	$25.00
092A-0727-021-00	$25.00
092A-0727-022-00	$25.00
092A-0727-023-00	$25.00
092A-0727-024-00	$25.00
092A-0727-025-00	$25.00
092A-0727-026-00	$25.00
092A-0727-027-00	$25.00
092A-0727-029-00	$25.00
092A-0727-030-00	$25.00
092A-0727-031-00	$25.00
092A-0727-032-00	$25.00
092A-0727-033-00	$25.00
092A-0727-034-00	$25.00
092A-0727-035-00	$25.00
092A-0727-036-00	$25.00
092A-0727-037-00	$25.00
092A-0727-038-00	$25.00
092A-0727-039-00	$25.00
092A-0727-040-00	$25.00
092A-0727-041-00	$25.00
092A-0727-042-00	$25.00
092A-0727-043-00	$25.00
092A-0727-044-00	$25.00
092A-0727-045-00	$25.00
092A-0727-046-00	$25.00
092A-0727-047-00	$25.00
092A-0727-048-00	$25.00
092A-0727-049-00	$25.00
092A-0727-050-00	$25.00
092A-0727-051-00	$25.00
092A-0727-052-00	$25.00
092A-0727-053-00	$25.00
092A-0727-054-00	$25.00
092A-0727-056-00	$25.00
092A-0727-057-00	$25.00
092A-0727-058-00	$25.00
092A-0727-059-00	$25.00
092A-0727-060-00	$25.00
092A-0727-061-00	$25.00
092A-0727-062-00	$25.00
092A-0727-063-00	$25.00
092A-0727-064-00	$25.00
092A-0727-065-00	$25.00
092A-0727-066-00	$25.00
092A-0727-067-00	$25.00
092A-0727-068-00	$25.00
092A-0727-069-00	$25.00
092A-0727-070-00	$25.00
092A-0727-071-00	$25.00
092A-0727-072-00	$25.00
092A-0727-073-00	$25.00
092A-0727-074-00	$25.00
092A-0727-075-00	$25.00
092A-0727-076-00	$25.00
092A-0727-077-00	$25.00
092A-0727-078-00	$25.00
092A-0727-079-00	$25.00
092A-0727-080-00	$25.00
092A-0727-081-00	$25.00
092A-0727-083-00	$25.00
092A-0727-084-00	$25.00
092A-0727-085-00	$25.00
092A-0727-086-00	$25.00
092A-0727-087-00	$25.00
092A-0727-088-00	$25.00
092A-0727-089-00	$25.00
092A-0727-090-00	$25.00
092A-0727-091-00	$25.00
092A-0727-092-00	$25.00
092A-0727-093-00	$25.00
092A-0727-094-00	$25.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0727-095-00	$25.00
092A-0727-096-00	$25.00
092A-0727-097-00	$25.00
092A-0727-098-00	$25.00
092A-0727-099-00	$25.00
092A-0727-100-00	$25.00
092A-0727-101-00	$25.00
092A-0727-102-00	$25.00
092A-0727-103-00	$25.00
092A-0727-104-00	$25.00
092A-0727-105-00	$25.00
092A-0727-106-00	$25.00
092A-0727-107-00	$25.00
092A-0727-108-00	$25.00
092A-0727-110-00	$25.00
092A-0727-111-00	$25.00
092A-0727-112-00	$25.00
092A-0727-113-00	$25.00
092A-0727-114-00	$25.00
092A-0727-115-00	$25.00
092A-0727-116-00	$25.00
092A-0727-117-00	$25.00
092A-0727-118-00	$25.00
092A-0727-119-00	$25.00
092A-0727-120-00	$25.00
092A-0727-121-00	$25.00
092A-0727-122-00	$25.00
092A-0727-123-00	$25.00
092A-0727-124-00	$25.00
092A-0727-125-00	$25.00
092A-0727-126-00	$25.00
092A-0727-127-00	$25.00
092A-0727-128-00	$25.00
092A-0727-129-00	$25.00
092A-0727-130-00	$25.00
092A-0727-131-00	$25.00
092A-0727-132-00	$25.00
092A-0727-133-00	$25.00
092A-0727-134-00	$25.00
092A-0727-135-00	$25.00
092A-0727-136-00	$25.00
092A-0727-137-00	$25.00
092A-0727-138-00	$25.00
092A-0727-139-00	$25.00
092A-0727-140-00	$25.00
092A-0727-141-00	$25.00
092A-0727-142-00	$25.00
092A-0727-143-00	$25.00
092A-0727-144-00	$25.00
092A-0727-145-00	$25.00
092A-0727-146-00	$25.00
092A-0727-147-00	$25.00
092A-0727-148-00	$25.00
092A-0727-149-00	$25.00
092A-0727-150-00	$25.00
092A-0727-151-00	$25.00
092A-0727-152-00	$25.00
092A-0727-153-00	$25.00
092A-0727-154-00	$25.00
092A-0727-155-00	$25.00
092A-0727-156-00	$25.00
092A-0727-157-00	$25.00
092A-0727-158-00	$25.00
092A-0727-159-00	$25.00
092A-0727-160-00	$25.00
092A-0727-161-00	$25.00
092A-0728-001-00	$25.00
092A-0728-002-00	$25.00
092A-0728-003-00	$25.00
092A-0728-004-00	$25.00
092A-0728-005-00	$25.00
092A-0728-006-00	$25.00
092A-0728-007-00	$25.00
092A-0728-008-00	$25.00
092A-0728-009-00	$25.00
092A-0728-010-00	$25.00
092A-0728-011-00	$25.00
092A-0728-012-00	$25.00
092A-0728-013-00	$25.00
092A-0728-014-00	$25.00
092A-0728-015-00	$25.00
092A-0728-016-00	$25.00
092A-0728-017-00	$25.00
092A-0728-018-00	$25.00
092A-0728-019-00	$25.00
092A-0728-020-00	$25.00
092A-0728-021-00	$25.00
092A-0728-022-00	$25.00
092A-0728-023-00	$25.00
092A-0728-024-00	$25.00
092A-0728-025-00	$25.00
092A-0728-026-00	$25.00
092A-0728-027-00	$25.00
092A-0728-028-00	$25.00
092A-0728-029-00	$25.00
092A-0728-030-00	$25.00
092A-0728-031-00	$25.00
092A-0728-032-00	$25.00
092A-0728-033-00	$25.00
092A-0728-034-00	$25.00
092A-0728-035-00	$25.00
092A-0728-036-00	$25.00
092A-0728-037-00	$25.00
092A-0728-038-00	$25.00
092A-0728-039-00	$25.00
092A-0728-040-00	$25.00
092A-0728-041-00	$25.00
092A-0728-042-00	$25.00
092A-0728-043-00	$25.00
092A-0728-044-00	$25.00
092A-0728-045-00	$25.00
092A-0728-046-00	$25.00
092A-0728-047-00	$25.00
092A-0728-048-00	$25.00
092A-0728-049-00	$25.00
092A-0728-050-00	$25.00
092A-0728-051-00	$25.00
092A-0728-052-00	$25.00
092A-0728-053-00	$25.00
092A-0728-054-00	$25.00
092A-0728-055-00	$25.00
092A-0728-056-00	$25.00
092A-0728-057-00	$25.00
092A-0728-058-00	$25.00
092A-0728-059-00	$25.00
092A-0728-060-00	$25.00
092A-0728-061-00	$25.00
092A-0728-062-00	$25.00
092A-0728-063-00	$25.00
092A-0728-064-00	$25.00
092A-0728-065-00	$25.00
092A-0728-066-00	$25.00
092A-0728-067-00	$25.00
092A-0728-068-00	$25.00
092A-0728-069-00	$25.00
092A-0728-070-00	$25.00
092A-0728-071-00	$25.00
092A-0728-072-00	$25.00
092A-0728-074-00	$25.00
092A-0728-075-00	$25.00
092A-0728-076-00	$25.00
092A-0728-077-00	$25.00
092A-0728-078-00	$25.00
092A-0728-079-00	$25.00
092A-0728-080-00	$25.00
092A-0728-081-00	$25.00
092A-0728-082-00	$25.00
092A-0728-083-00	$25.00
092A-0728-084-00	$25.00
092A-0728-085-00	$25.00
092A-0728-086-00	$25.00
092A-0728-087-00	$25.00
092A-0728-088-00	$25.00
092A-0728-089-00	$25.00
092A-0728-090-00	$25.00
092A-0728-091-00	$25.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0728-092-00	$25.00
092A-0728-093-00	$25.00
092A-0728-094-00	$25.00
092A-0728-095-00	$25.00
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092A-0728-126-00	$25.00
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092A-0729-009-00	$25.00
092A-0729-010-00	$25.00
092A-0729-011-00	$25.00
092A-0729-012-00	$25.00
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092A-2590-006-00	$25.00
092A-2590-007-00	$25.00
092A-2590-008-00	$25.00
092A-2590-009-00	$25.00
092A-2590-010-00	$25.00
092A-2590-011-00	$25.00
092A-2590-012-00	$25.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 11
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-2590-013-00	$25.00
092A-2590-014-00	$25.00
092A-2590-015-00	$25.00
092A-2590-016-00	$25.00
092A-2590-017-00	$25.00
092A-2590-018-00	$25.00
092A-2590-019-00	$25.00
092A-2590-020-00	$25.00
092A-2590-021-00	$25.00
092A-2590-022-00	$25.00
092A-2590-023-00	$25.00
092A-2590-024-00	$25.00
092A-2590-025-00	$25.00
092A-2590-026-00	$25.00
092A-2590-027-00	$25.00
092A-2590-028-00	$25.00
092A-2590-029-00	$25.00
092A-2590-030-00	$25.00
092A-2590-031-00	$25.00
092A-2590-032-00	$25.00
092A-2590-033-00	$25.00
092A-2590-034-00	$25.00
092A-2590-035-00	$25.00
092A-2590-036-00	$25.00
092A-2590-037-00	$25.00
092A-2590-038-00	$25.00
092A-2590-039-00	$25.00
092A-2590-040-00	$25.00
092A-2590-041-00	$25.00
092A-2590-042-00	$25.00
092A-2590-043-00	$25.00
092A-2590-044-00	$25.00
092A-2590-045-00	$25.00
092A-2590-046-00	$25.00
092A-2590-047-00	$25.00
Total Parcels:	1,127
Total Assessment:	$28,175.00

NEWARK
california

Landscaping and Lighting District No. 13

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 17

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 13
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") may levy and collect special assessments on parcels within the City of Newark Landscaping and Lighting District No. 13 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of median-landscape and mini-park improvements benefiting parcels within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties south of Willow Street, northwest of Thornton Avenue, and east of Cedar Boulevard. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Impacts of Proposition 218

On November 5, 1996 California voters approved Proposition 218 entitled "Right to Vote on Taxes Act" which added Articles XIIIC and XIIID to the California Constitution. While its title refers only to taxes, Proposition 218 established new procedural requirements for the formation and administration of assessment districts.

These new procedures stipulate that even if assessments are initially exempt from Proposition 218, future increases in assessments must comply with the provisions of Proposition 218. However, if the increase in assessments were anticipated in the assessment formula (e.g., CPI increase or assessment cap) then the assessment would comply with the intent and provisions of Proposition 218.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 13 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

> The maintenance and operation of landscaping, landscape irrigation, lighting within and adjacent to the rights-of-way of Thornton Avenue, Cedar Boulevard, Willow Street, Mahogany Place, Peachtree Avenue, and Papaya Avenue, including replacement and replanting costs, are part of the responsibilities. This also includes the maintenance and operation of landscaping, lighting, pathways, play areas, and play equipment within the in-tract mini-parks.

The development's Homeowner's Association has historically and continues to maintain all the District's authorized improvements, resulting in no maintenance of these improvements being provided by the City or funded by the District.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the Districts can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 13 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$0
Non-Assessment Revenues	$0
Total Projected Revenues	**$0**
Projected Expenses	
Contract Services	$0
Utilities	$0
Administration and Incidentals	$0
County Collection Fees	$0
Unforeseen Maintenance and Repairs	$0
Total Projected Expenses	**$0**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$3,519
Reserve Fund Collection Increase/(Decrease)	$0
Ending Fund Balance - June 30, 2024	$3,519
Recommended Operating Reserves	$0
Available Operating Reserves	$0
Available Capital Reserves	$3,519

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so the District can respond and address the need promptly.

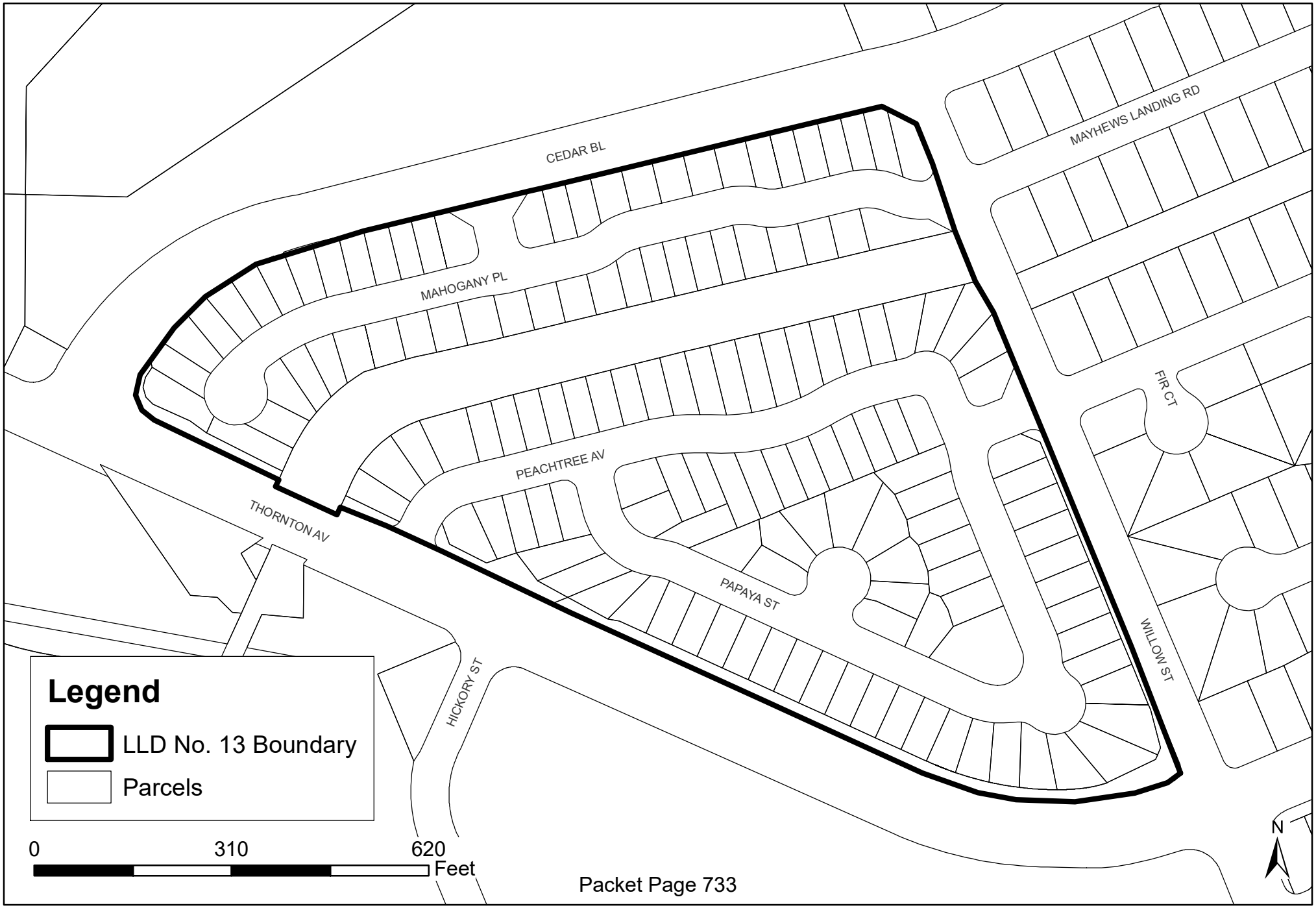
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 13
(THORNTON AVENUE AT WILLOW STREET)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, Article XIIID, of the California Constitution limits the amount of any assessment to the proportional "special benefit" conferred on the property. Article XIIID provides that only special benefits are assessable, and the City must separate the general benefits from the special benefits conferred on a parcel. There is no widely accepted or statutory formula for determining general and special benefit. However, the constitution states that a special benefit is different from a general benefit in that it is "particular and distinct" and "over and above" general benefits received by other properties.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Article XIIID provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the

assessment. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways, utility easements, and that portion of public property that is not developed and used for business purposes similar to private residential, commercial, industrial, and institutional activities.

The amount to be assessed may be apportioned by any formula or method which fairly distributes the amount among all assessable lots or parcels. In order for the City to separate out the general and special benefits for each improvement type, an analysis of each improvement was conducted. The analysis reviewed the purpose and users of each improvement, and then identified the properties that may benefit from the improvement both within and outside the City and within and outside the District, and then allocated the costs to maintain, service, and replace each improvement type to each identified property.

Because general benefits are not assessable, any costs associated with general benefits are to be paid for by the City or another non-assessment revenue source. Only the costs associated with the special benefits conferred on property within the District from the authorized improvements are assessable, and therefore may be assessed herein. A summary of the benefits conferred by the improvements is described below.

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the landscape and park improvements as determined at the time the District was established.

In reviewing each of the District's improvements, the proximity of those improvements to both properties within the District and those outside the District, as well as the reasons for installing and constructing such improvements, it is evident that the improvements are solely the result of developing properties within the District and the ongoing maintenance and operation of these improvements will directly affect the properties within the District. Although the improvements include a mini park, public areas, easements, rights-of-way, and other amenities available or visible to the public at large, the construction and installation of these improvements were only necessary for the development of properties within the District and were not required, nor necessarily desired by any properties or developments outside the District's boundary and any public access or use of the improvements by others is incidental. However, though it may be a rare occurrence, it is reasonable to conclude that individuals residing outside the boundaries of the District may utilize the mini park within the development. For this reason, it has been conservatively estimated that 2% of the costs of maintaining the mini park are associated with general benefit to the public at large and cannot be assessed to property within the boundaries of the District and would need to be funded using a non-assessment revenue source. All other improvements and related costs are determined to clearly provide distinct and special benefits to properties within the District

and therefore may be funded using assessment revenues if needed.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the landscape and park improvements can be summarized as follows:

- Improved aesthetics:
    - Well-maintained and attractive parks and landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
- Increased property values:
    - Attractive and well-maintained parks and landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
- Safety:
    - Landscaping helps calm traffic and reduce speeds, creating a safer environment for pedestrians and cyclists. It also acts as a physical buffer between roadways and properties within the District.

- Recreational opportunities:
    - Parks and the associated recreational opportunities provide for more aesthetically pleasing neighborhoods, environmental and health benefits, community gathering places, and an overall improved and healthier community image.
- Noise reduction:
    - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
    - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in the District, specifically increase the utility of the property within the District. For example, the assessments may provide funding to maintain the landscape and park improvements which provides visual and environmental benefits to the properties within the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, during the formation of the District, the City and Engineer of Work determined that each parcel within the District boundaries receives a similar benefit from the improvements. Therefore, the most appropriate method of apportioning costs was determined to be spreading all District costs equally to each parcel in the District. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

However, the City is not proposing to levy any assessments on property within the District in Fiscal Year 2023-24 because the maintenance of the improvements is funded by the local homeowner's association. Should costs arise that require the need to levy an assessment in the future, the costs of maintaining the District's improvements would be apportioned to assessable property within the District on a per parcel basis.

Should an assessment be levied in the future, publicly owned properties within the District must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the improvements. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts, public parkways, public property designated open space, and any portion of public property that is not used for business purposes similar to private residential, commercial, industrial, and institutional activities. Also exempted from the assessments are private streets, utility easements, Homeowner's Association common areas (except club houses, community centers, parking lots, etc.) and any other parcels that do not receive a special and direct benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such

changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

The City is not proposing to levy any assessments on property within the District for Fiscal Year 2023-24. Therefore, the total proposed assessment for Fiscal Year 2023-24 is $0.00.

NEWARK
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Landscaping and Lighting District No. 15

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

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Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 15

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 15
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the “1972 Act”). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 15 ("District") to maintain public improvements. The District was formed to provide a dedicated source of funding for the ongoing maintenance of median-landscape improvements benefiting parcels within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties along and fronting Iris Court. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Compliance with the California Constitution

Assessments are levied annually within the District pursuant to the 1972 Act. All assessments described in this Report and approved by the City Council are prepared in accordance with the 1972 Act and are compliant with the provisions of the California Constitution Article XIIID ("Article XIIID"), which was enacted with the passage of Proposition 218 in November 1996. Pursuant to Article XIIID Section 5, certain existing assessments are exempt from the substantive and procedural requirements of Article XIIID Section 4. Specifically, Article XIIID Section 5(b) exempted:

> *"Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessment shall be subject to the procedures and approval process set forth in Section 4."*

The City determined that the annual assessments originally established for the District were established by a petition signed by the persons owning all the parcels subject to the assessment at the time the assessment was originally proposed. As such, pursuant to Article XIIID Section 5(b), the pre–existing assessment amount has been exempted from the procedural requirements of Article XIIID Section 4 since the amount of the assessment has not increased since the passage of Proposition 218.

Any future increase in the assessment rate or substantial changes in the services provided would require that the District be brought into compliance with all the requirements of Article XIIID and would require the approval of the property owners subject to the assessment based upon a mailed ballot which would be sent to each property owner.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of these annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 15 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
  - The installation or planting of landscaping.
  - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
  - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
  - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
  - The installation of park or recreational improvements, including, but not limited to all the following:
    - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
    - Lights, playground equipment, play courts, and public restrooms.
  - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
  - The acquisition of land for park, recreational, or open space purposes.
  - The acquisition of any existing improvement otherwise authorized herein.
  - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

> The maintenance and operation of landscaping within the easement areas and the public right-of-way along Robertson Avenue fronting the District.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of this diagram is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the Districts can also be included.

The 1972 Act also requires that a special fund be set up for the revenues and expenditures of the District. Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 15 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$5,046
Non-Assessment Revenues	$0
Total Projected Revenues	**$5,046**
Projected Expenses	
Contract Services	($1,259)
Utilities	($826)
Administration and Incidentals	($1,961)
County Collection Fees	($86)
Unforeseen Maintenance and Repairs[1]	($207)
Total Projected Expenses	**($4,338)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$32,384
Reserve Fund Collection Increase/(Decrease)	$708
Ending Fund Balance - June 30, 2024	$33,092
Recommended Operating Reserves	$2,066
Available Operating Reserves	$2,066
Available Capital Reserves[2]	$31,027

[1] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[2] Includes $15,500 for future Plant Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 15
(IRIS COURT)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of public lights, landscaping, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore reflects the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, the 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was established.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services to the properties within the boundaries of the District. The apportioning of special benefit is a two-step process:

the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the District's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements can be summarized as follows:

- Improved aesthetics:
  - Well-maintained and attractive landscaping enhances the overall appearance and desirability of the area, making it visually appealing to property owners and visitors.
- Increased property values:
  - Attractive and well-maintained landscaping can increase the desirability of nearby properties, potentially leading to higher property values.
- Safety:
  - Landscaping helps calm traffic and reduce speeds, creating a safer environment for people traveling to and from properties within the District. It also acts as a physical buffer between roadways and properties within the District.
- Noise reduction:
  - Trees and plants help absorb traffic noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment.
- Reduced pollution:
  - Trees and plants aid in filtering pollutants from the air, improving air quality and creating a healthier environment for properties in proximity to the landscape.

These benefits, when applied to property in the District, specifically increase the utility of the property within the District. For example, the assessments provide funding to maintain the landscaping that improves safety and provides visual and environmental benefits to the properties within the District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability, and safety of the properties.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer at the time of formation determined that each parcel within the boundaries of the District receives a similar benefit from the improvements. Therefore, the most appropriate method of apportioning costs was determined to be

spreading all District costs equally to each parcel in the District. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the City proposes to collect the maximum assessment revenue from the assessable parcels located in the District, which amounts to $174.00 per parcel to be levied. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $5,046.00**.**

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 15
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-2376-031-00	$174.00
092A-2376-032-00	$174.00
092A-2376-033-00	$174.00
092A-2376-034-00	$174.00
092A-2376-035-00	$174.00
092A-2376-036-00	$174.00
092A-2376-037-00	$174.00
092A-2376-038-00	$174.00
092A-2376-039-00	$174.00
092A-2376-040-00	$174.00
092A-2376-041-00	$174.00
092A-2376-042-00	$174.00
092A-2376-043-00	$174.00
092A-2376-044-00	$174.00
092A-2376-045-00	$174.00
092A-2376-046-00	$174.00
092A-2376-047-00	$174.00
092A-2376-048-00	$174.00
092A-2376-049-00	$174.00
092A-2376-050-00	$174.00
092A-2376-051-00	$174.00
092A-2376-052-00	$174.00
092A-2376-053-00	$174.00
092A-2376-054-00	$174.00
092A-2376-055-00	$174.00
092A-2376-056-00	$174.00
092A-2376-057-00	$174.00
092A-2376-058-00	$174.00
092A-2376-059-00	$174.00
Total Parcels:	29
Total Assessment:	$5,046.00

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Landscaping and Lighting District No. 16

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
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Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 18

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 16
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 16 ("District") to maintain public improvements. The District was formed in May of 1999 to provide a dedicated source of funding for the ongoing maintenance of landscaping and park improvements benefiting parcels within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties within the development east of Kiote Drive, along Rinconada Court, Crystal Springs Court, Tanforan Court, and Silverado Place. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Impacts of Proposition 218

On November 5, 1996 California voters approved Proposition 218 entitled "Right to Vote on Taxes Act" which added Articles XIIIC and XIIID to the California Constitution. While its title refers only to taxes, Proposition 218 established new procedural requirements for the formation and administration of assessment districts.

These new procedures stipulate that even if assessments are initially exempt from Proposition 218, future increases in assessments must comply with the provisions of Proposition 218. However, if the increase in assessments were anticipated in the assessment formula (e.g., CPI increase or assessment cap) then the assessment would comply with the intent and provisions of Proposition 218.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 16 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
  - The installation or planting of landscaping.
  - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
  - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
  - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
  - The installation of park or recreational improvements, including, but not limited to all the following:
    - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
    - Lights, playground equipment, play courts, and public restrooms.
  - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
  - The acquisition of land for park, recreational, or open space purposes.
  - The acquisition of any existing improvement otherwise authorized herein.
  - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
  - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
  - The costs of printing, advertising, and giving of published, posted, and mailed notices.
  - Compensation payable to the county for collection of assessments.
  - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
  - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
  - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
  - Any expenses incidental to the issuance of bonds or notes.
  - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
  - Repair, removal or replacement of all or any part of any improvement.
  - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
  - The removal of trimmings, rubbish, debris, and other solid waste.
  - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
  - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
  - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

- The Landscape Improvements include, but are not limited to landscaping, planting, turf, trees, irrigation systems, and fixtures in public street and sidewalk rights-of-way, including parkways and other easements dedicated to the City within, and adjacent to, the District.
- The Park Improvements include but are not limited to landscaping, planting, shrubbery, trees, irrigation systems, hardscapes and fixtures, trails, and open space areas.

A more detailed description of the facilities which either have or will be constructed, operated, maintained, and serviced are generally described as follows.

> The maintenance of landscaping and the landscape irrigation system within the public right-of-way and adjacent easement along the street frontage of Kiote Drive in Tract 6671 and the landscaping, irrigation system, and recreation facilities related to the mini park common area shown as Parcel A on the Tract Map.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of these diagrams is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the District can also be included.

Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 16 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$19,903
Non-Assessment Revenues[1]	$404
Total Projected Revenues	**$20,307**
Projected Expenses	
Contract Services	($3,375)
Utilities	($9,999)
Administration and Incidentals	($5,539)
County Collection Fees	($338)
Unforeseen Maintenance and Repairs[2]	($963)
Total Projected Expenses	**($20,215)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$44,749
Reserve Fund Collection Increase/(Decrease)	$92
Ending Fund Balance - June 30, 2024	$44,841
Recommended Operating Reserves	$9,626
Available Operating Reserves	$9,626
Available Capital Reserves[3]	$35,215

[1] Non-Assessment Revenues equate to the City contribution in the amount of $404 for General Benefits conferred to the public at large.

[2] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[3] Includes $14,780 for future Plant Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

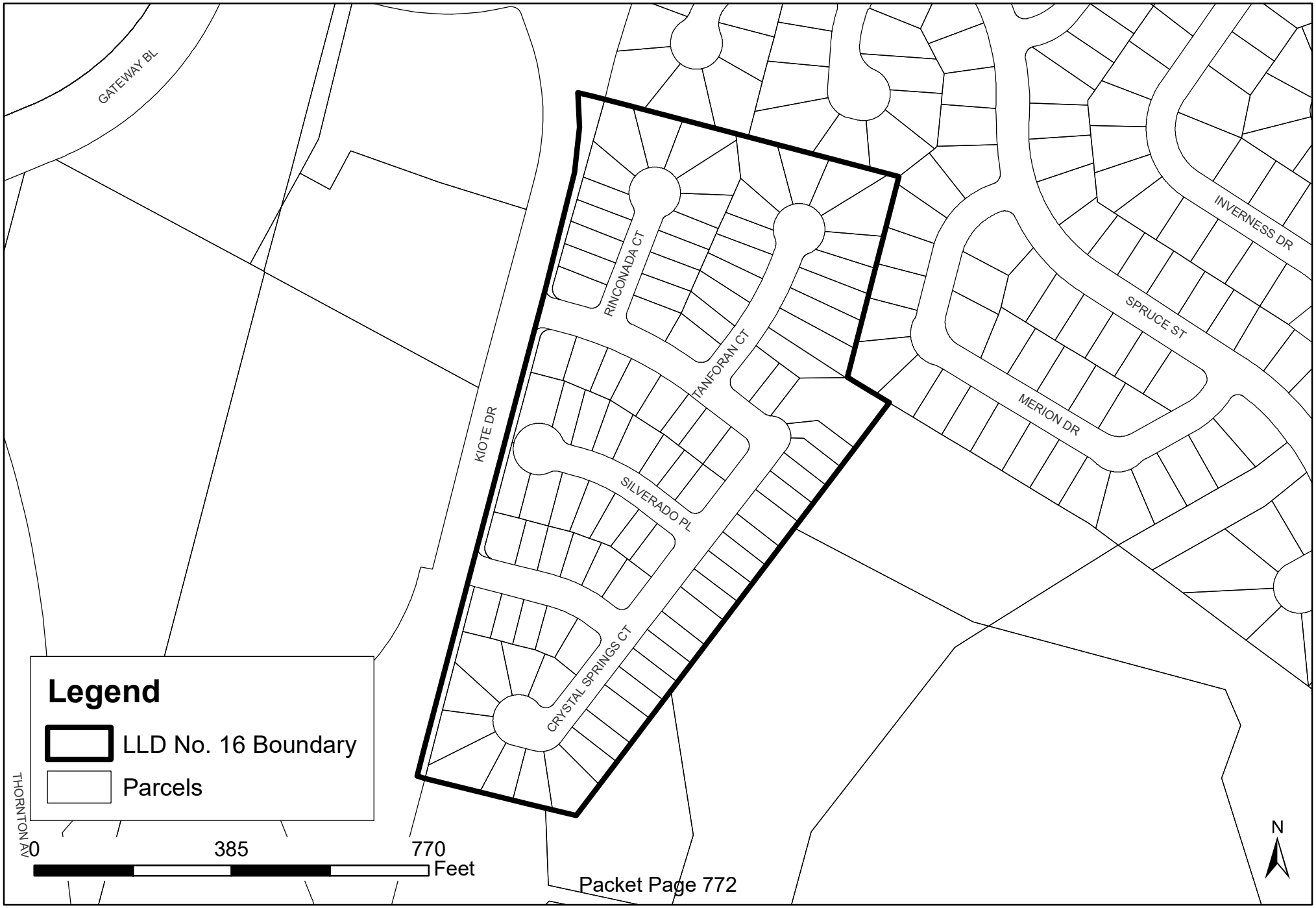
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 16
(PUITE HOMES/TRACT 6671)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of streetlights, landscaping, parks, trails, open space, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore needs to reflect the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, Article XIIID, of the California Constitution limits the amount of any assessment to the proportional "special benefit" conferred on the property. Article XIIID provides that only special benefits are assessable, and the City must separate the general benefits from the special benefits conferred on a parcel. There is no widely accepted or statutory formula for determining general and special benefit. However, the constitution states that a special benefit is different from a general benefit in that it is "particular and distinct" and "over and above" general benefits received by other properties.

The 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Article XIIID provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public

easements and rights-of-ways, public greenbelts and public parkways, utility easements, and that portion of public property that is not developed and used for business purposes similar to private residential, commercial, industrial, and institutional activities.

The amount to be assessed may be apportioned by any formula or method which fairly distributes the amount among all assessable lots or parcels. In order for the City to separate out the general and special benefits for each improvement type, an analysis of each improvement was conducted. The analysis reviewed the purpose and users of each improvement, and then identified the properties that benefit from the improvement, and then allocated the costs to maintain, service, and replace each improvement type to each identified property.

Because general benefits are not assessable, any costs associated with general benefits are to be paid for by the City. Only the costs associated with the special benefits conferred on property within District from the authorized improvements are assessable, and therefore assessed herein. A summary of the benefits conferred by the improvements is described below.

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was formed.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services within the boundaries of the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In determining the proportionate special benefit derived by each identified parcel, the proximity of the parcel to the public improvements detailed in Part A above, and the capital, maintenance, and operating costs of said public improvements, was considered and analyzed. Due to the close proximity of the parcels to the improvements detailed in Part A above, it has been demonstrated and determined that the parcels are uniquely benefited by, and receive a direct advantage from, and are conferred a particular and distinct special benefit over and above general benefits by said public improvements in a way that is particular and distinct from its effect on other parcels, and that real property in general and the public at large do not share.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements are summarized as follows.

Special Benefit from Landscape Maintenance

All parcels within the District receive special benefit from Landscape Maintenance. Trees, landscaping, hardscapes, ornamental structures, and appurtenant facilities, if well maintained, confer a particular and distinct special benefit upon real property within the District by providing beautification, shade and positive enhancement of the community character, attractiveness, and desirability of the surroundings. The landscape surrounding the development also acts as a buffer between nearby properties and the roadways improving the overall safety of properties within the development. In addition, the trees and plantings adjacent to the development help absorb noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment. In addition, all the aforementioned contributes to a specific increase in property desirability and a specific enhancement of the property value of each parcel within the District.

In Parkways and Land Values, written by John Nolan and Henry V. Hubbard in 1937, it is stated:

> " ... there is no lack of opinion, based on general principles and experience and common sense, that parkways do in fact add value to property, even though the amount cannot be determined exactly .... Indeed, in most cases where public money has been spent on parkways the assumption has been made that the proposed parkway will show a provable financial profit to the City. It has been believed that the establishment of parkways causes a rise in real estate values throughout the City, or in parts of the City, ... "

It should be noted that the definition of "parkways" above may include the roadway as well as the landscaping alongside the roadway.

Special Benefit from Park Maintenance

All parcels within District receive special benefit from Park Maintenance. The overall quality of life and desirability of an area is enhanced, when public parks and recreational facilities are in place, improved, operable, safe, clean, and properly maintained. Conversely, property desirability decreases when park and recreational facilities are unsafe or destroyed by the elements or vandalism.

Property desirability in an area also increases when there is an increase in the number of parks, recreation centers and sports facilities. These park and recreational facilities enable property owners to participate in sporting events, leisure activities, picnics, organized social events, and other miscellaneous activities.

Studies in several communities, including counties and cities throughout the United States, have indicated that recreation areas and facilities, if well maintained and wisely administered, have caused a marked increase in the property values of parcels in the community. Consequently, such recreation and park facilities have proved a potent factor in maintaining a sound economic condition and a high standard of livability in the community. These studies confirm the opinion, long held by planning authorities, as to the economic value of parks and recreational facilities in a community.

> *"The recreation value is realized as a rise in the value of land and other property in or near the recreation area, and is of both private interest to the landowner and others, holding an economic stake in the area, and of public interest to the taxpayers, who have a stake ...." (National Recreation and Park Association, June 1985)*

> *"Recreation and park amenities are central components in establishing the quality of life in a community. ... [Businesses'] main resource is their employees for whom quality of life is an important issue… The availability and attractiveness of local parks and programs influences some companies' relocation decisions. ... the presence of a park encourages real estate development around it.... ". (California Parks & Recreation, Winter 1997)*

The benefit of parks and other recreational facilities to residential and commercial/industrial properties has been summarized by several studies. The United States Department of the Interior, National Park Service, in a publication from June 1984, concluded that:

- Parks and recreation stimulate business and generate tax revenues
- Parks and recreation help conserve land, energy, and resources
- An investment in parks and recreation helps reduce pollution and noise, makes communities more livable, and increases property values
- Public recreation benefits all residents and employers by providing continuing opportunities to maintain a level of fitness throughout one's working life, and through helping individuals cope with the stress of a fast-paced and demanding life

Proper maintenance and operation of the mini park within the District benefits those properties within the development by providing environmental quality and recreational enhancement.

General Benefit

Since the in-tract streets within the development are designed to have minimal flow through traffic and the mini park within the District was designed for use by the properties within the District, there are few reasons for the public to visit the mini park or vehicles to access the in-tract streets unless their destination is to or from a single-family residential parcel within the development. However, it is reasonable to conclude that members of the public may use the mini park and vehicular traffic may on a rare occasion utilize the in-tract streets due to the need to turn around or a mistaken turn into the development. These rare circumstances where a pedestrian uses the mini park or a vehicle mistakenly uses the in-tract streets, have been determined to be a rare and infrequent circumstance. Even though these are rare and infrequent circumstances, they must be accounted for and cannot be assessed to the properties within the Districts. Therefore, based on low likelihood of the general public visiting the mini park and minimal if any flow-through traffic, it is conservatively estimated that approximately 98% of the annual trips to the mini park or along local in-tract roadways within the development would be a special and direct benefit to the parcels within the District and 2% of the annual trips to the mini park or along local in-tract roadways within the development would be a general benefit.

The share of costs attributable to the general benefits associated with the District improvements cannot be assessed to properties within the District, but are required to be paid by some other source, such as the City's General Fund.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer at the time of formation determined that each parcel within the boundaries of the District receives a similar benefit from the improvements. Therefore, the most appropriate method of apportioning costs was determined to be spreading all District costs equally to each parcel in the District. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the City proposes to generate the maximum assessment revenue from the assessable parcels located in the District, which amounts to $209.50 per parcel to be levied. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to

develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $19,902.50.

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 16
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-2597-001-00	$209.50
092A-2597-002-00	$209.50
092A-2597-003-00	$209.50
092A-2597-004-00	$209.50
092A-2597-005-00	$209.50
092A-2597-006-00	$209.50
092A-2597-007-00	$209.50
092A-2597-008-00	$209.50
092A-2597-009-00	$209.50
092A-2597-010-00	$209.50
092A-2597-011-00	$209.50
092A-2597-012-00	$209.50
092A-2597-013-00	$209.50
092A-2597-014-00	$209.50
092A-2597-015-00	$209.50
092A-2597-016-00	$209.50
092A-2597-017-00	$209.50
092A-2597-018-00	$209.50
092A-2597-019-00	$209.50
092A-2597-020-00	$209.50
092A-2597-021-00	$209.50
092A-2597-022-00	$209.50
092A-2597-023-00	$209.50
092A-2597-024-00	$209.50
092A-2597-025-00	$209.50
092A-2597-026-00	$209.50
092A-2597-027-00	$209.50
092A-2597-028-00	$209.50
092A-2597-029-00	$209.50
092A-2597-030-00	$209.50
092A-2597-031-00	$209.50
092A-2597-032-00	$209.50
092A-2597-033-00	$209.50
092A-2597-034-00	$209.50
092A-2597-035-00	$209.50
092A-2597-036-00	$209.50
092A-2597-037-00	$209.50
092A-2597-038-00	$209.50
092A-2597-039-00	$209.50
092A-2597-040-00	$209.50
092A-2597-041-00	$209.50
092A-2597-042-00	$209.50
092A-2597-043-00	$209.50
092A-2597-044-00	$209.50
092A-2597-045-00	$209.50
092A-2597-046-00	$209.50
092A-2597-047-00	$209.50
092A-2597-048-00	$209.50
092A-2597-049-00	$209.50
092A-2597-050-00	$209.50
092A-2597-051-00	$209.50
092A-2597-052-00	$209.50
092A-2597-053-00	$209.50
092A-2597-054-00	$209.50
092A-2597-055-00	$209.50
092A-2597-056-00	$209.50
092A-2597-057-00	$209.50
092A-2597-058-00	$209.50
092A-2597-059-00	$209.50
092A-2597-060-00	$209.50
092A-2597-061-00	$209.50
092A-2597-062-00	$209.50
092A-2597-063-00	$209.50
092A-2597-064-00	$209.50
092A-2597-065-00	$209.50
092A-2597-066-00	$209.50
092A-2597-067-00	$209.50
092A-2597-068-00	$209.50
092A-2597-069-00	$209.50
092A-2597-070-00	$209.50
092A-2597-071-00	$209.50
092A-2597-072-00	$209.50
092A-2597-073-00	$209.50
092A-2597-074-00	$209.50
092A-2597-075-00	$209.50
092A-2597-076-00	$209.50
092A-2597-077-00	$209.50
092A-2597-078-00	$209.50
092A-2597-079-00	$209.50
092A-2597-080-00	$209.50
092A-2597-081-00	$209.50
092A-2597-082-00	$209.50
092A-2597-083-00	$209.50
092A-2597-084-00	$209.50
092A-2597-085-00	$209.50
092A-2597-086-00	$209.50
092A-2597-087-00	$209.50
092A-2597-088-00	$209.50
092A-2597-089-00	$209.50
092A-2597-090-00	$209.50
092A-2597-091-00	$209.50
092A-2597-092-00	$209.50
092A-2597-093-00	$209.50
092A-2597-094-00	$209.50
092A-2597-095-00	$209.50
Total Parcels:	95
Total Assessment:	$19,902.50

NEWARK
california

Landscaping and Lighting District No. 17

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 17

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 17
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the “1972 Act”). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 17 ("District") to maintain public improvements. The District was formed in May of 2004 to provide a dedicated source of funding for the ongoing maintenance of landscaping improvements benefiting property within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties within the infill development of Tract 7004 north of Mayhews Landing Road, along Dijon Drive, and south of Bellhaven Avenue. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Impacts of Proposition 218

On November 5, 1996 California voters approved Proposition 218 entitled "Right to Vote on Taxes Act" which added Articles XIIIC and XIIID to the California Constitution. While its title refers only to taxes, Proposition 218 established new procedural requirements for the formation and administration of assessment districts.

These new procedures stipulate that even if assessments are initially exempt from Proposition 218, future increases in assessments must comply with the provisions of Proposition 218. However, if the increase in assessments were anticipated in the assessment formula (e.g., CPI increase or assessment cap) then the assessment would comply with the intent and provisions of Proposition 218.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 17 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

- The Landscape Improvements include, but are not limited to landscaping, planting, turf, trees, irrigation systems, and fixtures in public street and sidewalk rights-of-way, including parkways and other easements dedicated to the City within, and adjacent to, the District.

A more detailed description of the facilities which either have or will be constructed, operated, maintained, and serviced are generally described as follows.

The maintenance of landscaping and the landscape irrigation system within the public right-of-way along the street frontages of Newark Boulevard and Mayhews Landing Road associated with Tract 7004.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of these diagrams is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the District can also be included.

Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 17 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$6,237
Non-Assessment Revenues[1]	$150
Total Projected Revenues	**$6,387**
Projected Expenses	
Contract Services	($1,822)
Utilities	($3,167)
Administration and Incidentals	($2,052)
County Collection Fees	($106)
Unforeseen Maintenance and Repairs[2]	($357)
Total Projected Expenses	**($7,504)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$4,897
Reserve Fund Collection Increase/(Decrease)	($1,117)
Ending Fund Balance - June 30, 2024	$3,780
Recommended Operating Reserves	$3,573
Available Operating Reserves	$3,573
Available Capital Reserves[3]	$207

[1] Non-Assessment Revenues equate to the City contribution in the amount of $150 for General Benefits conferred to the public at large.

[2] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[3] $1,680 will be needed for future Plant Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

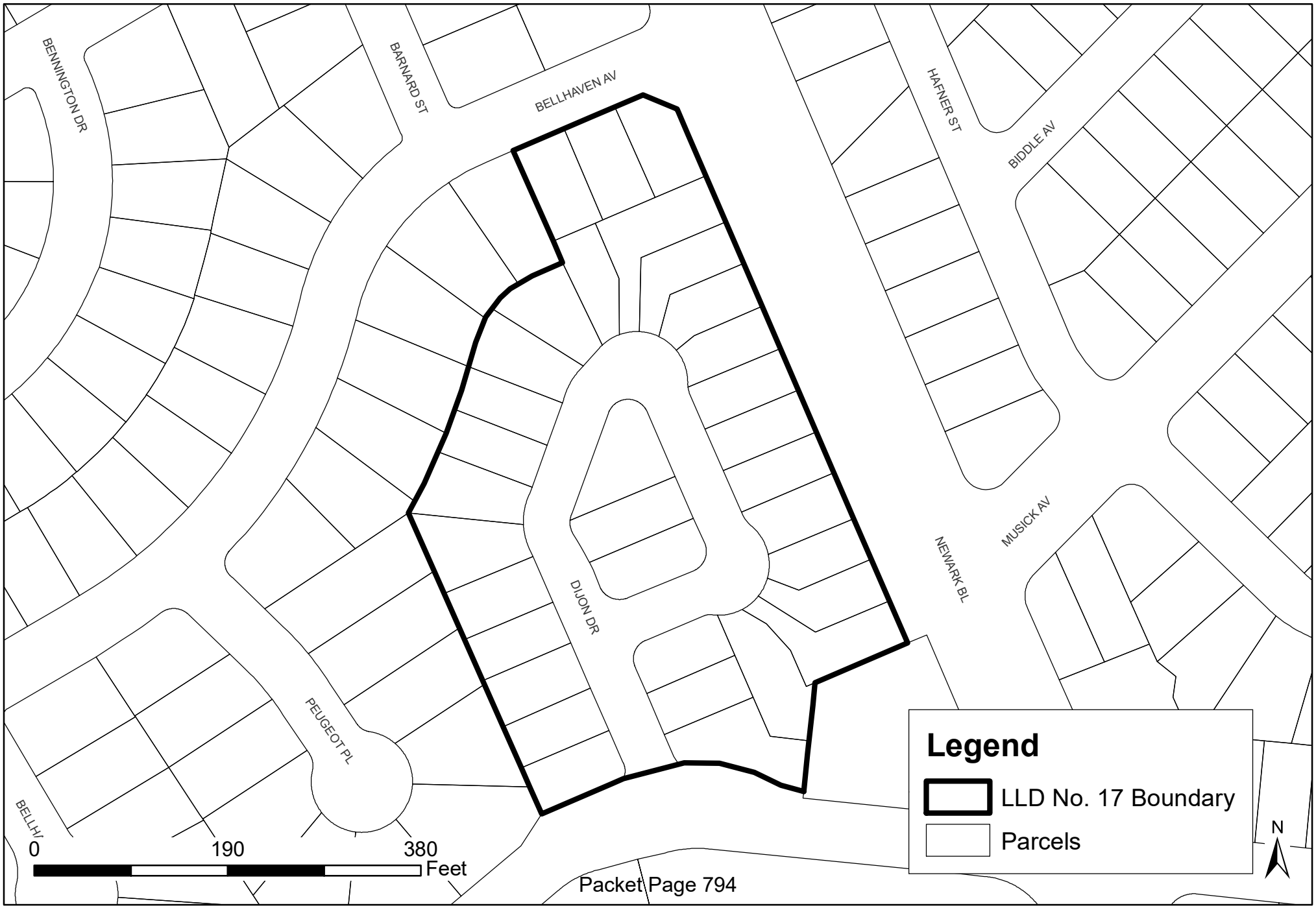
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 17
(MER SOLIEL/TRACT 7004)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of streetlights, landscaping, parks, trails, open space, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore needs to reflect the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, Article XIIID, of the California Constitution limits the amount of any assessment to the proportional "special benefit" conferred on the property. Article XIIID provides that only special benefits are assessable, and the City must separate the general benefits from the special benefits conferred on a parcel. There is no widely accepted or statutory formula for determining general and special benefit. However, the constitution states that a special benefit is different from a general benefit in that it is "particular and distinct" and "over and above" general benefits received by other properties.

The 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Article XIIID provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public

easements and rights-of-ways, public greenbelts and public parkways, utility easements, and that portion of public property that is not developed and used for business purposes similar to private residential, commercial, industrial, and institutional activities.

The amount to be assessed may be apportioned by any formula or method which fairly distributes the amount among all assessable lots or parcels. In order for the City to separate out the general and special benefits for each improvement type, an analysis of each improvement was conducted. The analysis reviewed the purpose and users of each improvement, and then identified the properties that benefit from the improvement, and then allocated the costs to maintain, service, and replace each improvement type to each identified property.

Because general benefits are not assessable, any costs associated with general benefits are to be paid for by the City. Only the costs associated with the special benefits conferred on property within the District from the authorized improvements are assessable, and therefore assessed herein. A summary of the benefits conferred by the improvements is described below.

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was formed.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services within the boundaries of the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In determining the proportionate special benefit derived by each identified parcel, the proximity of the parcel to the public improvements detailed in Part A above, and the capital, maintenance, and operating costs of said public improvements, was considered and analyzed. Due to the close proximity of the parcels to the improvements detailed in Part A above, it has been demonstrated and determined that the parcels are uniquely benefited by, and receive a direct advantage from, and are conferred a particular and distinct special benefit over and above general benefits by said public improvements in a way that is particular and distinct from its effect on other parcels, and that real property in general and the public at large do not share.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the improvements or their specific demographic status. The basis for these special

benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements are summarized as follows.

Special Benefit from Landscape Maintenance

All parcels within the District receive special benefit from Landscape Maintenance. Trees, landscaping, hardscapes, ornamental structures, and appurtenant facilities, if well maintained, confer a particular and distinct special benefit upon real property within the District by providing beautification, shade and positive enhancement of the community character, attractiveness, and desirability of the surroundings through association with the improvements. The landscape surrounding the development not only enhances beautification of the adjacent development but also acts as a buffer between nearby properties and the roadways improving the overall safety of properties within the development. In addition, the trees and plantings adjacent to the development help absorb noise and create a buffer between the road and nearby properties, reducing noise levels and creating a more peaceful environment. In addition, all the aforementioned contributes to a specific increase in property desirability and a specific enhancement of the property value of each parcel within the District.

In Parkways and Land Values, written by John Nolan and Henry V. Hubbard in 1937, it is stated:

> " ... there is no lack of opinion, based on general principles and experience and common sense, that parkways do in fact add value to property, even though the amount cannot be determined exactly .... Indeed, in most cases where public money has been spent on parkways the assumption has been made that the proposed parkway will show a provable financial profit to the City. It has been believed that the establishment of parkways causes a rise in real estate values throughout the City, or in parts of the City, ... "

It should be noted that the definition of "parkways" above may include the roadway as well as the landscaping alongside the roadway.

General Benefit

In reviewing each of the District improvements, the proximity of those improvements to both properties within the District and those outside the District, as well as the reasons for installing and constructing such improvements, it is evident that the improvements are solely the result of developing properties within the District, and the ongoing maintenance and operation of these improvements will directly affect the properties within the District. Although the improvements include public areas, easements, rights-of-way, and other amenities available or visible to the public at large, the construction and installation of these improvements were only necessary for the development of properties within the District and were not required, nor necessarily desired by any properties or developments outside the District boundary and any public access or use of the improvements by others is incidental. Though the landscape was designed as a result of the development of the

properties, and for use by the properties within the District, it is reasonable to conclude that pedestrians passing by and the traffic flow along the roadways adjacent to the landscaping receive some incidental benefit from the improvements and such incidental benefits must be accounted for and cannot be assessed to the properties within the District. Therefore, it is conservatively estimated that approximately 98% of the benefit conferred by the landscaping constructed for the development and properties within the District would be a special and direct benefit to the parcels within the District and 2% of the benefit is conservatively conferred to the public at large that may utilize the roadway adjacent to the development would be a general benefit.

The share of costs attributable to the general benefits associated with the District improvements cannot be assessed to properties within the District, but are required to be paid by some other source, such as the City's General Fund.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer at the time of formation determined that each parcel within the boundaries of the District receives a similar benefit from the improvements. Therefore, the most appropriate method of apportioning costs was determined to be spreading all District costs equally to each parcel in the District. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the City proposes to generate the maximum assessment revenue from the assessable parcels located in the District, which amounts to $189.00 per parcel to be levied. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $6,237.00**.**

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 17
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-0623-089-00	$189.00
092A-0623-090-00	$189.00
092A-0623-091-00	$189.00
092A-0623-092-00	$189.00
092A-0623-093-00	$189.00
092A-0623-094-00	$189.00
092A-0623-095-00	$189.00
092A-0623-096-00	$189.00
092A-0623-097-00	$189.00
092A-0623-098-00	$189.00
092A-0623-099-00	$189.00
092A-0623-100-00	$189.00
092A-0623-101-00	$189.00
092A-0623-102-00	$189.00
092A-0623-103-00	$189.00
092A-0623-104-00	$189.00
092A-0623-105-00	$189.00
092A-0623-106-00	$189.00
092A-0623-107-00	$189.00
092A-0623-108-00	$189.00
092A-0623-109-00	$189.00
092A-0623-110-00	$189.00
092A-0623-111-00	$189.00
092A-0623-112-00	$189.00
092A-0623-113-00	$189.00
092A-0623-114-00	$189.00
092A-0623-115-00	$189.00
092A-0623-116-00	$189.00
092A-0623-117-00	$189.00
092A-0623-118-00	$189.00
092A-0623-119-00	$189.00
092A-0623-120-00	$189.00
092A-0623-121-00	$189.00
Total Parcels:	33
Total Assessment:	$6,237.00

NEWARK
california

Landscaping and Lighting District No. 18

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES

Where Innovative Strategies
Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 3

Part A – Plans and Specifications 5

Part B – Estimate of Cost 8

Part C – Assessment District Diagram 10

Part D – Method of Apportionment of Assessments 12

Part E - Assessment Roll 17

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 18
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the “1972 Act”). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 18 ("District") to maintain public improvements. The District was formed in June of 2015 to provide a dedicated source of funding for the ongoing maintenance of landscaping improvements benefiting parcels within the boundaries of the District.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed.

The District generally consists of those properties within the developments of Tract 8130, which is located north of Cedar Boulevard, south of Timber Street and the Nimitz Freeway, west of Central Avenue and the adjacent commercial and industrial structures, and east of the Public Storage property. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District is provided in Part C of this Report.

Impacts of Proposition 218

On November 5, 1996 California voters approved Proposition 218 entitled "Right to Vote on Taxes Act" which added Articles XIIIC and XIIID to the California Constitution. While its title refers only to taxes, Proposition 218 established new procedural requirements for the formation and administration of assessment districts.

These new procedures stipulate that even if assessments are initially exempt from Proposition 218, future increases in assessments must comply with the provisions of Proposition 218. However, if the increase in assessments were anticipated in the assessment formula (e.g., CPI increase or assessment cap) then the assessment would comply with the intent and provisions of Proposition 218.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District, (2) a cost estimate for the District, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 18 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
    - The installation or planting of landscaping.
    - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
    - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
    - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
    - The installation of park or recreational improvements, including, but not limited to all the following:
        - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
        - Lights, playground equipment, play courts, and public restrooms.
    - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
    - The acquisition of land for park, recreational, or open space purposes.
    - The acquisition of any existing improvement otherwise authorized herein.
    - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
  - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
  - The costs of printing, advertising, and giving of published, posted, and mailed notices.
  - Compensation payable to the county for collection of assessments.
  - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
  - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
  - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
  - Any expenses incidental to the issuance of bonds or notes.
  - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
  - Repair, removal or replacement of all or any part of any improvement.
  - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
  - The removal of trimmings, rubbish, debris, and other solid waste.
  - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
  - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
  - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

- The Landscape Improvements include, but are not limited to landscaping, planting, turf, trees, irrigation systems, and fixtures in medians, public streets, and sidewalk rights-of-way, including parkways and other easements dedicated to the City within, and adjacent to, the District.

A more detailed description of the facilities which either have or will be constructed, operated, maintained, and serviced are generally described as follows.

The maintenance of landscaping and the landscape irrigation system within the Cedar Boulevard street medians along the frontage of Tract 8130.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of these diagrams is on file with the City's Public Works Department.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the District can also be included.

Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 18 Fiscal Year 2023-24 Cost Estimate	
Projected Revenues	
Assessment Revenue	$10,981
Non-Assessment Revenues[1]	$296
Total Projected Revenues	**$11,278**
Projected Expenses	
Contract Services	($5,262)
Utilities	($4,935)
Administration and Incidentals	($3,732)
County Collection Fees	($187)
Unforeseen Maintenance and Repairs[2]	($706)
Total Projected Expenses	**($14,821)**
Projected Fund Balance	
Beginning Fund Balance - July 1, 2023	$52,455
Reserve Fund Collection Increase/(Decrease)	($3,543)
Ending Fund Balance - June 30, 2024	$48,912
Recommended Operating Reserves	$7,058
Available Operating Reserves	$7,058
Available Capital Reserves[3]	$41,854

[1] Non-Assessment Revenues equate to the City contribution in the amount of $296 for General Benefits conferred to the public at large.

[2] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[3] Includes $3,253 for future Plant Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

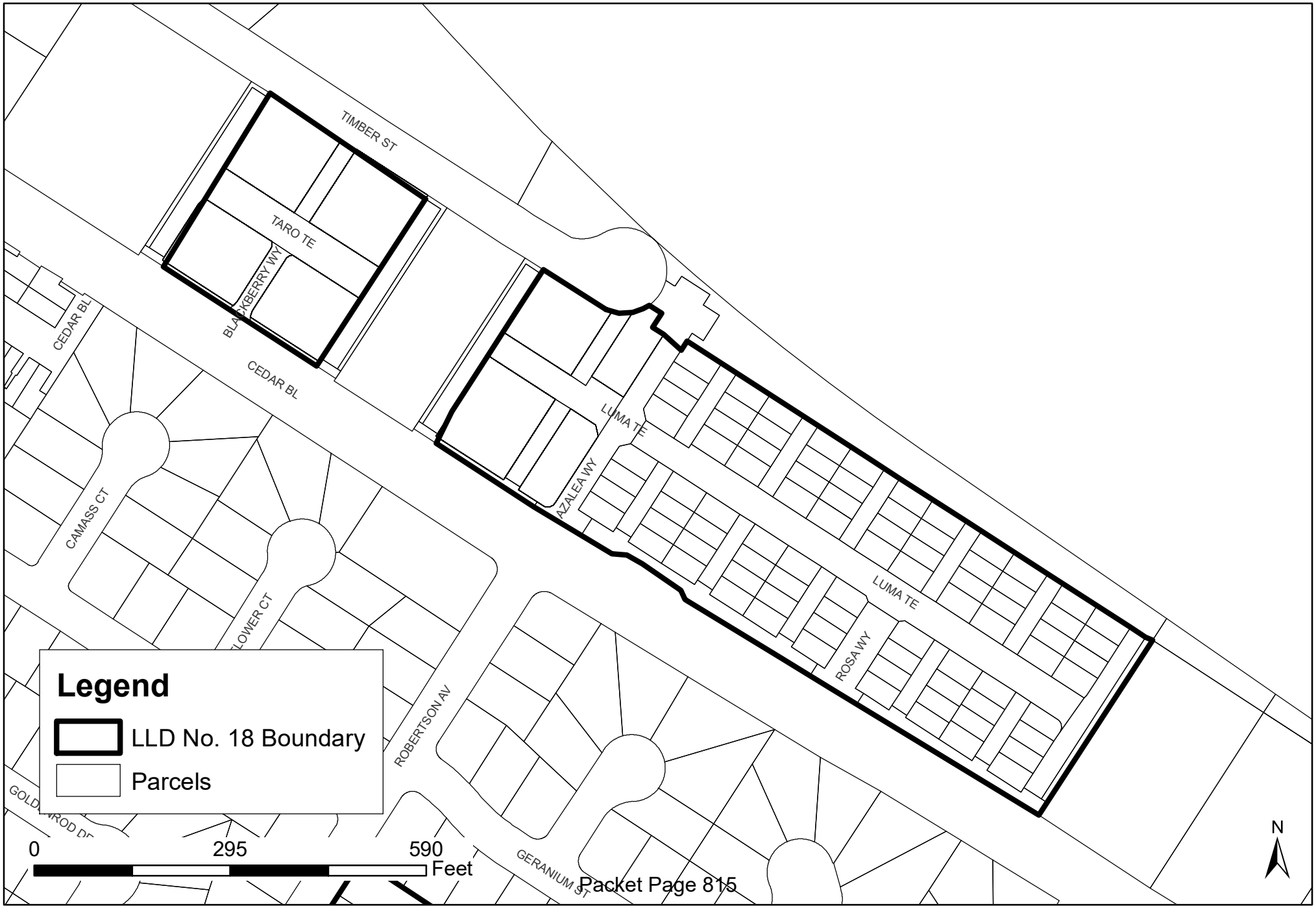
PART C

ASSESSMENT DISTRICT DIAGRAM

The boundaries of the District are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagram is shown on the following page.

LANDSCAPING AND LIGHTING DISTRICT NO. 18
(TRACT 8130)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of streetlights, landscaping, parks, trails, open space, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore needs to reflect the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, Article XIIID, of the California Constitution limits the amount of any assessment to the proportional "special benefit" conferred on the property. Article XIIID provides that only special benefits are assessable, and the City must separate the general benefits from the special benefits conferred on a parcel. There is no widely accepted or statutory formula for determining general and special benefit. However, the constitution states that a special benefit is different from a general benefit in that it is "particular and distinct" and "over and above" general benefits received by other properties.

The 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Article XIIID provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public

easements and rights-of-ways, public greenbelts and public parkways, utility easements, and that portion of public property that is not developed and used for business purposes similar to private residential, commercial, industrial, and institutional activities.

The amount to be assessed may be apportioned by any formula or method which fairly distributes the amount among all assessable lots or parcels. In order for the City to separate out the general and special benefits for each improvement type, an analysis of each improvement was conducted. The analysis reviewed the purpose and users of each improvement, and then identified the properties that benefit from the improvement, and then allocated the costs to maintain, service, and replace each improvement type to each identified property.

Because general benefits are not assessable, any costs associated with general benefits are to be paid for by the City. Only the costs associated with the special benefits conferred on property within District from the authorized improvements are assessable, and therefore assessed herein. A summary of the benefits conferred by the improvements is described below.

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District was formed.

The District consists of all Assessor Parcels within the boundaries of the District. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services within the boundaries of the District. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In determining the proportionate special benefit derived by each identified parcel, the proximity of the parcel to the public improvements detailed in Part A above, and the capital, maintenance, and operating costs of said public improvements, was considered and analyzed. Due to the close proximity of the parcels to the improvements detailed in Part A above, it has been demonstrated and determined that the parcels are uniquely benefited by, and receive a direct advantage from, and are conferred a particular and distinct special benefit over and above general benefits by said public improvements in a way that is particular and distinct from its effect on other parcels, and that real property in general and the public at large do not share.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by the District. These special benefits are not dependent on any one property owner's use of the improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements are summarized as follows.

Special Benefit from Landscape Maintenance

All parcels within the District receive special benefit from Landscape Maintenance within the adjacent medians. Trees, landscaping, hardscapes, ornamental structures, and appurtenant facilities, if well maintained, confer a particular and distinct special benefit upon real property within the District by providing beautification, shade and positive enhancement of the community character, attractiveness, and desirability of the surroundings. The medians adjacent to the development help calm traffic and reduce speeds, creating a safer environment for those traveling to and from the properties within the District. The median also acts as a physical buffer between portions of the roadway and properties within the District improving the overall safety of properties within the development. In addition, the trees and plantings within the medians help absorb noise from the road for nearby properties, reducing noise levels and creating a more peaceful environment. In addition, all the aforementioned contributes to a specific increase in property desirability and a specific enhancement of the property value of each parcel within the District.

In Parkways and Land Values, written by John Nolan and Henry V. Hubbard in 1937, it is stated:

> " ... there is no lack of opinion, based on general principles and experience and common sense, that parkways do in fact add value to property, even though the amount cannot be determined exactly .... Indeed, in most cases where public money has been spent on parkways the assumption has been made that the proposed parkway will show a provable financial profit to the City. It has been believed that the establishment of parkways causes a rise in real estate values throughout the City, or in parts of the City, ... "

It should be noted that the definition of "parkways" above may include the roadway as well as the landscaping alongside the roadway.

General Benefit

In reviewing each of the District improvements, the proximity of those improvements to both properties within the District and those outside the District, as well as the reasons for installing and constructing such improvements, it is evident that the improvements are solely the result of developing properties within the District, and the ongoing maintenance and operation of these improvements will directly affect the properties within the District. Although the improvements include public areas, easements, rights-of-way, and other

amenities available or visible to the public at large, the construction and installation of these improvements were only necessary for the development of properties within the District and were not required, nor necessarily desired by any properties or developments outside the District boundary. Though the medians were designed as a result of the development of the properties within the District, it is reasonable to conclude that the traffic flow along the roadways adjacent to the median landscaping receive some incidental benefit from the improvements and such incidental benefits must be accounted for and cannot be assessed to the properties within the District. Therefore, it is conservatively estimated that approximately 98% of the benefit conferred by the medians in the roadways constructed for the development and properties within the District would be a special and direct benefit to the parcels within the District and 2% of the benefit from the medians is conferred to the public at large that may utilize the roadway adjacent to the development would be a general benefit.

The share of costs attributable to the general benefits associated with the District improvements cannot be assessed to properties within the District, but are required to be paid by some other source, such as the City's General Fund.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Therefore, the City and Engineer at the time of formation determined that each parcel within the boundaries of the District receives a similar benefit from the improvements. Therefore, the most appropriate method of apportioning costs was determined to be spreading all District costs equally to each dwelling unit in the District. This methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments.

In Fiscal Year 2023-24, the City proposes to collect the maximum assessment revenue from the assessable parcels located in the District, which amounts to $66.96 per parcel to be levied. A listing of each assessable parcel and their proposed Fiscal Year 2023-24 assessment is on the Assessment Roll in Part E of this Report.

Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways (all of which are typically not assigned an Assessor's Parcel Number (APN) by the County). Also exempted from the assessment would be public agency owned property, utility rights-of-ways, common areas (such as in condominium complexes or those that are owned by a Homeowner's or Property Owner's Association), and any other property that is deemed to be unable to develop by the City. These types of parcels do not benefit from the improvements.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $10,981.44.

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 18
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-2598-024-00	$66.96
092A-2598-025-00	$66.96
092A-2598-026-00	$66.96
092A-2598-027-00	$66.96
092A-2598-028-00	$66.96
092A-2598-029-00	$66.96
092A-2598-030-00	$66.96
092A-2598-031-00	$66.96
092A-2598-032-00	$66.96
092A-2598-033-00	$66.96
092A-2598-034-00	$66.96
092A-2598-035-00	$66.96
092A-2598-037-00	$66.96
092A-2598-038-00	$66.96
092A-2598-039-00	$66.96
092A-2598-040-00	$66.96
092A-2598-041-00	$66.96
092A-2598-042-00	$66.96
092A-2598-043-00	$66.96
092A-2598-044-00	$66.96
092A-2598-045-00	$66.96
092A-2598-046-00	$66.96
092A-2598-047-00	$66.96
092A-2598-048-00	$66.96
092A-2598-050-00	$66.96
092A-2598-051-00	$66.96
092A-2598-052-00	$66.96
092A-2598-053-00	$66.96
092A-2598-054-00	$66.96
092A-2598-055-00	$66.96
092A-2598-056-00	$66.96
092A-2598-057-00	$66.96
092A-2598-058-00	$66.96
092A-2598-059-00	$66.96
092A-2598-061-00	$66.96
092A-2598-062-00	$66.96
092A-2598-063-00	$66.96
092A-2598-064-00	$66.96
092A-2598-065-00	$66.96
092A-2598-066-00	$66.96
092A-2598-067-00	$66.96
092A-2598-068-00	$66.96
092A-2598-069-00	$66.96
092A-2598-070-00	$66.96
092A-2598-072-00	$66.96
092A-2598-073-00	$66.96
092A-2598-074-00	$66.96
092A-2598-075-00	$66.96
092A-2598-076-00	$66.96
092A-2598-077-00	$66.96
092A-2598-078-00	$66.96
092A-2598-079-00	$66.96
092A-2598-080-00	$66.96
092A-2598-081-00	$66.96
092A-2598-082-00	$66.96
092A-2598-083-00	$66.96
092A-2598-084-00	$66.96
092A-2598-085-00	$66.96
092A-2598-087-00	$66.96
092A-2598-088-00	$66.96
092A-2598-089-00	$66.96
092A-2598-090-00	$66.96
092A-2598-091-00	$66.96
092A-2598-092-00	$66.96
092A-2598-093-00	$66.96
092A-2598-095-00	$66.96
092A-2598-096-00	$66.96
092A-2598-097-00	$66.96
092A-2598-098-00	$66.96
092A-2598-099-00	$66.96
092A-2598-100-00	$66.96
092A-2598-101-00	$66.96
092A-2598-102-00	$66.96
092A-2598-103-00	$66.96
092A-2598-104-00	$66.96
092A-2598-106-00	$66.96
092A-2598-107-00	$66.96
092A-2598-108-00	$66.96
092A-2598-109-00	$66.96
092A-2598-110-00	$66.96
092A-2599-018-00	$66.96
092A-2599-019-00	$66.96
092A-2599-020-00	$66.96
092A-2599-021-00	$66.96
092A-2599-022-00	$66.96
092A-2599-023-00	$66.96
092A-2599-024-00	$66.96
092A-2599-025-00	$66.96
092A-2599-026-00	$66.96
092A-2599-027-00	$66.96
092A-2599-028-00	$66.96
092A-2599-029-00	$66.96
092A-2599-030-00	$66.96
092A-2599-031-00	$66.96
092A-2599-032-00	$66.96
092A-2599-033-00	$66.96
092A-2599-034-00	$66.96
092A-2599-035-00	$66.96
092A-2599-036-00	$66.96
092A-2599-037-00	$66.96
092A-2599-038-00	$66.96
092A-2599-039-00	$66.96
092A-2599-040-00	$66.96
092A-2599-041-00	$66.96
092A-2599-042-00	$66.96
092A-2599-043-00	$66.96
092A-2599-044-00	$66.96
092A-2599-045-00	$66.96
092A-2599-046-00	$66.96
092A-2599-047-00	$66.96
092A-2599-048-00	$66.96
092A-2599-049-00	$66.96
092A-2599-050-00	$66.96
092A-2599-051-00	$66.96
092A-2599-052-00	$66.96
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092A-2599-056-00	$66.96
092A-2599-057-00	$66.96
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092A-2599-060-00	$66.96
092A-2599-061-00	$66.96
092A-2599-062-00	$66.96
092A-2599-063-00	$66.96
092A-2599-064-00	$66.96
092A-2599-065-00	$66.96
092A-2599-066-00	$66.96
092A-2599-067-00	$66.96
092A-2599-068-00	$66.96
092A-2599-069-00	$66.96
092A-2599-070-00	$66.96
092A-2599-071-00	$66.96
092A-2599-072-00	$66.96
092A-2599-073-00	$66.96
092A-2599-074-00	$66.96
092A-2599-075-00	$66.96
092A-2599-076-00	$66.96
092A-2599-077-00	$66.96
092A-2599-078-00	$66.96
092A-2599-079-00	$66.96
092A-2599-080-00	$66.96
092A-2599-081-00	$66.96
092A-2599-082-00	$66.96
092A-2599-083-00	$66.96
092A-2599-084-00	$66.96
092A-2599-085-00	$66.96
092A-2599-086-00	$66.96
092A-2599-087-00	$66.96
092A-2599-088-00	$66.96
092A-2599-089-00	$66.96
092A-2599-090-00	$66.96
092A-2599-091-00	$66.96
092A-2599-092-00	$66.96
092A-2599-093-00	$66.96

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 18
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Assessment Amount
092A-2599-094-00	$66.96
092A-2599-095-00	$66.96
092A-2599-096-00	$66.96
092A-2599-097-00	$66.96
092A-2599-098-00	$66.96
092A-2599-099-00	$66.96
092A-2599-100-00	$66.96
092A-2599-101-00	$66.96
Total Parcels:	164
Total Assessment:	$10,981.44

NEWARK
california

Landscaping and Lighting District No. 19

Fiscal Year 2023-24
Preliminary Engineer's Report

June 22, 2023

Prepared by

FRANCISCO AND ASSOCIATES
Where Innovative Strategies Fund Tomorrow's Communities

Table of Contents

Page No.

Certificate ii

Section I - Introduction 1

Section II – Engineer's Report 4

Part A – Plans and Specifications 6

Part B – Estimate of Cost 13

Part C – Assessment District Diagram 15

Part D – Method of Apportionment of Assessments 23

Part E - Assessment Roll 31

ENGINEER'S REPORT
CITY OF NEWARK
LANDSCAPING AND LIGHTING DISTRICT NO. 19
FISCAL YEAR 2023-24

The undersigned, acting on behalf of Francisco & Associates respectfully submits the enclosed Engineer's Report as directed by the Newark City Council pursuant to the provisions of Article XIIID, Section 4 of the California Constitution, and the Landscape and Lighting Act of 1972 being Section 22500 et al of the California Streets and Highways Code (the "1972 Act"). The undersigned certifies that he is a Professional Engineer, registered in the State of California.

Dated: June 5, 2023

By: _____
Eduardo Espinoza, P.E.
RCE # 83709

SECTION I

INTRODUCTION

The City of Newark ("City") levies and collects special assessments on parcels within the City of Newark Landscaping and Lighting District No. 19 ("District") to maintain public improvements. The District was formed in December of 2016 to provide a dedicated source of funding for the ongoing maintenance of median and buffer landscape, street lighting, and park improvements benefiting parcels within the boundaries of the District. Since formation, additional properties have been annexed into the District. A historical listing of the date each annexation occurred since formation follows:

- Annexation No. 1 (September 14, 2017)
- Annexation No. 2 (September 14, 2017)
- Annexation No. 3 (September 14, 2017)
- Annexation No. 4 (May 9, 2019)
- Annexation No. 5 (November 12, 2020)
- Annexation No. 6 (January 27, 2022)

Following the approval of the annexations listed above, the District consists of the following seven (7) zones of benefit.

- Zone 1 (Bayshores)
  The Bayshores Tract Map 8085 was comprised of residential lots (detached homes, condominiums, and townhomes), landscape lots, a park area, and private roads. The landscape lots and park around the clubhouse will be maintained by the Homeowners Association and will not be funded by assessments.

- Zone 2 (Lighthouse)
  The Lighthouse Tract Map 8157 was comprised of eighty-eight (88) condominium units and private roads.

- Zone 3 (Newark Senior Housing – USA Properties)
  The Newark Senior Housing – USA Properties project is comprised of one building, containing seventy-five (75) apartment units.

- Zone 4 (Tract 8098 – Glass Bay)
  The Glass Bay Tract Map 8098 was comprised of two hundred and seventeen (217) single-family homes and private roads.

- Zone 5 (Tracts 8099 & 8436 - Bridgeway)
  The Bridgeway Development was comprised of Tract 8099 and 8436 and contains three hundred and six (306) single family lots and two hundred and seventy (270) multi-family units.

- Zone 6 (Tract 8459 – Compass Bay)
  The Compass Bay Development was comprised of Tract 8459 which included fifty-three (53) single family lots and eighty-five (85) multi-family units.

- Zone 7 (Tract 8453 – Harbor Pointe)
  The Harbor Pointe (Bridgeway Parcel C) Development was comprised of Tract 8453 and contains one hundred and ninety two (192) single family lots.

The assessments and method of apportionment described in this Report utilize commonly accepted assessment engineering practices and have been calculated and proportionately spread to each parcel based on the special benefits received as approved by the City Council at the time the District was formed and each subsequent zone of benefit was established.

The District generally consists of those properties in an area known as Bayside Newark, formerly known as the Dumbarton Transit-Oriented Development. The Bayside Newark project is located next to the proposed commuter rail station near the corner of Willow Avenue and Enterprise Drive. A reduced copy of the Assessment Diagram showing the exterior boundaries of the District and each zone of benefit is provided in Part C of this Report.

Impacts of Proposition 218

On November 5, 1996 California voters approved Proposition 218 entitled "Right to Vote on Taxes Act" which added Articles XIIIC and XIIID to the California Constitution. While its title refers only to taxes, Proposition 218 established new procedural requirements for the formation and administration of assessment districts.

These new procedures stipulate that even if assessments are initially exempt from Proposition 218, future increases in assessments must comply with the provisions of Proposition 218. However, if the increase in assessments were anticipated in the assessment formula (e.g., CPI increase or assessment cap) then the assessment would comply with the intent and provisions of Proposition 218.

Current Annual Administration

As required by the 1972 Act, the Engineer's Report includes: (1) a description of the improvements to be operated, maintained, and serviced by the District and each benefit zone, (2) a cost estimate for the District and each benefit zone, and (3) a listing of the proposed Fiscal Year 2023-24 assessments to be levied upon each assessable lot or parcel within the District and each benefit zone.

The City will hold a Public Hearing on July 13, 2023, regarding this District which will provide an opportunity for any interested person to be heard. At the conclusion of the Public Hearing, the City Council may adopt a resolution confirming the assessment rates as originally proposed or as modified.

Payment of annual assessments for each parcel will be made in the same manner and at the same time as payments are made for their annual property taxes. All funds collected through the assessments must be placed in a special fund and can only be used for the purposes stated within this Report.

SECTION II

ENGINEER'S REPORT PREPARED FOR THE CITY OF NEWARK LANDSCAPING AND LIGHTING DISTRICT NO. 19 FISCAL YEAR 2023-24

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 of Division 15 of the Streets and Highways Code of the State of California), and in accordance with the Resolution of Initiation, being Resolution No. 11499, which directs the preparation and filing of the Engineer's Report, adopted by the City Council of the City of Newark, on April 27, 2023, the following Report was prepared consisting of Section I (Introduction), and this, Section II, which consists of five (5) parts as follows:

PART A: PLANS AND SPECIFICATIONS

This part describes the improvements maintained by the District. Plans and specifications for the improvements are on file in the Office of the Director of Public Works of the City of Newark and are incorporated herein by reference.

PART B: ESTIMATE OF COST

This part contains an estimate of the cost of the proposed improvements to be maintained for Fiscal Year 2023-24, including incidental costs and expenses in connection therewith. The estimate is attached hereto and is on file in the Office of the Director of Public Works of the City of Newark.

PART C: ASSESSMENT DISTRICT DIAGRAM

This part incorporates a Diagram of the District showing the exterior boundaries of the District, the boundaries of any zones within the District and the lines and dimensions of each lot or parcel of land within the District. This Diagram has been prepared by the Engineer of Work and is on file in the Office of the Director of Public Works of the City of Newark.

The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year when this Report was prepared. The Assessor's maps and records are incorporated by reference herein and made a part of this Report.

PART D: METHOD OF APPORTIONMENT OF ASSESSMENTS

This part describes the method of apportionment of assessments, based upon each parcel's classification within the District in proportion to the estimated special benefits to be received.

PART E: ASSESSMENT ROLL

This part contains an assessment of the estimated cost of the improvements apportioned to each benefited parcel of land within the District. The Assessment Roll is filed in the Office of the City Clerk of the City of Newark and is incorporated in this Report. The list is keyed to the records of the Alameda County Assessor, which are incorporated herein by reference.

PART A

PLANS AND SPECIFICATIONS

IMPROVEMENTS AND SERVICES PURSUANT TO THE 1972 ACT

The improvements and services authorized by the provisions of the Landscape and Lighting Act of 1972, being Part 2 of Division 15 of the Streets and Highways Code, commencing with Section 22500 (hereafter referred to as the "1972 Act"), that may be applicable to this District and associated assessments may include one or more of the following definitions:

- "Improvement" means one or any combination of the following:
  - The installation or planting of landscaping.
  - The installation or construction of statuary, fountains, and other ornamental structures and facilities.
  - The installation or construction of public lighting facilities, including, but not limited to, traffic signals.
  - The installation or construction of any facilities which are appurtenant to any of the forgoing, or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
  - The installation of park or recreational improvements, including, but not limited to all the following:
    - Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
    - Lights, playground equipment, play courts, and public restrooms.
  - The maintenance or servicing, or both, of any of the forgoing, and of any improvements authorized below.
  - The acquisition of land for park, recreational, or open space purposes.
  - The acquisition of any existing improvement otherwise authorized herein.
  - The acquisition or construction of any community center, municipal auditorium or hall, or similar public facility for the indoor presentation of performances, shows, stage productions, fairs, conventions, exhibitions, pageants, meetings, parties, or other group events, activities, or functions, whether those events, activities, or functions are public or private.

- "Incidental expenses" include all the following:
    - The costs of preparation of the report, including plans, specifications, estimates, diagram, and assessment.
    - The costs of printing, advertising, and giving of published, posted, and mailed notices.
    - Compensation payable to the county for collection of assessments.
    - Compensation of any engineer or attorney employed to render services in proceedings pursuant to this part.
    - Any other expenses incidental to the construction, installation, or maintenance and servicing of improvements.
    - Any expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
    - Any expenses incidental to the issuance of bonds or notes.
    - Costs associated with any elections held for the approval of a new or increased assessment.

- "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

- "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and services of any improvement, including:
    - Repair, removal or replacement of all or any part of any improvement.
    - Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
    - The removal of trimmings, rubbish, debris, and other solid waste.
    - The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

- "Public lighting facilities" means all works or improvements used or useful for the lighting of any public places, including ornamental standards, luminaries, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

- "Service" or "servicing" means the furnishing of:
    - Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements.
    - Water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other improvements.

DESCRIPTION OF DISTRICT IMPROVEMENTS

The improvements, which have been constructed within the City, and those which may be subsequently constructed, operated, maintained, and serviced with District assessments are generally described as follows:

- The Landscape Improvements include, but are not limited to landscaping, planting, turf, trees, irrigation systems, and fixtures in public street and sidewalk rights-of-way, including medians, traffic circles, parkways and other easements dedicated to the City within, and adjacent to, the zones.
- The Park Improvements include but are not limited to landscaping, planting, shrubbery, trees, irrigation systems, hardscapes and fixtures, trails, and open space areas.
- Street Lighting Improvements include, but are not limited to poles, fixtures, bulbs, conduits, conductors, equipment including guys, anchors, posts and pedestals, metering devices and appurtenant facilities as required to provide lighting in public street and sidewalk rights-of-way and other easements dedicated to the City within, and adjacent to, the zones.

Improvement diagrams have been prepared identifying all improvements and areas that are to be maintained by the District. A copy of these diagrams is on file with the City's Public Works Department.

A more detailed description of the facilities which either have or will be constructed, operated, maintained, and serviced by each of the benefit zones follows.

Zone 1 (Bayshores)

Landscape Improvements

The Landscape Improvements include streetscapes, medians, and traffic circles, specifically:

- The south side of Central Avenue, between Willow Street and Salty Cove Road.
- The south side of Central Avenue, between Salty Cove Road and Hickory Street.
- East side of Willow Street, south of Central Avenue.
- West side of Willow Street, along the eastern border of the tract, including planter strips.
- Medians along Willow Street, between Central Avenue and Seawind Way.
- Traffic Circles at the intersections of Willow Street and Central Avenue, and Willow Street and Seawind Way.
- 47 Trash Capture Devices ("TCD") throughout the project, to keep trash from collecting in the landscaped areas along the southern edge of the project and the wetlands beyond.

Street Lighting Improvements
The Street Lighting Improvements will be located along streets within the zone as shown below:

- 7 streetlights located along Seawind Way at the eastern boundary of the zone.
- 10 streetlights located along Spring Tide Road, through the center of the zone.
- 3 streetlights located along Bayshores Drive.
- 2 streetlights located along Quiet Cove Way.
- 2 streetlights located along Lookout Way.
- 6 streetlights located along Harbor Light Road.
- 7 streetlights located along Central Avenue at the southern boundary of the zone.
- 13 streetlights located along Willow Street at the eastern boundary of the zone.

Zone 2 (Lighthouse)

Landscape Improvements
The Landscape Improvements include streetscapes, medians, and traffic circles, specifically:

- Northwest corner of intersection of Willow Street and Seawind Way.
- West side of Willow Street, along the easterly border of the tract, including planter strips.
- Medians along Willow Street, between Seawind Way and the northerly border of the tract.
- Traffic Circle at the intersection of Willow Street and Seawind Way.
- One TCD on Seawind Way.

Street Lighting Improvements
The Street Lighting Improvements will be located along streets within the zone as shown below:

- 3 streetlights located along Seawind Way.
- 1 streetlight located along Willow Street.
- 4 streetlights located along Willow Street between Seawind Way and Enterprise Drive.

Zone 3 (Newark Senior Housing – USA Properties)

Landscape Improvements
The Landscape Improvements include streetscapes, medians, and traffic circles, specifically:

- West side of Willow Street, along the eastern border of the project, including planter strips.
- Medians along Willow Street, between the northerly and southerly border of the project.

Street Lighting Improvements
The Street Lighting Improvements will be located along streets within the zone as shown below:

- 4 streetlights located along Willow Street between Seawind Way and Enterprise Drive.

Zone 4 (Tract 8098 – Glass Bay)

Landscape Improvements
The Landscape Improvements include streetscapes, medians, and traffic circles, specifically:

- The east side of Willow Street at the southeast and northeast corners of Seawind Way and Willow Street.
- Medians along Enterprise Drive along the northerly border of the tract.
- Traffic Circle at the intersection of Willow Street and Seawind Way.
- Traffic Circle at the intersection of Willow Street and Enterprise Drive.
- 27 Landscape Debris/TCD throughout the tract.

Street Lighting Improvements
The Street Lighting Improvements will be located along streets within the zone as shown below:

- 21 streetlights located throughout the interior of the tract.
- 4 streetlights located along Enterprise Drive at the northerly boundary of the tract.
- 4 streetlights located along Willow Street between Central Avenue and Seawind Way.
- 4 streetlights located along Willow Street between Seawind Way and Enterprise Drive.

Zone 5 (Tracts 8099 & 8436 - Bridgeway)

Landscape Improvements

The Landscape Improvements include streetscapes, medians, and traffic circles, specifically:

- Median islands at Hickory Street and Seawind Way.
- Traffic Circle at the intersection of Hickory Street and Seawind Way.
- Median islands at Seawind Way in Phase 2 of the development.
- 6 TCD on Seawind Way.
- 8 TCD on Bay Breeze Street.
- 2 TCD on Headlands Avenue.
- 17 TCD on Hickory Street.
- 12 TCD on Seawind Way, in Phase 2 of the development.
- The Bay Trail in Phases 1 and 2 of the development.

Street Lighting Improvements

The Street Lighting Improvements will be located along streets within the zone as shown below:

- 2 streetlights located along Headlands Avenue.
- 6 streetlights located along Bay Breeze Street.
- 4 streetlights located along Seawind Way in Phase 1 of the development.
- 4 streetlights located at the intersection of Seawind Way and Hickory Street.
- 15 streetlights located along Hickory Street.
- 8 streetlights located along Seawind Way in Phase 2 of the development.

Zone 6 (Tract 8459 – Compass Bay)

Landscape Improvements

The Landscape Improvements include streetscapes, medians, and traffic circles, specifically:

- Median Islands at Seawind Way and Hickory Street.
- Median Islands at Hickory Street and Enterprise Drive.
- Center Median on Enterprise Drive.
- Traffic Circle at Seawind Way and Hickory Street.
- Traffic Circle at Hickory Street and Enterprise Drive.
- 1 TCD on Seawind Way.
- 3 TCD on Hickory Street.
- 4 TCD on Enterprise Drive.

Park Improvements
Park improvements include but are not limited to landscaping, planting, shrubbery, trees, irrigation systems, hardscapes and fixtures and open space areas within a planned 5.05 acre park that is proposed for the FMC Willow Development to be located northwest of the Compass Bay development near the intersection of Hickory Street and Enterprise Drive.

Street Lighting Improvements
The Street Lighting Improvements will be located along streets within the zone as shown below:

- 1 Streetlight located on Seawind Way.
- 1 Streetlight located at the intersection of Seawind Way and Hickory Street.
- 2 Streetlights located on Hickory Street.
- 2 Streetlights located at the intersection of Hickory Street and Enterprise Drive.
- 6 Streetlights located on Enterprise Drive.

Zone 7 (Tract 8453 – Harbor Pointe)

Landscape Improvements
The Landscape Improvements include streetscapes, medians, and traffic circles, specifically:

- Traffic circle located at Enterprise Drive and Seawind Way.
- Median islands located along Enterprise Drive.
- Traffic circle located at Enterprise Drive and Hickory Street.
- 12 TCD along Enterprise Drive and the Enterprise Drive and Seawind Way traffic circle.
- The Bay Trail located along the exterior of the development.

Park Improvements
Park improvements include but are not limited to landscaping, planting, shrubbery, trees, irrigation systems, hardscapes and fixtures and open space areas within a planned 5.05 acre park that is proposed for the FMC Willow Development to be located northwest of the Compass Bay development near the intersection of Hickory Street and Enterprise Drive.

Street Lighting Improvements
The Street Lighting Improvements will be located along streets within the zone as shown below:

- 11 streetlights located along Enterprise Drive and the Enterprise Drive and Seawind Way traffic circle.
- 2 streetlights located at the traffic circle at Enterprise Drive and Hickory Street.

PART B

ESTIMATE OF COSTS

The 1972 Act requires that a special fund be set up for the collection of revenues and expenditures of the District. The Act provides that the total cost of construction, operation, and maintenance and servicing of the public improvements specified in Part A of this Report can be recovered by the District. Incidental expenses including administration of the District, engineering fees, legal fees and all other costs associated with the construction, operation and maintenance and servicing of the District can also be included.

Funds raised from the assessments shall be used only for the expenditures represented above. A contribution to the District by the City may be made to reduce assessments as the City deems appropriate. Any balance remaining on July 1 at the end of the fiscal year must be carried over to the next fiscal year unless the funds are being accumulated for future capital replacement projects or operating reserves.

The following table provides a summary of the estimated District revenues and cost estimates for Fiscal Year 2023-24.

Landscaping and Lighting District No. 19
Fiscal Year 2023-24 Cost Estimate

	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Total Amount
Projected Revenues								
Assessment Revenue	$41,551	$3,923	$2,720	$19,777	$36,120	$12,224	$0	$116,315
Non-Assessment Revenues[1]	$4,457	$594	$750	$2,237	$2,582	$3,148	$0	$13,768
Total Projected Revenues	**$46,008**	**$4,517**	**$3,470**	**$22,014**	**$38,702**	**$15,372**	**$0**	**$130,083**
Projected Expenses								
Contract Services	($5,361)	($343)	($492)	($1,790)	($2,929)	($2,239)	$0	($13,154)
Utilities	($5,777)	($370)	($531)	($1,929)	($3,156)	($2,412)	$0	($14,175)
Administration and Incidentals	($10,527)	($674)	($967)	($3,516)	($5,751)	($4,396)	$0	($25,830)
County Collection Fees	($706)	($67)	($46)	($336)	($614)	($208)	$0	($1,977)
Unforeseen Maintenance and Repairs[2]	($1,119)	($73)	($102)	($379)	($622)	($463)	$0	($2,757)
Total Projected Expenses	**($23,489)**	**($1,526)**	**($2,138)**	**($7,951)**	**($13,072)**	**($9,718)**	**$0**	**($57,893)**
Projected Fund Balance								
Beginning Fund Balance - July 1, 2023	$197,537	$15,544	$10,777	$78,353	$128,931	$0	$0	$431,142
Reserve Fund Collection Increase/(Decrease)	$22,519	$2,990	$1,332	$14,064	$25,630	$5,654	$0	$72,189
Ending Fund Balance - June 30, 2024	$220,056	$18,534	$12,109	$92,417	$154,561	$5,654	$0	$503,331
Recommended Operating Reserves	$11,745	$763	$1,069	$3,975	$6,536	$4,859	$0	$28,947
Available Operating Reserves	$11,745	$763	$1,069	$3,975	$6,536	$4,859	$0	$28,947
Available Capital Reserves[3]	$208,312	$17,771	$11,040	$88,442	$148,025	$796	$0	$474,384

[1] Non-Assessment Revenues equate to the City contribution in the amount of $7,556 for General Benefits and $6,212 for Special Benefits conferred to property not in the District.

[2] Unforeseen Maintenance and Repairs are assumed to be 5% of the Projected Expenses.

[3] Includes $156,000 for future Plant Replacement and $5,000 for future Streetlight Replacement projects.

The purpose of the various reserves is to ensure the District will have funds available for cashflow purposes and to repair or reconstruct the improvements that are the responsibility of the District.

The Recommended Operating Reserve target is fifty percent (50%) of the projected expenditures. Maintaining a fully funded Operating Reserve eliminates the need for the City to transfer funds from non-District accounts to pay for operational expenses during the first half of the fiscal year and provides the District with sufficient funds to address any unforeseen or unusual expenditures that may occur during the year.

The purpose of collecting and holding funds in a Capital Reserve is so that when improvements need to be replaced or expenditures are greater than can be conveniently raised from a single year's assessment, funds are available so that the District can respond and address the need promptly.

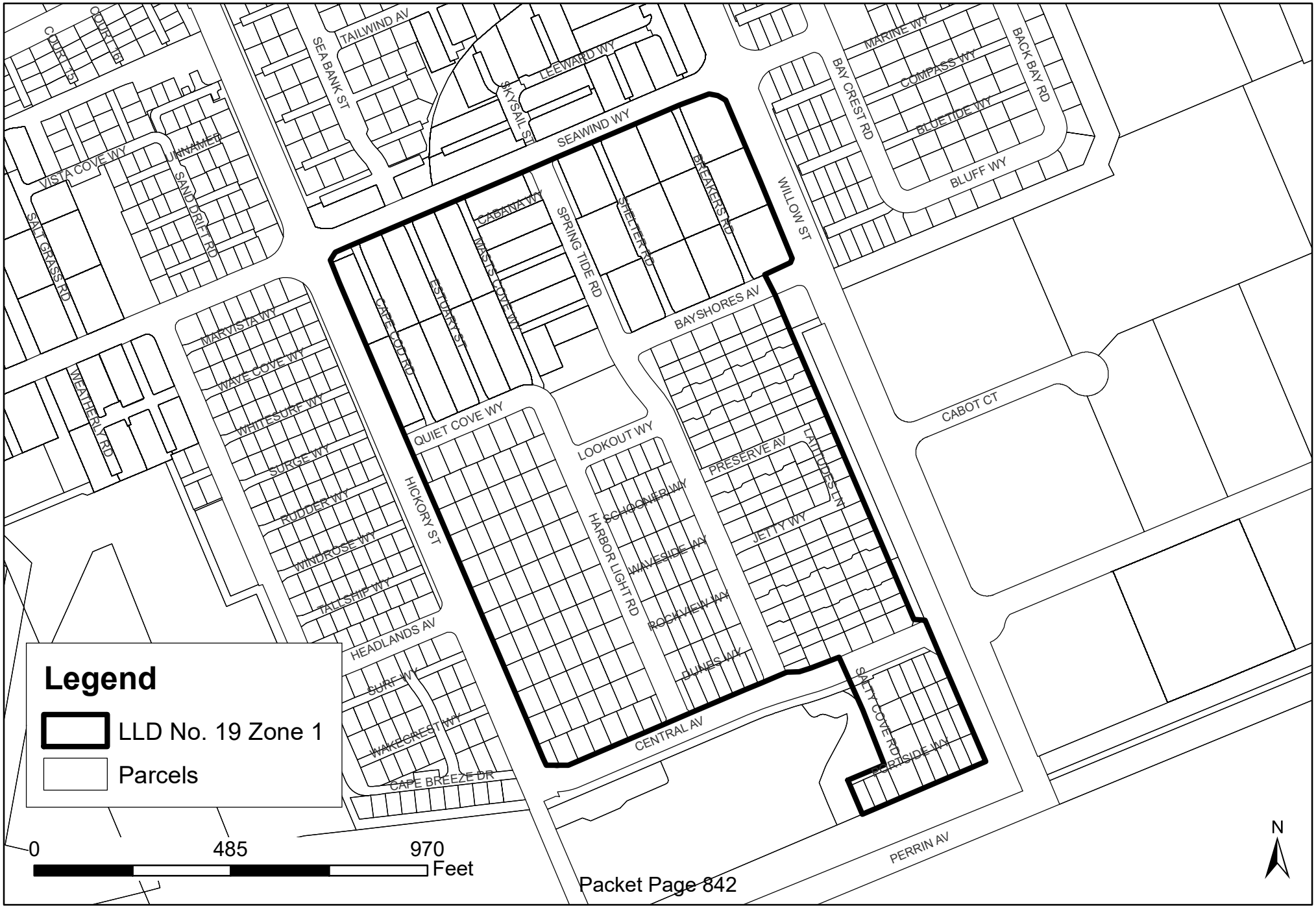
PART C

ASSESSMENT DISTRICT DIAGRAM

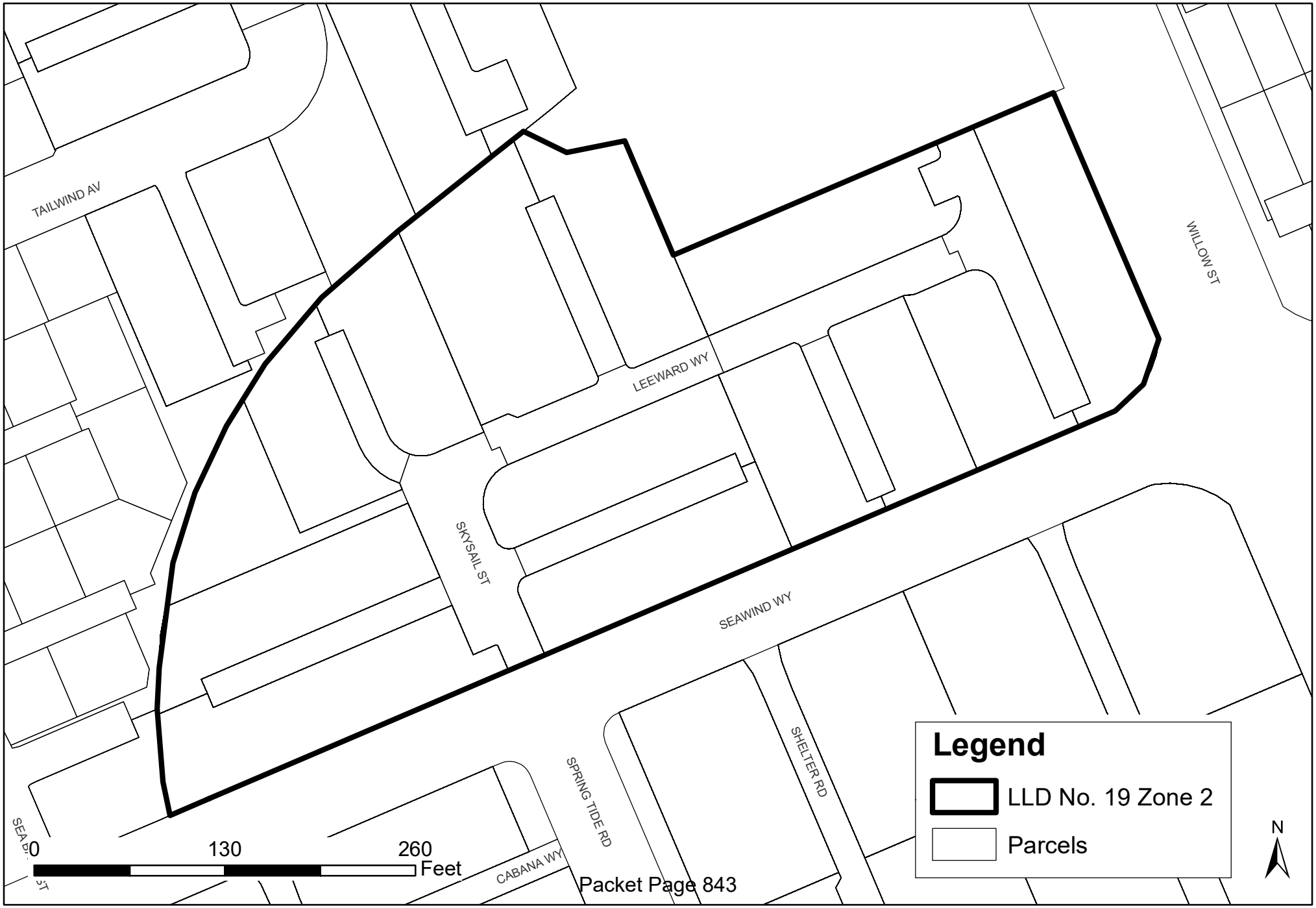
The boundaries of the District and each zone of benefit are shown herein. The Diagram is on file in the Public Works Department of the City and shown on the following page of this Engineer's Report. The lines and dimensions of each parcel within the District are those lines and dimensions shown on the maps of the Alameda County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report.

A reduced copy of the Assessment Diagrams are shown on the following pages.

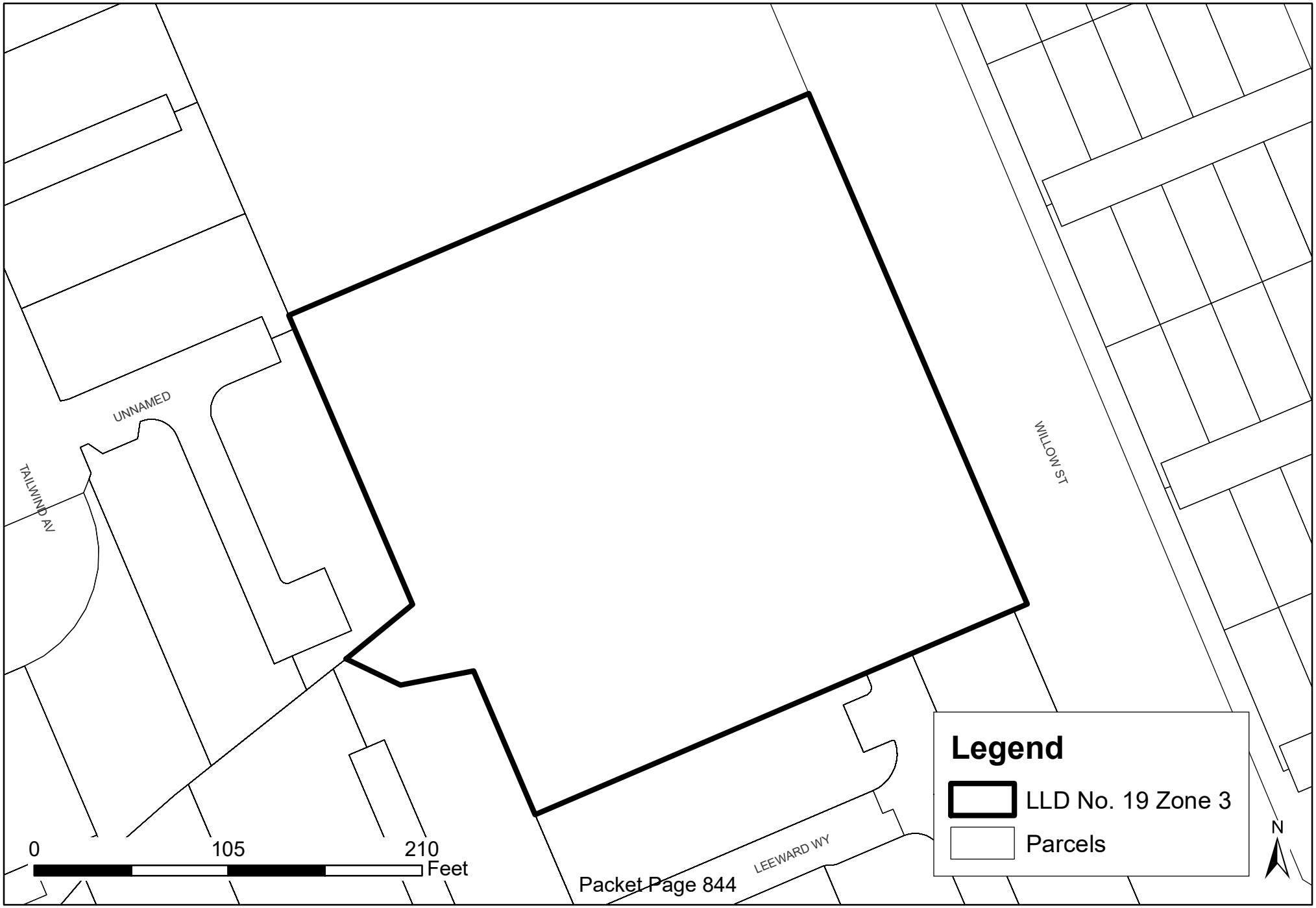
LANDSCAPING AND LIGHTING DISTRICT NO. 19 ZONE 1
(BAYSHORES)
ASSESSMENT DIAGRAM



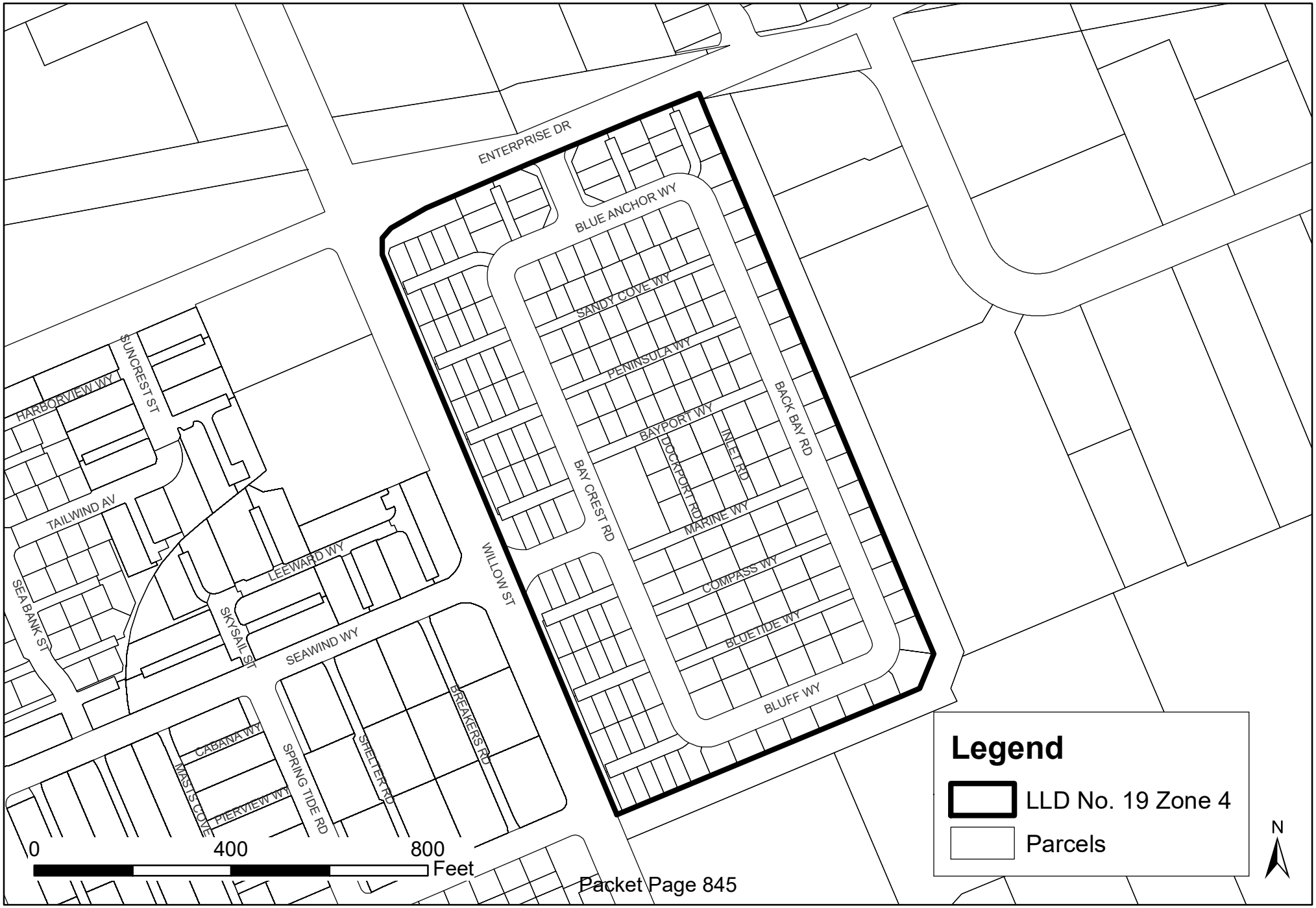
LANDSCAPING AND LIGHTING DISTRICT NO. 19 ZONE 2
ANNEXATION NO. 1 (LIGHTHOUSE)
ASSESSMENT DIAGRAM



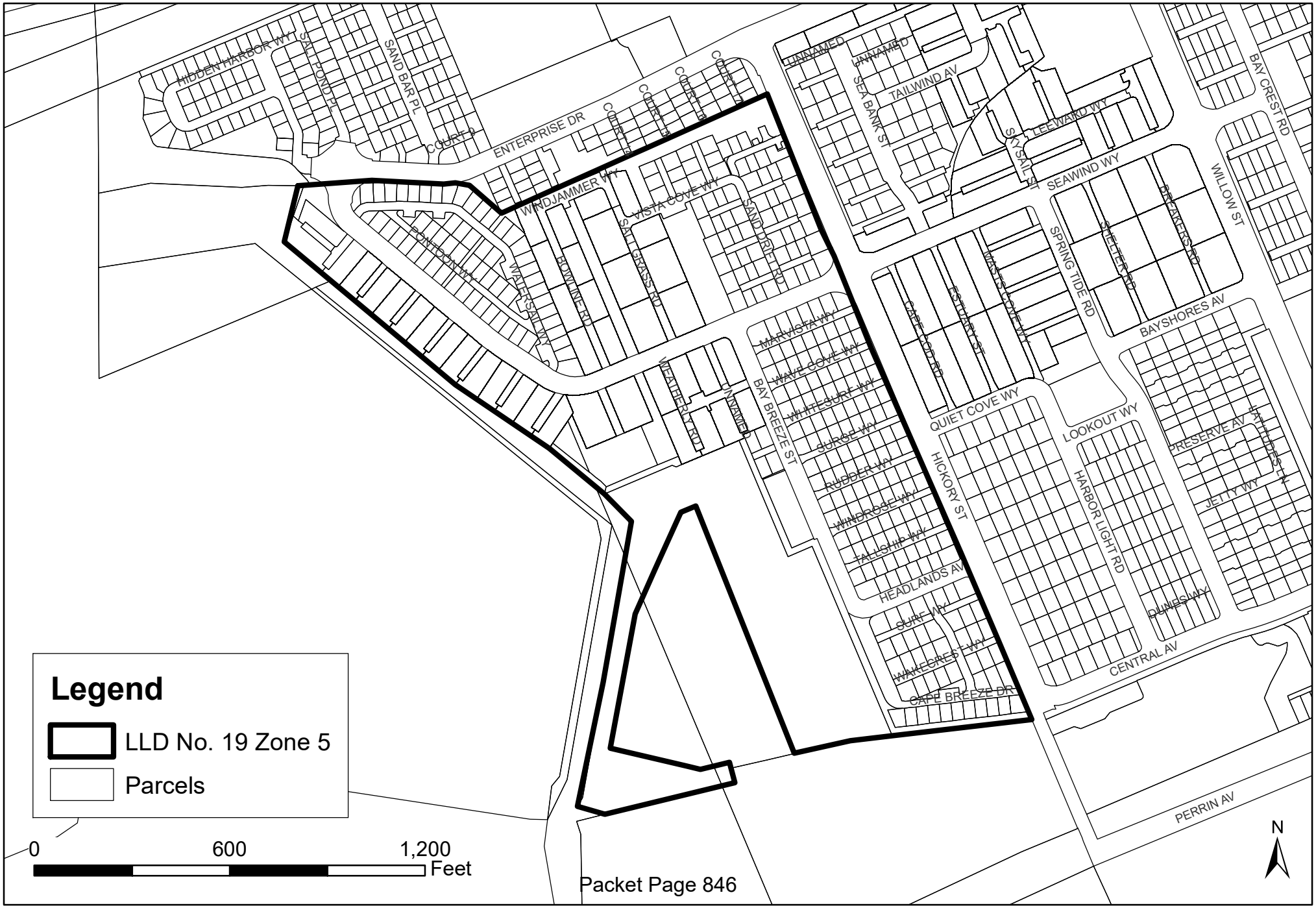
LANDSCAPING AND LIGHTING DISTRICT NO. 19 ZONE 3
ANNEXATION NO. 2 (NEWARK SENIORS HOUSING)
ASSESSMENT DIAGRAM



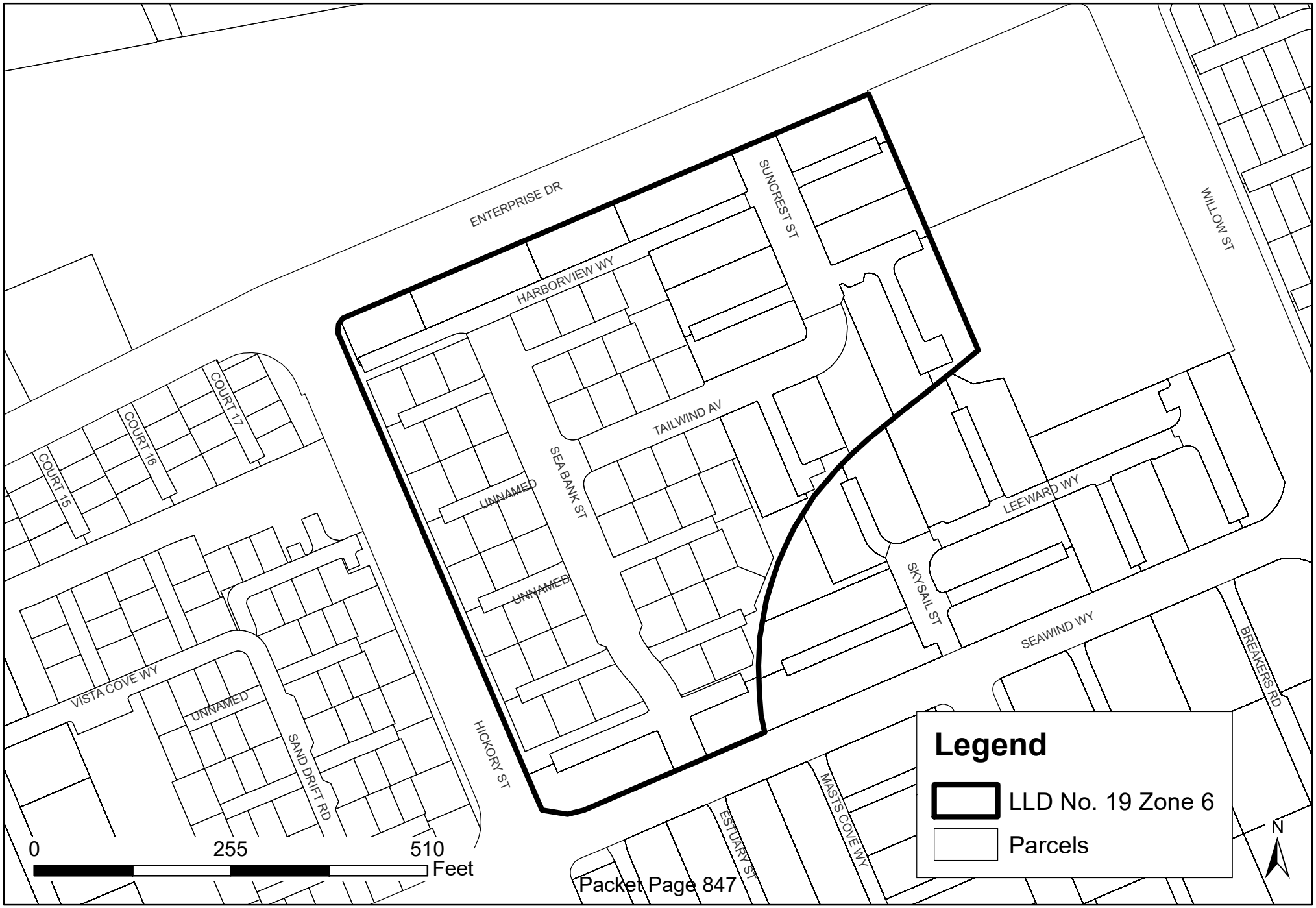
LANDSCAPING AND LIGHTING DISTRICT NO. 19 ZONE 4
ANNEXATION NO. 3 (GLASS BAY)
ASSESSMENT DIAGRAM



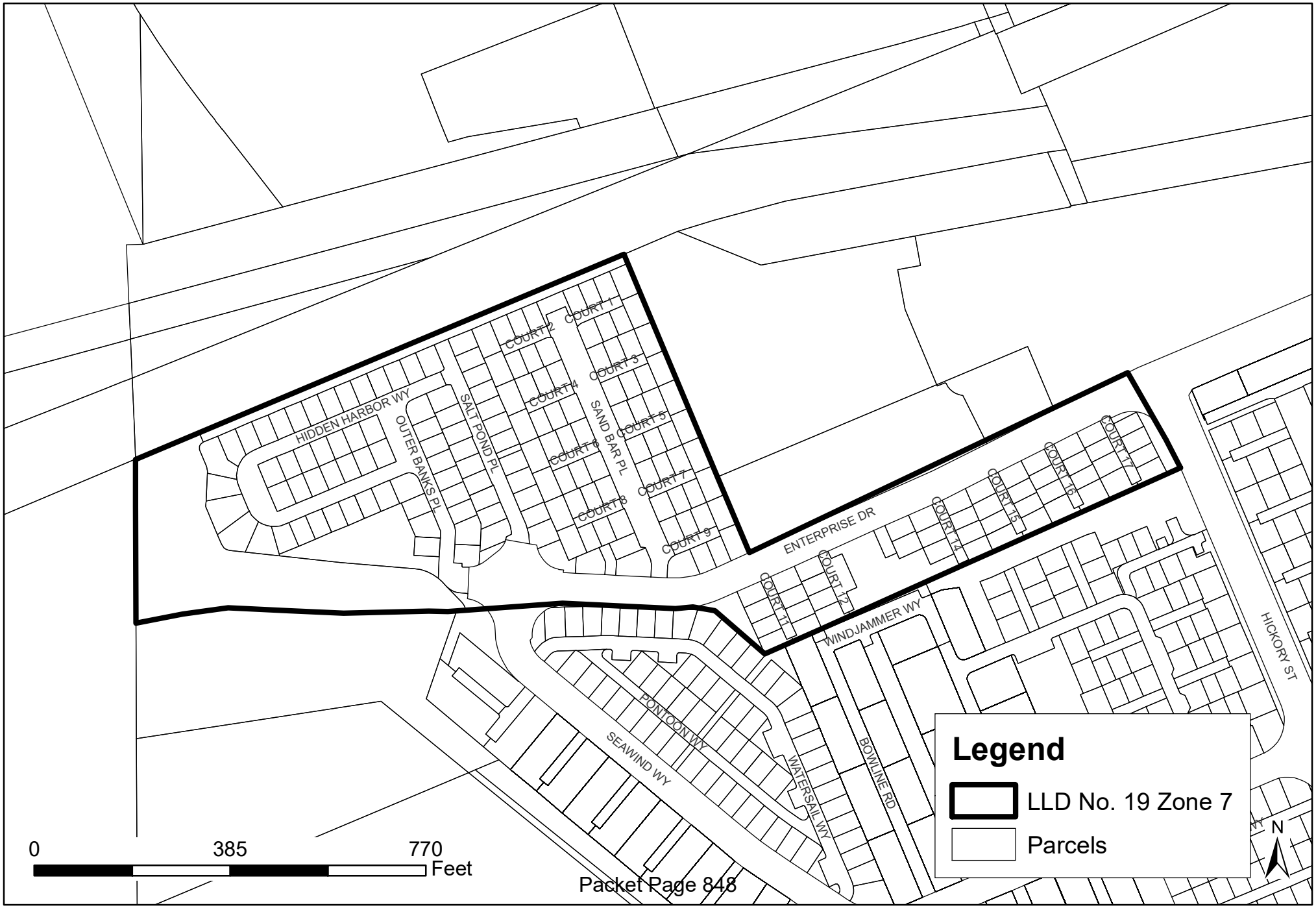
LANDSCAPING AND LIGHTING DISTRICT NO. 19 ZONE 5
ANNEXATION NO. 4 (BRIDGEWAY)
ASSESSMENT DIAGRAM



LANDSCAPING AND LIGHTING DISTRICT NO. 19 ZONE 6
ANNEXATION NO. 5 (COMPASS BAY)
ASSESSMENT DIAGRAM



LANDSCAPING AND LIGHTING DISTRICT NO. 19 ZONE 7
ANNEXATION NO. 6 (HARBOR POINTE)
ASSESSMENT DIAGRAM



PART D

METHOD OF APPORTIONMENT OF ASSESSMENTS

This section explains the benefits to be derived from the improvements and the methodology used to apportion the total costs of the improvements to properties within the District.

The method used for apportioning the assessment is based upon the relative special benefits to be derived by the properties in the District and any established benefit zones. The assessment is apportioned to each parcel in proportion to the relative cost of the special benefits from the improvements.

General

The 1972 Act permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements which include the construction, maintenance and servicing of streetlights, landscaping, parks, trails, open space, and appurtenant facilities. The 1972 Act further requires that the cost of these improvements be levied according to benefit rather than assessed value:

> *"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements."*

The formula used for calculating assessments in the District therefore needs to reflect the composition of the parcels, and the improvements and services provided, to fairly apportion the costs based on estimated benefit to each parcel.

In addition, Article XIIID, of the California Constitution limits the amount of any assessment to the proportional "special benefit" conferred on the property. Article XIIID provides that only special benefits are assessable, and the City must separate the general benefits from the special benefits conferred on a parcel. There is no widely accepted or statutory formula for determining general and special benefit. However, the constitution states that a special benefit is different from a general benefit in that it is "particular and distinct" and "over and above" general benefits received by other properties.

The 1972 Act permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location, and extent of the improvements, the various areas will receive different degrees of benefit from the improvement." Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax".

Article XIIID provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment. Exempted from the assessment would be the areas of public streets, public

avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways, utility easements, and that portion of public property that is not developed and used for business purposes similar to private residential, commercial, industrial, and institutional activities.

The amount to be assessed may be apportioned by any formula or method which fairly distributes the amount among all assessable lots or parcels. In order for the City to separate out the general and special benefits for each improvement type, an analysis of each improvement was conducted. The analysis reviewed the purpose and users of each improvement, and then identified the properties that benefit from the improvement both within and outside the District and each zone of benefit, and then allocated the costs to maintain, service, and replace each improvement type to each identified property.

Because general benefits are not assessable, any costs associated with general benefits or special benefits assigned to properties (both within and outside and the District and each zone of benefit) not in a zone of benefit are to be paid for by the City or by the area receiving special benefits from the improvements. Only the costs associated with the special benefits conferred on property within each zone of benefit from the authorized improvements are assessable, and therefore assessed herein. A full analysis showing the quantification and separation of special and general benefits performed by the City and Assessment Engineer at the time of formation and the establishment of each zone of benefit can be found in the formation and annexation reports for each zone of benefit. A summary of the analysis by improvement type is described below.

Discussion of Benefit

Each of the improvements have been carefully reviewed by the City and the corresponding assessments have been proportionately spread to each parcel based on the special benefits conferred to property from the improvements as determined at the time the District and each subsequent zone of benefit was established.

The District consists of all Assessor Parcels within the boundaries of a zone of benefit. The method of apportioning costs and assessing properties is based upon the proportional special benefits to be conferred by the improvements and services within each zone of benefit to the properties within and outside the boundaries of the District and each zone of benefit. The apportioning of special benefit is a two-step process: the first step is to identify the types of special benefits arising from the improvements and services, and the second step is to allocate the costs and assign assessments to property based on the estimates of the special benefit being conferred to each property.

In determining the proportionate special benefit derived by each identified parcel, the proximity of the parcel to the public improvements detailed in Part A above, and the capital, maintenance, and operating costs of said public improvements, was considered and analyzed. Due to the close proximity of the parcels to the improvements detailed in Part A above, it has been demonstrated and determined that the parcels are uniquely benefited by, and receive a direct advantage from, and are conferred a particular and

distinct special benefit over and above general benefits by said public improvements in a way that is particular and distinct from its effect on other parcels, and that real property in general and the public at large do not share.

In summary, the assessments can only be levied based on the special benefit to property conferred from the installation, maintenance, and servicing of the improvements funded by each zone of benefit within the District. These special benefits are not dependent on any one property owner's use of each zone of benefit's improvements or their specific demographic status. The basis for these special benefits comes from statutes approved by the California Legislature and other studies that describe the types of benefits received by property from such improvements. The identified special benefits conferred to property from the improvements are summarized as follows.

Special Benefit from Landscape Maintenance

All parcels within each zone of benefit of the District receive special benefit from Landscape Maintenance. Trees, landscaping, hardscapes, ornamental structures, and appurtenant facilities, if well maintained, confer a particular and distinct special benefit upon real property within each zone of benefit by providing beautification, shade and positive enhancement of the community character, attractiveness, and desirability of the surroundings. In addition, all the aforementioned contributes to a specific increase in property desirability and a specific enhancement of the property value of each parcel within each zone of benefit of the District.

In Parkways and Land Values, written by John Nolan and Henry V. Hubbard in 1937, it is stated:

> " ... there is no lack of opinion, based on general principles and experience and common sense, that parkways do in fact add value to property, even though the amount cannot be determined exactly .... Indeed, in most cases where public money has been spent on parkways the assumption has been made that the proposed parkway will show a provable financial profit to the City. It has been believed that the establishment of parkways causes a rise in real estate values throughout the City, or in parts of the City, ... "

It should be noted that the definition of "parkways" above may include the roadway as well as the landscaping alongside the roadway.

Special Benefit from Street Lighting Maintenance

All parcels within each applicable zone of benefit of the District receive special benefit from Street Lighting Maintenance. The special benefit from street lighting can be measured by increased safety to people and property, as well as the increased availability of lighting. The safety to people results in a special benefit to parcels because street lighting improves traffic safety during ingress and egress to the property and creates a deterrent to crime against property. The safety to property results in a special benefit to both developed and vacant or undeveloped parcels because street lighting operation, maintenance and

servicing provides for the protection of buildings and personal property against crimes such as theft and vandalism.

Additionally, all parcels in the applicable zones of benefit receive a special benefit from the installation, operation, maintenance, and servicing of the street lighting on collector streets. Collector street lighting benefits properties primarily because the properties, and the persons traveling to and from the properties, are provided safe street access.

Special Benefit from Park Maintenance

All parcels within Zones 6 (Tract 8459 – Compass Bay) and 7 (Tract 8453 – Harbor Pointe) receive special benefit from Park Maintenance. The overall quality of life and desirability of an area is enhanced, when public parks and recreational facilities are in place, improved, operable, safe, clean, and properly maintained. Conversely, property desirability decreases when park and recreational facilities are unsafe or destroyed by the elements or vandalism.

Property desirability in an area also increases when there is an increase in the number of parks, recreation centers and sports facilities. These park and recreational facilities enable property owners to participate in sporting events, leisure activities, picnics, organized social events, and other miscellaneous activities.

Studies in several communities, including counties and cities throughout the United States, have indicated that recreation areas and facilities, if well maintained and wisely administered, have caused a marked increase in the property values of parcels in the community. Consequently, such recreation and park facilities have proved a potent factor in maintaining a sound economic condition and a high standard of livability in the community. These studies confirm the opinion, long held by planning authorities, as to the economic value of parks and recreational facilities in a community.

> *“The recreation value is realized as a rise in the value of land and other property in or near the recreation area, and is of both private interest to the landowner and others, holding an economic stake in the area, and of public interest to the taxpayers, who have a stake ...." (National Recreation and Park Association, June 1985)*
>
> *“Recreation and park amenities are central components in establishing the quality of life in a community. ... [Businesses’] main resource is their employees for whom quality of life is an important issue… The availability and attractiveness of local parks and programs influences some companies’ relocation decisions. ... the presence of a park encourages real estate development around it.... ". (California Parks & Recreation, Winter 1997)*

The benefit of parks and other recreational facilities to residential and commercial/industrial properties has been summarized by several studies. The United States Department of the Interior, National Park Service, in a publication from June 1984, concluded that:

- Parks and recreation stimulate business and generate tax revenues
- Parks and recreation help conserve land, energy, and resources
- An investment in parks and recreation helps reduce pollution and noise, makes communities more livable, and increases property values
- Public recreation benefits all residents and employers by providing continuing opportunities to maintain a level of fitness throughout one's working life, and through helping individuals cope with the stress of a fast-paced and demanding life

Proper maintenance and operation of the parks within the City benefits those properties within the service areas of the parks by providing environmental quality and recreational enhancement.

Special Benefit to Parcels Outside of the District

There are parcels outside each zone of benefit that receive special benefit from some of the improvements. Based on the analysis performed at the time of formation and the establishment of each subsequent annexation, a summary of the percentage of annual costs attributable to special benefits to parcels outside the District by zone of benefit is shown below:

LLD No. 19 Benefit Zone	Percentage of Costs Attributed to Special Benefit Outside the Zone
Zone 1 (Bayshore)	4.46%
Zone 2 (Lighthouse)	36.23%
Zone 3 (Newark Senior Housing)	35.06%
Zone 4 (Tract 8098 - Glass Bay)	11.29%
Zone 5 (Tracts 8099 & 8436 - Bridgeway)	3.97%
Zone 6 (Tract 8459 - Compass Bay)	25.17%
Zone 7 (Tract 8453 - Harbor Pointe)	3.83%

The share of costs attributable to special benefits conferred to parcels outside of each zone of benefit cannot be assessed to properties within each specific zone, but are required to be paid by some other source, such as the City's General Fund.

General Benefit

The Assessment Engineer at the time of District formation and at the establishment of each subsequent annexation performed an analysis and determined there are general benefits conferred from the landscape and park improvements to the public at large. Based on these analyses performed by the original Assessment Engineer, a summary of the percentage of annual costs attributable to general benefit are shown below:

LLD No. 19 Benefit Zone	Percentage of Costs Attributed to General Benefit
Zone 1 (Bayshore)	14.52%
Zone 2 (Lighthouse)	2.67%
Zone 3 (Newark Senior Housing)	0.00%
Zone 4 (Tract 8098 - Glass Bay)	16.85%
Zone 5 (Tracts 8099 & 8436 - Bridgeway)	15.78%
Zone 6 (Tract 8459 - Compass Bay)	7.23%
Zone 7 (Tract 8453 - Harbor Pointe)	6.71%

The share of costs attributable to the general benefits of each zone of benefit cannot be assessed to properties within each specific zone, but are required to be paid by some other source, such as the City's General Fund.

Method of Assessment

This process of apportioning assessments to each property involves determining the relative special benefit received by each property from the improvements and services. Since the assessment will be levied against parcels of property as shown on the tax roll, the final charges must be assigned by Assessor's Parcel Number. If assessments were to be spread just by parcel, not considering land use or parcel size, a single family parcel would be paying the same as a 50 unit apartment parcel or a large commercial establishment and this would not be equitable.

Therefore, the City and Engineer at the time of formation and the establishment of each subsequent zone, determined that the most appropriate method of apportioning costs was determined to be spreading each benefit zone costs on an Equivalent Dwelling Unit (EDU) basis. The single family detached residential unit or lot has been selected as the basic unit for calculation of assessments and is defined as one EDU. Each land-use in the District is converted to EDU's. The EDU method is seen as the most appropriate and equitable method of spread of benefit to each parcel from the improvements since it is based on land-use type and parcel size. Property within the District is assigned to one of the following categories.

Single Family Residential. Parcels zoned for single family detached home residential uses are assessed 1 EDU per dwelling unit. Parcels designated as Single Family Residential land-use will be assessed 1 EDU per dwelling unit or lot, including undeveloped subdivided residential lots and vacant land zoned for single family residential uses with a tentative or final tract map.

Multiple Family Residential. Multiple-family residential (including apartments, condominiums, townhomes, and duplexes) land use equivalencies are determined based on the number of dwelling units on each parcel. Due to population density and size of structure relative to the typical single family residence, each dwelling unit defined as multi-family residential, including apartments, condominiums, town homes, and duplexes, are assigned and EDU of 0.75 EDU . The EDU's assigned to a multiple-family residential parcel are calculated by multiplying the number of dwelling units by the EDU Factor of 0.75.

Non-Residential. In converting non-residential properties to EDU's, the EDU Factor used in each zone of benefit was determined using the EDU density of the residential property for each zone. During formation and the establishment of each subsequent zone, the number of planned residential EDU located in the zone were divided by the associated acreage to arrive at an EDU factor per acre for non-residential parcels. All properties that are developed for non-residential uses are therefore assigned an EDU factor per acre by zone of benefit, all of which are shown in the table below. Non-Residential may include but not be limited to commercial, industrial, church, school, institutional, and other non-residential uses.

Undeveloped Parcels. Undeveloped parcels receive a reduced level of benefit as compared to developed parcels. Undeveloped parcels therefore are assessed at 20% of the non-residential rate per acre for each zone of benefit. This includes all lots designated as undeveloped or vacant without a tentative or final tract map but does not include easements or streets, whether private or public, which are non-assessable.

Exempt Parcels. - Publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the improvements. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts, public parkways, public property designated open space, and any portion of public property that is not used for business purposes similar to private residential, commercial, industrial, and institutional activities. Also exempted from the assessments are private streets, utility easements, homeowner's or property owner's association common areas (except club houses, community centers, parking lots, etc.) and any other parcels that do not receive a special and direct benefit from the improvements.

The following table summarizes the EDU Factors by zone of benefit for each land use category.

		EDU Factor						
Land Use Classification	**Unit**	**Zone 1**	**Zone 2**	**Zone 3**	**Zone 4**	**Zone 5**	**Zone 6**	**Zone 7**
Single-Family Residential	per Dwelling Unit	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Multi-Family Residential	per Dwelling Unit	0.750	0.750	0.750	0.750	0.750	0.750	0.750
Non-Residential	per Acre	11.250	8.158	27.040	10.150	8.158	7.810	8.158
Vacant Property	per Acre	2.250	1.632	5.410	2.030	1.631	1.562	1.631

Parcels within each zone may be assessed once it is anticipated that improvements will need to be maintained or reserve funds will need to be collected for the ensuing fiscal year.

The table below summarizes both the maximum and applied assessment rates per EDU for Fiscal Year 2023-24.

LLD No. 19 Benefit Zone	Maximum Assessment Rate	Applied Assessment Rate
Zone 1 (Bayshore)	$110.05	$87.34
Zone 2 (Lighthouse)	$74.91	$59.45
Zone 3 (Newark Senior Housing)	$60.93	$48.36
Zone 4 (Tract 8098 - Glass Bay)	$114.83	$91.14
Zone 5 (Tracts 8099 & 8436 - Bridgeway)	$94.01	$80.00
Zone 6 (Tract 8459 - Compass Bay)	$122.61	$107.46
Zone 7 (Tract 8453 - Harbor Pointe)	$139.74	$0.00

Maximum Assessment Rate Increases

The maximum assessment rates for each zone may be adjusted annually by the greater of the annual increase in the Bureau of Labor Statistics, Consumer Price Index for the month of February, All Urban Consumers for the San Francisco/Oakland/San Jose area, or 3%.

Appeals and Interpretations

Any property owner who feels that the assessment levied on the subject property is in error because of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City Engineer or her or his designee may refer their appeal to the City Council and the decision of the City Council shall be final.

PART E

ASSESSMENT ROLL

A list of names and addresses of the owners of all parcels, and the description of each parcel within the District is shown on the last equalized Secured Property Tax Roll of the Alameda County Assessor, which by reference is hereby made a part of this Report.

This list is keyed to the Assessor's Parcel Numbers as shown on the Assessment Roll, which includes the proposed amount of assessments for Fiscal Year 2023-24 apportioned to each parcel. The Assessment Roll is on file in the Public Works Department of the City and is included in this Report beginning on the next page.

The total proposed assessment for Fiscal Year 2023-24 is $116,315.32**.**

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
092 -0257-033-00	1	$65.50
092 -0257-034-00	1	$65.50
092 -0257-035-00	1	$65.50
092 -0257-036-00	1	$65.50
092 -0257-037-00	1	$65.50
092 -0257-038-00	1	$65.50
092 -0257-039-00	1	$65.50
092 -0257-040-00	1	$65.50
092 -0257-041-00	1	$65.50
092 -0257-042-00	1	$65.50
092 -0257-043-00	1	$65.50
092 -0257-045-00	1	$65.50
092 -0257-046-00	1	$65.50
092 -0257-047-00	1	$65.50
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092 -0257-067-00	1	$65.50
092 -0257-068-00	1	$65.50
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092 -0257-216-00	1	$65.50
092 -0257-217-00	1	$65.50

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
092 -0257-218-00	1	$65.50
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092 -0257-220-00	1	$65.50
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092 -0258-057-00	1	$87.34
092 -0258-058-00	1	$87.34

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
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092 -0258-060-00	1	$87.34
092 -0258-061-00	1	$87.34
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092 -0261-010-00	1	$87.34
092 -0261-011-00	1	$87.34
092 -0261-012-00	1	$87.34

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
092 -0261-013-00	1	$87.34
092 -0261-014-00	1	$87.34
092 -0261-015-00	1	$87.34
092 -0261-016-00	1	$87.34
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092 -0260-111-00	2	$44.58
092 -0260-112-00	2	$44.58
092 -0260-113-00	2	$44.58
092 -0260-114-00	2	$44.58
092 -0260-116-00	2	$44.58
092 -0260-117-00	2	$44.58

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
092 -0260-118-00	2	$44.58
092 -0260-119-00	2	$44.58
092 -0260-120-00	2	$44.58
092 -0260-121-00	2	$44.58
092 -0260-122-00	2	$44.58
092 -0260-123-00	2	$44.58
092 -0115-012-08	3	$2,720.24
092 -0259-024-00	4	$91.14
092 -0259-025-00	4	$91.14
092 -0259-026-00	4	$91.14
092 -0259-027-00	4	$91.14
092 -0259-028-00	4	$91.14
092 -0259-029-00	4	$91.14
092 -0259-030-00	4	$91.14
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092 -0259-170-00	4	$91.14
092 -0259-171-00	4	$91.14
092 -0259-172-00	4	$91.14

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
092 -0259-173-00	4	$91.14
092 -0259-174-00	4	$91.14
092 -0259-175-00	4	$91.14
092 -0259-176-00	4	$91.14
092 -0259-177-00	4	$91.14
092 -0259-178-00	4	$91.14
092 -0259-179-00	4	$91.14
092 -0259-180-00	4	$91.14
092 -0259-181-00	4	$91.14
092 -0259-182-00	4	$91.14
092 -0259-183-00	4	$91.14
092 -0259-184-00	4	$91.14
092 -0259-185-00	4	$91.14
092 -0259-186-00	4	$91.14
092 -0259-187-00	4	$91.14
092 -0259-188-00	4	$91.14
092 -0259-189-00	4	$91.14
092 -0259-190-00	4	$91.14
092 -0259-191-00	4	$91.14
092 -0259-192-00	4	$91.14
092 -0259-193-00	4	$91.14
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092 -0259-200-00	4	$91.14
092 -0259-201-00	4	$91.14
092 -0259-202-00	4	$91.14
092 -0259-203-00	4	$91.14
092 -0259-204-00	4	$91.14
092 -0259-205-00	4	$91.14
092 -0259-206-00	4	$91.14
092 -0259-207-00	4	$91.14
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092 -0259-232-00	4	$91.14
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092 -0259-240-00	4	$91.14
537 -0856-001-00	5	$517.52
537 -0856-014-00	5	$80.00
537 -0856-015-00	5	$80.00
537 -0856-016-00	5	$80.00
537 -0856-017-00	5	$80.00
537 -0856-018-00	5	$80.00
537 -0856-019-00	5	$80.00
537 -0856-020-00	5	$80.00
537 -0856-021-00	5	$80.00
537 -0856-022-00	5	$80.00
537 -0856-023-00	5	$80.00
537 -0856-024-00	5	$80.00
537 -0856-025-00	5	$80.00
537 -0856-026-00	5	$80.00
537 -0856-027-00	5	$80.00
537 -0856-028-00	5	$80.00
537 -0856-029-00	5	$80.00
537 -0856-030-00	5	$80.00
537 -0856-031-00	5	$80.00
537 -0856-032-00	5	$80.00
537 -0856-033-00	5	$80.00
537 -0856-034-00	5	$80.00
537 -0856-035-00	5	$80.00
537 -0856-036-00	5	$80.00
537 -0856-037-00	5	$80.00
537 -0856-038-00	5	$80.00
537 -0856-039-00	5	$80.00
537 -0856-040-00	5	$80.00
537 -0856-041-00	5	$80.00
537 -0856-042-00	5	$80.00
537 -0856-043-00	5	$80.00
537 -0856-044-00	5	$80.00
537 -0856-045-00	5	$80.00
537 -0856-046-00	5	$80.00
537 -0856-047-00	5	$80.00
537 -0856-048-00	5	$80.00
537 -0856-049-00	5	$80.00
537 -0856-050-00	5	$80.00
537 -0856-051-00	5	$80.00
537 -0856-052-00	5	$80.00
537 -0856-053-00	5	$80.00
537 -0856-054-00	5	$80.00
537 -0856-055-00	5	$80.00
537 -0856-056-00	5	$80.00
537 -0856-057-00	5	$80.00
537 -0856-058-00	5	$80.00
537 -0856-059-00	5	$80.00
537 -0856-060-00	5	$80.00
537 -0856-061-00	5	$80.00
537 -0856-062-00	5	$80.00
537 -0856-063-00	5	$80.00
537 -0856-064-00	5	$80.00
537 -0856-065-00	5	$80.00
537 -0856-087-00	5	$80.00
537 -0856-088-00	5	$80.00
537 -0856-089-00	5	$80.00
537 -0856-090-00	5	$80.00
537 -0856-091-00	5	$80.00
537 -0856-092-00	5	$80.00
537 -0856-093-00	5	$80.00
537 -0856-094-00	5	$80.00
537 -0856-095-00	5	$80.00
537 -0856-096-00	5	$80.00
537 -0856-097-00	5	$80.00
537 -0856-098-00	5	$80.00
537 -0856-099-00	5	$80.00
537 -0856-100-00	5	$80.00
537 -0856-101-00	5	$80.00
537 -0856-102-00	5	$60.00
537 -0856-103-00	5	$60.00
537 -0856-104-00	5	$60.00
537 -0856-105-00	5	$60.00
537 -0856-106-00	5	$60.00
537 -0856-107-00	5	$60.00
537 -0856-109-00	5	$60.00
537 -0856-110-00	5	$60.00
537 -0856-111-00	5	$60.00
537 -0856-112-00	5	$60.00
537 -0856-113-00	5	$60.00
537 -0856-114-00	5	$60.00
537 -0856-115-00	5	$60.00
537 -0856-117-00	5	$60.00
537 -0856-118-00	5	$60.00
537 -0856-119-00	5	$60.00
537 -0856-120-00	5	$60.00
537 -0856-121-00	5	$60.00
537 -0856-122-00	5	$60.00
537 -0856-123-00	5	$60.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
537 -0856-125-00	5	$60.00
537 -0856-126-00	5	$60.00
537 -0856-127-00	5	$60.00
537 -0856-128-00	5	$60.00
537 -0856-129-00	5	$60.00
537 -0856-130-00	5	$60.00
537 -0856-131-00	5	$60.00
537 -0856-132-00	5	$60.00
537 -0856-133-00	5	$60.00
537 -0856-135-00	5	$60.00
537 -0856-136-00	5	$60.00
537 -0856-137-00	5	$60.00
537 -0856-138-00	5	$60.00
537 -0856-139-00	5	$60.00
537 -0856-140-00	5	$60.00
537 -0856-141-00	5	$60.00
537 -0856-142-00	5	$60.00
537 -0856-143-00	5	$60.00
537 -0856-145-00	5	$60.00
537 -0856-146-00	5	$60.00
537 -0856-147-00	5	$60.00
537 -0856-148-00	5	$60.00
537 -0856-149-00	5	$60.00
537 -0856-150-00	5	$60.00
537 -0856-151-00	5	$60.00
537 -0856-152-00	5	$60.00
537 -0856-153-00	5	$60.00
537 -0856-155-00	5	$60.00
537 -0856-156-00	5	$60.00
537 -0856-157-00	5	$60.00
537 -0856-158-00	5	$60.00
537 -0856-159-00	5	$60.00
537 -0856-160-00	5	$60.00
537 -0856-162-00	5	$60.00
537 -0856-163-00	5	$60.00
537 -0856-164-00	5	$60.00
537 -0856-165-00	5	$60.00
537 -0856-166-00	5	$60.00
537 -0856-167-00	5	$60.00
537 -0856-169-00	5	$60.00
537 -0856-170-00	5	$60.00
537 -0856-171-00	5	$60.00
537 -0856-172-00	5	$60.00
537 -0856-173-00	5	$60.00
537 -0856-174-00	5	$60.00
537 -0856-175-00	5	$60.00
537 -0856-176-00	5	$60.00
537 -0856-177-00	5	$60.00
537 -0856-179-00	5	$60.00
537 -0856-180-00	5	$60.00
537 -0856-181-00	5	$60.00
537 -0856-182-00	5	$60.00
537 -0856-184-00	5	$60.00
537 -0856-185-00	5	$60.00
537 -0856-186-00	5	$60.00
537 -0856-187-00	5	$60.00
537 -0856-188-00	5	$60.00
537 -0856-189-00	5	$60.00
537 -0856-190-00	5	$60.00
537 -0856-191-00	5	$60.00
537 -0856-192-00	5	$60.00
537 -0857-020-00	5	$80.00
537 -0857-021-00	5	$80.00
537 -0857-022-00	5	$80.00
537 -0857-023-00	5	$80.00
537 -0857-024-00	5	$80.00
537 -0857-025-00	5	$80.00
537 -0857-026-00	5	$80.00
537 -0857-027-00	5	$80.00
537 -0857-028-00	5	$80.00
537 -0857-029-00	5	$80.00
537 -0857-030-00	5	$80.00
537 -0857-031-00	5	$80.00
537 -0857-032-00	5	$80.00
537 -0857-033-00	5	$80.00
537 -0857-034-00	5	$80.00
537 -0857-035-00	5	$80.00
537 -0857-036-00	5	$80.00
537 -0857-037-00	5	$80.00
537 -0857-038-00	5	$80.00
537 -0857-039-00	5	$80.00
537 -0857-040-00	5	$80.00
537 -0857-041-00	5	$80.00
537 -0857-042-00	5	$80.00
537 -0857-043-00	5	$80.00
537 -0857-044-00	5	$80.00
537 -0857-045-00	5	$80.00
537 -0857-046-00	5	$80.00
537 -0857-047-00	5	$80.00
537 -0857-048-00	5	$80.00
537 -0857-049-00	5	$80.00
537 -0857-050-00	5	$80.00
537 -0857-051-00	5	$80.00
537 -0857-052-00	5	$80.00
537 -0857-053-00	5	$80.00
537 -0857-054-00	5	$80.00
537 -0857-055-00	5	$80.00
537 -0857-056-00	5	$80.00
537 -0857-057-00	5	$80.00
537 -0857-058-00	5	$80.00
537 -0857-059-00	5	$80.00
537 -0857-060-00	5	$80.00
537 -0857-061-00	5	$80.00
537 -0857-062-00	5	$80.00
537 -0857-063-00	5	$80.00
537 -0857-064-00	5	$80.00
537 -0857-065-00	5	$80.00
537 -0857-066-00	5	$80.00
537 -0857-067-00	5	$80.00
537 -0857-068-00	5	$80.00
537 -0857-069-00	5	$80.00
537 -0857-070-00	5	$80.00
537 -0857-071-00	5	$80.00
537 -0857-072-00	5	$80.00
537 -0857-073-00	5	$80.00
537 -0857-074-00	5	$80.00
537 -0857-075-00	5	$80.00
537 -0857-076-00	5	$80.00
537 -0857-077-00	5	$80.00
537 -0857-078-00	5	$80.00
537 -0857-079-00	5	$80.00
537 -0857-080-00	5	$80.00
537 -0857-081-00	5	$80.00
537 -0857-082-00	5	$80.00
537 -0857-083-00	5	$80.00
537 -0857-084-00	5	$80.00
537 -0857-085-00	5	$80.00
537 -0857-086-00	5	$80.00
537 -0857-087-00	5	$80.00
537 -0857-088-00	5	$80.00
537 -0857-089-00	5	$80.00
537 -0857-090-00	5	$80.00
537 -0857-091-00	5	$80.00
537 -0857-092-00	5	$80.00
537 -0857-093-00	5	$80.00
537 -0857-094-00	5	$80.00
537 -0857-095-00	5	$80.00
537 -0857-096-00	5	$80.00
537 -0857-097-00	5	$80.00
537 -0857-098-00	5	$80.00
537 -0857-099-00	5	$80.00
537 -0857-100-00	5	$80.00
537 -0857-101-00	5	$80.00
537 -0857-102-00	5	$80.00
537 -0857-103-00	5	$80.00
537 -0857-104-00	5	$80.00
537 -0857-105-00	5	$80.00
537 -0857-106-00	5	$80.00
537 -0857-107-00	5	$80.00
537 -0857-108-00	5	$80.00
537 -0857-109-00	5	$80.00
537 -0857-110-00	5	$80.00
537 -0857-111-00	5	$80.00
537 -0857-112-00	5	$80.00
537 -0857-113-00	5	$80.00
537 -0857-114-00	5	$80.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
537 -0857-115-00	5	$80.00
537 -0857-116-00	5	$80.00
537 -0857-117-00	5	$80.00
537 -0857-118-00	5	$80.00
537 -0857-119-00	5	$80.00
537 -0857-120-00	5	$80.00
537 -0857-121-00	5	$80.00
537 -0857-122-00	5	$80.00
537 -0857-123-00	5	$80.00
537 -0857-124-00	5	$80.00
537 -0857-125-00	5	$80.00
537 -0857-126-00	5	$80.00
537 -0857-127-00	5	$80.00
537 -0857-128-00	5	$80.00
537 -0857-129-00	5	$80.00
537 -0857-130-00	5	$80.00
537 -0857-131-00	5	$80.00
537 -0857-132-00	5	$80.00
537 -0857-133-00	5	$80.00
537 -0857-134-00	5	$80.00
537 -0857-135-00	5	$80.00
537 -0857-136-00	5	$80.00
537 -0857-137-00	5	$80.00
537 -0857-138-00	5	$80.00
537 -0857-139-00	5	$80.00
537 -0857-140-00	5	$80.00
537 -0857-141-00	5	$80.00
537 -0857-142-00	5	$80.00
537 -0857-143-00	5	$80.00
537 -0857-144-00	5	$80.00
537 -0857-145-00	5	$80.00
537 -0857-146-00	5	$80.00
537 -0857-147-00	5	$80.00
537 -0857-148-00	5	$80.00
537 -0857-149-00	5	$80.00
537 -0857-150-00	5	$80.00
537 -0857-151-00	5	$80.00
537 -0857-152-00	5	$80.00
537 -0857-153-00	5	$80.00
537 -0857-154-00	5	$80.00
537 -0857-155-00	5	$80.00
537 -0857-156-00	5	$80.00
537 -0857-157-00	5	$80.00
537 -0857-158-00	5	$80.00
537 -0857-159-00	5	$80.00
537 -0857-160-00	5	$80.00
537 -0857-161-00	5	$80.00
537 -0857-162-00	5	$80.00
537 -0857-163-00	5	$80.00
537 -0857-164-00	5	$80.00
537 -0857-165-00	5	$80.00
537 -0857-166-00	5	$80.00
537 -0857-167-00	5	$80.00
537 -0857-168-00	5	$80.00
537 -0857-169-00	5	$80.00
537 -0857-170-00	5	$80.00
537 -0857-171-00	5	$80.00
537 -0857-172-00	5	$80.00
537 -0857-173-00	5	$80.00
537 -0857-174-00	5	$80.00
537 -0857-175-00	5	$80.00
537 -0857-176-00	5	$80.00
537 -0857-177-00	5	$80.00
537 -0857-178-00	5	$80.00
537 -0857-179-00	5	$80.00
537 -0857-180-00	5	$80.00
537 -0857-181-00	5	$80.00
537 -0857-182-00	5	$80.00
537 -0857-183-00	5	$80.00
537 -0857-184-00	5	$80.00
537 -0857-185-00	5	$80.00
537 -0857-186-00	5	$80.00
537 -0857-187-00	5	$80.00
537 -0857-188-00	5	$80.00
537 -0857-189-00	5	$80.00
537 -0857-190-00	5	$80.00
537 -0857-191-00	5	$80.00
537 -0857-192-00	5	$80.00
537 -0857-193-00	5	$80.00
537 -0857-194-00	5	$80.00
537 -0857-195-00	5	$80.00
537 -0857-196-00	5	$80.00
537 -0857-197-00	5	$80.00
537 -0857-198-00	5	$80.00
537 -0857-199-00	5	$80.00
537 -0857-200-00	5	$80.00
537 -0858-029-00	5	$60.00
537 -0858-030-00	5	$60.00
537 -0858-031-00	5	$60.00
537 -0858-032-00	5	$60.00
537 -0858-033-00	5	$60.00
537 -0858-034-00	5	$60.00
537 -0858-035-00	5	$60.00
537 -0858-037-00	5	$60.00
537 -0858-038-00	5	$60.00
537 -0858-039-00	5	$60.00
537 -0858-040-00	5	$60.00
537 -0858-041-00	5	$60.00
537 -0858-042-00	5	$60.00
537 -0858-043-00	5	$60.00
537 -0858-045-00	5	$60.00
537 -0858-046-00	5	$60.00
537 -0858-047-00	5	$60.00
537 -0858-048-00	5	$60.00
537 -0858-050-00	5	$60.00
537 -0858-051-00	5	$60.00
537 -0858-052-00	5	$60.00
537 -0858-053-00	5	$60.00
537 -0858-054-00	5	$60.00
537 -0858-055-00	5	$60.00
537 -0858-056-00	5	$60.00
537 -0858-057-00	5	$60.00
537 -0858-058-00	5	$60.00
537 -0858-060-00	5	$60.00
537 -0858-061-00	5	$60.00
537 -0858-062-00	5	$60.00
537 -0858-063-00	5	$60.00
537 -0858-064-00	5	$60.00
537 -0858-065-00	5	$60.00
537 -0858-067-00	5	$60.00
537 -0858-068-00	5	$60.00
537 -0858-069-00	5	$60.00
537 -0858-070-00	5	$60.00
537 -0858-071-00	5	$60.00
537 -0858-072-00	5	$60.00
537 -0858-073-00	5	$60.00
537 -0858-075-00	5	$60.00
537 -0858-076-00	5	$60.00
537 -0858-077-00	5	$60.00
537 -0858-078-00	5	$60.00
537 -0858-079-00	5	$60.00
537 -0858-080-00	5	$60.00
537 -0858-081-00	5	$60.00
537 -0858-082-00	5	$60.00
537 -0858-083-00	5	$60.00
537 -0858-085-00	5	$60.00
537 -0858-086-00	5	$60.00
537 -0858-087-00	5	$60.00
537 -0858-088-00	5	$60.00
537 -0858-089-00	5	$60.00
537 -0858-090-00	5	$60.00
537 -0860-034-00	5	$24.96
537 -0860-035-00	5	$31.68
537 -0860-036-00	5	$25.84
537 -0860-037-00	5	$80.00
537 -0860-038-00	5	$80.00
537 -0860-039-00	5	$80.00
537 -0860-040-00	5	$80.00
537 -0860-041-00	5	$80.00
537 -0860-042-00	5	$80.00
537 -0860-043-00	5	$80.00
537 -0860-044-00	5	$80.00
537 -0860-045-00	5	$80.00
537 -0860-046-00	5	$80.00
537 -0860-047-00	5	$80.00
537 -0860-048-00	5	$80.00

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
537 -0860-049-00	5	$80.00
537 -0860-050-00	5	$80.00
537 -0860-051-00	5	$80.00
537 -0860-052-00	5	$80.00
537 -0860-053-00	5	$80.00
537 -0860-054-00	5	$80.00
537 -0860-055-00	5	$80.00
537 -0860-056-00	5	$80.00
537 -0860-057-00	5	$80.00
537 -0860-058-00	5	$80.00
537 -0860-059-00	5	$80.00
537 -0860-060-00	5	$80.00
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092 -0264-078-00	6	$80.60
092 -0264-080-00	6	$80.60

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
FISCAL YEAR 2023-24

Assessor's Parcel Number	Zone	Assessment Amount
092 -0264-081-00	6	$80.60
092 -0264-082-00	6	$80.60
092 -0264-083-00	6	$80.60
092 -0264-084-00	6	$80.60
092 -0264-085-00	6	$80.60
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092 -0265-058-00	6	$80.60
092 -0265-060-00	6	$80.60
092 -0265-061-00	6	$80.60
092 -0265-062-00	6	$80.60
092 -0265-063-00	6	$80.60
092 -0265-064-00	6	$80.60
092 -0265-065-00	6	$80.60
092 -0265-067-00	6	$80.60
092 -0265-068-00	6	$80.60
092 -0265-069-00	6	$80.60
092 -0265-070-00	6	$80.60
092 -0265-071-00	6	$80.60
092 -0265-072-00	6	$80.60
092 -0265-074-00	6	$80.60
092 -0265-076-00	6	$80.60
092 -0265-077-00	6	$80.60
Total Parcels:		1,476
Total Assessment:		$116,315.32

CITY OF NEWARK
LANDSCAPING & LIGHTING DISTRICT No. 19
ASSESSMENT ROLL
Fiscal Year 2023-24

SUMMARY

Zone	Parcel	Assessment
Zone No. 1	542	$ 41,550.68
Zone No. 2	88	$ 3,923.04
Zone No. 3	1	$ 2,720.24
Zone No. 4	217	$ 19,777.38
Zone No. 5	494	$ 36,120.00
Zone No. 6	134	$ 12,223.98
Total	1,476	$ 116,315.32

STAFF REPORT

Item F. 2.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Jayson Imai, Assistant City Engineer
SUBJECT	Adopt a resolution for approval of the Road Repair and Accountability Act of 2017 (Senate Bill 1) Fiscal Year 2023-2024 Project List

SUMMARY AND RECOMMENDATION

In order to receive Road Maintenance and Rehabilitation Account (RMRA) funds from the State, Senate Bill 1 requires cities and counties to submit to the California Transportation Commission each year a list of projects proposed to be funded with RMRA funds. For Fiscal Year 2023-2024, staff recommends that City Council approve inclusion of the Old Town Streetscape and Complete Streets Improvements Project on the City of Newark's RMRA Project List, and that the City Council, by resolution approve the Road Repair and Accountability Act of 2017 (Senate Bill 1) Fiscal Year 2023-2024 Project List.

BACKGROUND

In April 2017, the State Legislature passed Senate Bill 1 (SB1), the Road Repair and Accountability Act of 2017. SB1 established the Road Maintenance and Rehabilitation Program and provides a significant, stable and ongoing increase in state transportation funding to address deferred maintenance on the state highway and local streets and roads systems. Funds for the program are deposited into the State Transportation Fund, Road Maintenance and Rehabilitation Account (RMRA). The funds come from increased gasoline excise taxes, diesel fuel sales taxes, and vehicle registration fees.

SB1 continues to generate over $5 billion annually for State and local transportation improvements. Cities and counties are slated to receive over $1.4 billion per year for local street and road maintenance. Allocations of funds to cities are based upon population.

RMRA funding is in addition to the Highway Users Tax Account (HUTA) funds that the City receives annually (commonly known as "Gas Tax" funds). However, for the purposes of the 2022-2024 Biennial Budget and Capital Improvement Plan, RMRA revenue is included with anticipated Gas Tax fund projections.

In order to receive RMRA funds from the State, SB1 requires cities and counties to submit to the California Transportation Commission each year a list of projects proposed to be funded with RMRA funds. RMRA funds are required to be used

towards projects that include, but are not limited to:

- Road maintenance and rehabilitation
- Safety improvements
- Railroad grade separations
- Traffic control devices
- Complete Street components, which include active transportation elements, pedestrian and bicycle safety improvements, transit facilities, and drainage and stormwater capture measures in conjunction with other allowable projects

DISCUSSION/ANALYSIS

Fuel consumption sharply declined during the height of the COVID-19 health crisis and Shelter-In-Place orders in effect throughout the state of California, but has largely recovered to its prior, slightly declining trajectory. Fuel prices have remained relatively high over the past several months; however, the price of fuel has no effect on Local Streets and Roads RMRA revenue as all SB1 taxes are assessed per gallon, regardless of price. The State Department of Finance (DOF) estimates that Fiscal Year 2023-2024 RMRA revenues will grow by 11.4 percent over the current fiscal year despite lower fuel consumption as scheduled SB1 tax rate increases have kept local revenue allocations growing at a modest rate.

Updated revenue projections released in May estimate that the City of Newark will receive approximately $1,148,916 of RMRA funds for Fiscal Year 2023-2024. This is an increase of 13.7% over Newark's estimated total RMRA fund revenues in Fiscal Year 2022-2023.

For Fiscal Year 2023-2024, staff recommends that City Council approve the following RMRA project list:

Project Title	Project Location
Old Town Streetscape and Complete Streets Improvements, Project No. 1258	Thornton Avenue between Olive Street and Ash Street

In the past, RMRA funds were used to help fund the City's Annual Asphalt Concrete Overlay, Slurry Seal and Sidewalk, Curb and Gutter Replacement Programs, among other projects.

The RMRA project list is neither binding nor inclusive. Including a project on the list does not obligate the City to complete the project nor does it limit the flexibility of the City to use RMRA funds toward projects not originally included on the list, so long as the project meets the eligibility criteria listed above.

FISCAL IMPACT

There is no fiscal impact associated with this action. Jurisdictions that receive SB1/RMRA funds are not required to provide local matching funds.

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 - Lenka Hovorka, Assistant City Manager

Attachments

RMRA Fiscal Year 2024 Project List Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 (SENATE BILL 1) FISCAL YEAR 2023-2024 PROJECT LIST

WHEREAS, Senate Bill 1 (SB1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects in our community that are proposed for SB1 funding and which projects are completed each fiscal year; and

WHEREAS, the City must adopt by resolution each year a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB1, with such list of projects including a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City will receive an estimated $1,148,916 in RMRA funding in Fiscal Year 2023-2024 from SB1; and

WHEREAS, this is the seventh year in which the City is receiving SB1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB1; and

WHEREAS, the City used the 2022-2024 Capital Improvement Plan to develop the SB1 project list to ensure public input into our community's transportation priorities; and

WHEREAS, the City uses a Pavement Management System to develop SB1 project lists to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

WHEREAS, the funding from SB1 will help the City maintain and rehabilitate multiple street segments and help add active transportation infrastructure throughout the City this year and into the future; and

WHEREAS, the 2022 California Statewide Local Streets and Roads Needs Assessment found that the City's streets are in "good" condition and this revenue will help the City maintain the overall quality of our road system and over the next decade; and

WHEREAS, the SB1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety and investing in complete streets infrastructure will have significant positive co-benefits statewide.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves the following list of projects to be funded in part or solely with Fiscal Year 2023-2024 Road Maintenance and Rehabilitation Account revenues:

Project Title & Description	**Project Location**	**Estimated Useful Life**	**Anticipated Start of Project**	**Anticipated Completion of Project**
Old Town Streetscape and Complete Streets Improvements, Project No. 1258 Roadway and complete street improvements that will improve access, safety, and connections for pedestrians, bicyclists, and transit users, while also serving as a catalyst for private investment in the Old Town neighborhood. The Project will reduce the number of travel lanes on Thornton Avenue from three to two, to provide the necessary right of way to construct wider sidewalks and new bike lanes. Additional pedestrian and bicycle safety and connectivity improvements will include high visibility crosswalks, curb extensions, and a new bus stop boarding island to reduce conflicts with bike lanes, all to improve the convenience and comfort of alternative travel modes.	Thornton Avenue between Olive Street and Ash Street	20 years	June 2025	December 2025

STAFF REPORT

Item F. 3.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	James Scanlin, Environmental Services Manager
SUBJECT	Waive full reading, conduct second reading by title only, and adopt an ordinance adding Chapter 8.44, "Sustainable Foodware", to the Newark Municipal Code.

An ordinance adding Chapter 8.44, "Sustainable Foodware", was introduced at the June 8, 2023, City Council meeting. A second reading of the ordinance is required prior to adoption.

The Sustainable Foodware Ordinance aims to reduce single-use plastic waste, decrease the amount of waste going to landfill, reduce the discharge of plastics to local creeks and the San Francisco Bay, and improve the beauty of the City of Newark. The ordinance aligns with a new state mandate, Assembly Bill 1276, that restricts the distribution of single-use foodware. It will also assist the City with meeting the trash reduction requirements in its stormwater discharge permit issued by the San Francisco Bay Regional Quality Control Board. The ordinance requires that food facilities eliminate the unnecessary distribution of single-use foodware and bans the use of expanded-polystyrene foodware. A robust outreach and education program will be developed and implemented to assist food facilities with compliance. Staff recommends that the City Council waive full reading and, by title only, adopt an ordinance adding Chapter 8.44, Sustainable Foodware, to the Newark Municipal Code.

Attachments

Sustainable Foodware Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK ADDING CHAPTER 8.44, "SUSTAINABLE FOODWARE", TO THE NEWARK MUNICIPAL CODE TO REGULATE THE USE OF DISPOSABLE FOODWARE TO IMPROVE THE HEALTH AND SAFETY OF THE NEWARK COMMUNITY AND ENVIRONMENT

WHEREAS, the purpose of this Ordinance is to comply with certain state laws restricting the distribution of single-use foodware accessories by restaurants and other food facilities, and to reduce the single-use plastic food service ware to improve the health and safety of the City of Newark community and environment; and

WHEREAS, reducing single-use plastic foodware waste improves the health and safety of the City of Newark's community and the environment as single-use plastics cause litter and pollution flowing to storm drains, creeks, the San Francisco Bay, and the Pacific Ocean. Reducing single-use plastic protects the health and safety of marine life; and

WHEREAS, reducing single-use plastic food service ware waste improves the beauty of the natural environment for the health and safety of the City of Newark community; and

WHEREAS, polystyrene is a problematic environmental pollutant because it breaks down into microplastics which cause significant damage to marine life and wildlife. Polystyrene is non-recyclable and non-reusable and better, recyclable, environmentally friendly materials have replaced polystyrene; and

WHEREAS, on October 5, 2021, AB 1276 was signed into law, restricting the distribution of single-use food service ware accessories (e.g., utensils, straws, stirrers, condiment packets, etc.) by restaurants and other food facilities; and

WHEREAS, the City Council wishes to have a sustainable foodware ordinance in Newark; and

WHEREAS, the City Council desires to authorize staff to enforce the sustainable foodware ordinance within Newark.

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

SECTION 1. Recitals.

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

SECTION 2. Municipal Code Amendment.

Chapter 8.44, Sustainable Foodware as contained in Exhibit A, attached hereto and incorporated herein, is added to the Newark Municipal Code.

SECTION 3. CEQA.

This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the provisions contained herein may have a significant effect on the environment. Further, the Ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 of Title 14 of the California Code of Regulations as actions taken by regulatory agencies to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.

SECTION 4. Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Ordinance or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 5. Publication and effective date.

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

Chapter 8.44 – SUSTAINABLE FOODWARE

8.44.010 - Purpose.

The City Council finds and determines that:

A. An Ordinance reducing single-use plastic foodware waste improves the health and safety of the City of Newark's community and the environment since single-use plastics cause litter and pollution flowing to storm drains, creeks, San Francisco Bay, and the Pacific Ocean. Reducing single-use plastic also protects the health and safety of marine life.

B. An Ordinance reducing single-use plastic foodware waste improves the beauty of the natural environment for the health and safety of the City of Newark community.

C. Polystyrene is a problematic environmental pollutant since it breaks down into microplastics which cause significant damage to marine life and wildlife. Polystyrene is non-recyclable and non-reusable and better, recyclable, environmentally friendly materials have replaced Polystyrene.

D. On October 5, 2021, AB 1276 was signed into law by Governor Gavin Newsom. AB 1276 restricts the distribution of single-use foodware accessories (e.g., utensils, straws, stirrers, condiment packets, etc.) by restaurants and other food facilities.

8.44.020 - Definitions.

The following definitions govern the use of terms in this chapter:

A. "Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for longer-term multiple reuse.

B. "Foodware" means food contact products used for serving, distributing, holding, packaging, and/or transporting Prepared Food including, but not limited to plates, cups, bowls, trays, clamshell containers, boxes, utensils, straws, lids, and food contact paper (e.g., wraps, bags, tray liners, etc.). The term "Foodware" includes Foodware Accessories and Standard Condiments in Disposable packaging.

C. "Foodware Accessories" include different types of Foodware such as straws, stirrers, Utensils, condiment cups and packets, cocktail sticks/picks, toothpicks, napkins, cup spill plugs, cup sleeves, and other similar accessory or accompanying Foodware used as part of food or beverage service or packaging. Detachable lids for beverage cups and food containers are not considered a Foodware Accessory.

D. "Food Facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption, as defined by the California Health and Safety Code Section 113789 or successor. It includes both permanent and temporary food facilities.

E. “Healthcare Facilities” mean places that provide healthcare to the public. Healthcare Facilities includes, but is not limited to hospitals, clinics, outpatient care centers, nursing homes, psychiatric care centers, medical offices, hospice homes, mental health and addiction treatment centers, orthopedic and other rehabilitation centers, urgent care, birth centers, etc.

F. “Polystyrene” and Polystyrene-based” means expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and is included in all or a portion of Foodware.

G. “Prepackaged Food” means any labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer.

H. “Prepared Food” means food or beverages that undergo a cooking or food preparation technique on the Food Facility’s premises for consumption by the public. Cooking or food preparation technique includes, but is not limited to the following:

1. Cooking methods, utilizing application of heat, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.
2. Beverage preparation, such as blending, brewing, steeping, juicing, diluting, or pouring.
3. Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, decorating, or icing.

Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.

I. “Standard Condiment” means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, and includes different types such as ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, and sugar/sugar substitutes.

J. “Takeout Food” means Prepared Food that is purchased to be consumed off a Food Facility’s premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party Takeout Food Delivery Service.

K. “Takeout Food Delivery Service” is a service for online food ordering and delivery of Prepared Food from a Food Facility to a customer. This service can be provided directly by the Food Facility or by a third-party.

L. “Utensils” include different types of instruments used to assist the consumption of food, e.g., forks, knives, spoons, sporks, chopsticks, and tongs.

8.44.030 – Distribution of Foodware and Foodware Accessories.

A. Food Facilities, for on-premises dining and off-premises dining (e.g., Takeout Food Delivery Service, catering off-site, etc.), shall not provide any Foodware Accessories or Standard Condiment in Disposable packaging to a consumer unless the specific type of Foodware Accessory or specific type of Standard Condiment is requested by the consumer, with the following exceptions:

1. Food Facilities that are drive-through Food Facilities may ask a drive-through consumer if the consumer wants a specific type of Foodware Accessory if the item is necessary for the consumer to consume Prepared Food or to prevent spills of or safely transport Prepared Food.

2. Food Facilities that are located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through consumer if the consumer wants a specific type of Foodware Accessory if the item is necessary for the consumer to consume Prepared Food or to prevent spills of or safely transport Prepared Food.

B. Foodware Accessories and Standard Condiment in Disposable packaging provided by Food Facilities for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of Foodware Accessory or type of Standard Condiment desired without also having to take a different type of Foodware Accessory or type of Standard Condiment. Food Facilities cannot distribute Utensils that are bundled or packaged together. Each type of Utensil (e.g., fork, spoon, knife, etc.) must be specifically requested by the consumer in order for a Food Facility to provide the item(s).

C. Nothing in this Chapter shall prohibit a Food Facility from making unwrapped Foodware Accessories available to a consumer using refillable self-service dispensers that dispense different types of Foodware Accessories one item at a time to allow for Foodware Accessories to be obtained.

D. Nothing in this Chapter shall prohibit a Food Facility from making Standard Condiment available to a consumer using refillable self-service dispensers to allow for Standard Condiment to be obtained. Food Facilities that offer Standard Condiment are encouraged to use bulk dispensers for the condiments rather than condiments packaged for single use.

E. Takeout Food Delivery Services shall provide consumers with the option to proactively request the different types of available Foodware Accessories and the different types of Standard Condiment from a Food Facility serving Prepared Food. The default option on the digital ordering/point-of-sale platforms of Takeout Food Delivery Services shall be that no Foodware Accessories or Standard Condiment are requested.

F. Takeout Food Delivery Services shall provide Food Facilities the ability to tailor the digital ordering/point-of-sale platforms so that Food Facilities can customize and itemize the different types of available Foodware Accessories (including different types of Utensils) and the different types of available Standard Condiments for consumers to proactively select.

G. If a Food Facility uses any Takeout Food Delivery Service, the Food Facility shall customize its menu with an itemized list and/or provide options of the different types of available Foodware Accessories and the different types of available Standard Condiments for consumers to proactively select. Only those specific types of Foodware Accessories or specific types of Standard Condiment proactively requested by the consumer shall be provided by the Food Facility. If a consumer does not request any Foodware Accessories or Standard Condiment, no Foodware Accessories or Standard Condiment shall be provided by the Food Facility for delivery of Prepared Food. Each type of Utensil (e.g., fork, spoon, knife, etc.) offered by the Food Facility shall also be

listed individually, unbundled on the menu, and provided by the Food Facility for delivery along with the Prepared Food only if requested by the consumer.

8.44.040 - Standards and Required Use of Foodware.

A. No Food Facility shall use Polystyrene or Polystyrene-based Disposable Foodware when providing Prepared Food.

B. Nothing in this Chapter shall conflict or be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities.

8.44.050 - Recordkeeping and Inspection.

A. Food Facilities shall keep complete an accurate record or documents of the purchase of the acceptable Foodware evidencing compliance with this Chapter for a minimum period of three years from the date of purchase.

B. The record shall be made available for inspection at no cost to the City staff (or their designee) authorized to enforce this ordinance unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Facility address. The City may, from time to time modify the requirements and inspections to enable compliance by the Food Facilities.

8.44.060 - Automatic Exemptions.

A. Prepackaged Food is exempt from the provisions of this Chapter.

B. If the City determines that a reasonably feasible Foodware that complies with this ordinance does not exist, these items will be exempt from all or select requirements of the abovementioned provisions of this Chapter until the City's Environmental Services Manager (or their designee) determines that a reasonably feasible alternative is available on the market for purchase.

C. Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

8.44.070 - Case-by-Case Consideration of Requests for Hardship Exemption.

A. Grounds for an exemption.

An exemption from any of the provisions of this Chapter may be granted by the Environmental Services Manager or designee upon demonstration by a Food Facility to the satisfaction of the City that strict application of the requirements would cause undue hardship. An "undue hardship" includes, but is not limited to the following:

1. A situation unique to the Food Facility where a suitable alternative that conforms with the requirements detailed in this ordinance does not exist for a specific application.
2. Imposing the provisions of this Chapter would cause significant economic hardship. "Significant economic hardship" may be based on, but not limited to, demonstrating that suitable Disposable Foodware is not available at a

commercially reasonable price and the additional cost associated with providing the Disposable Foodware is particularly burdensome to the Food Facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the Food Facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Environmental Services Manager or designee may consider the following information: ability of the Food Facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.

B. Request for an exemption. A request for an exemption from the requirements of this Chapter shall include all information deemed necessary by the City to render a decision, including but not limited to documentation showing the factual support for the requested exemption. A request for an exemption may be approved by the Environmental Services Manager or designee, in whole or in part, with or without conditions. The duration of the exemption, if granted, shall also be determined by the Environmental Services Manager or designee.

8.44.080 - Enforcement.

A. The Environmental Services Manager or their designee may enforce this Chapter. The enforcement provisions will commence January 1, 2024, after the outreach and education phase for Food Facilities.

B. Any violation of Section 8.44.040 is punishable as specified in Section 1.16.010 or by any other applicable law.

C. The first and second violations of Section 8.44.030 shall result in a notice of violation, and any subsequent violation of that section shall constitute an infraction punishable by a fine of twenty-five dollars for each day in violation, but not to exceed three hundred dollars annually.

D. The Environmental Services Manager or designee can modify the enforcement process from time to time to ensure compliance with this Chapter, and such authorization can include modifications to enforcement provisions, the methods, and details to issue violations, and or assess administrative fines on behalf of the City.

E. This Section shall not be interpreted to limit any otherwise available civil or administrative remedies under law.

STAFF REPORT
Item F. 4.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Adopt a resolution approving a fund balance and reserve policy

SUMMARY AND RECOMMENDATION

Establishing a fund balance and reserve policy is among the most important of the City's fiscal policies in mitigating financial risk and should be re-evaluated and updated as needed. Based on results of the Government Finance Officer Association (GFOA) structured assessment methodology, staff recommends that the City Council authorize increasing the combined reserve target level from 25% to a minimum of 30% of operating and debt service expenditures.

BACKGROUND

City Council Resolution No. 10,311 establishes goals for setting the General Fund Emergency and Fiscal Uncertainty Reserves at 15% and 10%, respectively, of General Fund final operating expenditures. As part of the Finance Department's key objectives of providing leadership in the development and updates of financial policies for the City, staff reviewed reserve policy levels to determine the appropriate level of reserves to support cash flow and manage risk.

Applying GFOA's structured approach for assessing risk, the following factors were considered:

- Revenue source stability, local disasters and other financial hardships or downturns in the local or national economy
- Contingencies for unseen operating or capital needs, including strategic investment opportunities
- Other unfunded liabilities
- Dependency of other funds on the General Fund
- Institutional changes, such as State budget takeaways and unfunded mandates
- Cash flow requirements

Using this assessment tool, a reserve goal range of 26%-35% of General Fund expenditures was derived, landing the City in the Moderate to High level of risk to retain through reserves.

GFOA Reserve Rating Scale

Rating	Target Minimum General Fund Reserve
8 -16	Minimal risk to retain through reserves. Consider target equal to the GFOA minimum recommended reserve of 16.6% (two months cash flow) of revenues/expenditures.
17-24	Low to moderate level of risk to retain through reserves. Consider reserve target of 17% to 25%.
25-31	Moderate to high level of risk to retain through reserves. Consider reserve target of 26% to 35%.
32-40	High level of risk to retain through reserves. Consider reserve target greater than 35%.

DISCUSSION/ANALYSIS

The GFOA structured approach for assessing risk covered the following eight factors where ratings for each were determined to arrive at an adjusted risk score of 29.

The eight factors and identified potential risks for the City of Newark are summarized below:

1. Vulnerability to extreme events and public safety concerns – Major extreme events the community could reasonably be subject to and the likelihood and potential magnitude of loss for each event.
    - An earthquake, recession, and pandemic are extreme, but likely, events that would require a quick and decisive response from the City.

2. Revenue source stability – Volatility of major revenue sources based on factors such as past experience and trends with that revenue, characteristics of the tax or rate payers, state or federal revenue takeaways, and economic factors.
    - Though the City's major revenue sources have been stable, they are still subject to significant swings with a recession, downturns in the economy, or possible State takeaways.

3. Expenditure stability – Spikes in expenditures, usually arising from special, non-recurring circumstances such as lawsuits; critical special projects without a funding source; or new state or federal spending requirements and unfunded mandates.
    - Potential expenditure hikes could include increased pension and health insurance costs, deferred and unexpected infrastructure repairs, State/Federal mandates, and population growth requiring additional service requirements.

4. Leverage – Common examples include unfunded pensions and unfunded assets, as well as outstanding bond indebtedness and compensated absences. Is the source of leverage very large? Does it have an off-setting funding source or asset?
    - The City is subject to significant leverage primarily due to a current bond debt and unfunded pension liabilities. There is limited risk with regard to outstanding bond indebtedness, as debt is expected to be fully covered by Measure GG sales tax revenue. With regard to pension liabilities, the City has recently begun implementing strategies to pay down our pension liabilities and will soon be proposing new strategies as well.

5. Liquidity – Intra-period cash imbalances, such as property taxes that are only

received at two major points during the year (December and June).
    - Similar to other cities, some revenues and expenditures are not received evenly throughout the year.

6. Dependence of Other Funds – Are there other funds that have a significant dependence on the General Fund?
    - The City's General Fund currently provides significant support to the other cost center departments (Recreation, Development, and Maintenance). The City is currently in the process of updating the Master Fee Schedule to bring fees closer to truer costs.

7. Growth and New Development – Is significant growth a realistic possibility in the next three to five years? This includes assessing likely potential marginal costs associated with serving new growth compared with marginal revenue and resulting gaps.
    - The City's population is expected to increase with new housing development.

8. High-priority, unfunded capital projects – Are there high-priority projects without a funding source, where reserves may be looked to as a funding source?
    - The City has a significantly underfunded Capital Improvement Plan, along with deferred maintenance and outdated infrastructure. A facilities study is currently underway to assist the City in planning for its long-term facility and maintenance needs.

Tabulating the results of the assessment, the analytical guidance derived was that the City faced a moderate to high level of risk to retain through reserves and that a target reserve level of 26% to 35% of General Fund operating revenue or expenditures be considered.

For FY 2022, the General Fund included $11.4 million for the Emergency Reserve and $10.7 million for the Fiscal Uncertainty Reserve, which in total was 34.7% of FY 2022 General Fund expenditures. This total is approximately 9.7% over the 25% total reserve goal established by the current resolution and is slightly above the 30% reserve target resulting from the application of the GFOA reserve assessment tool. Maintaining this increased reserve level goal will assist the City with cash flow needs, future economic downturns, and rising costs of pension liabilities, while also providing an immediate resource for emergencies and potential strategic opportunities.

Based on the results of the GFOA structured assessment methodology, Staff recommends that the combined target reserve level be increased from 25% to 30%.

FISCAL IMPACT

This change will not prompt an immediate change to the current reserve balance but upon review of FY 2023, year-end results may be increased or decreased depending on final General Fund expenditure results. Going forward, the General Fund Emergency and Fiscal Uncertainty Reserve will be updated after the completion of each year-end audit when final results are available. At such time, other transfers to existing reserves or funds will be evaluated and also presented to the City Council for

approval.

REVIEW AND APPROVAL

Prepared by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Redlined Resolution Draft

Resolution Redlines accepted

Presentation

RESOLUTION NO. XXXXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE GENERAL FUND EMERGENCY AND FISCAL UNCERTAINTY RESERVE POLICY

WHEREAS, the Governmental Accounting Standards Board (GASB) enacted GASB 54-Fund Balance Reporting and Governmental Fund Type Definitions; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Newark for the City to prudently prepare for emergencies, uncertain economic conditions, capital improvement needs and for equipment replacement needs; and

WHEREAS, the City determined the appropriate level of reserves based on the Government Finance Association's (GFOA) structured approach for assessing risk, which includes the evaluation of vulnerability to extreme events and public safety concerns, revenue source stability, expenditure stability, leverage, liquidity, dependency on other funds for the General Fund, growth and new development, and unfunded high priority capital projects; and

WHEREAS, Resolution No. 10311 which approved the Fund Balance Policy and Procedure on January 22, 2015, is hereby repealed.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newark, California approves the following actions supporting the Fund Balance and Reserve Policy:

1. The City will strive to maintain a combined minimum reserve target of 30% of final General Fund operating and debt services expenditures (excluding transfers) for fiscal stability, cash flow needs, contingencies, and strategic opportunities. This reserve will be called the Emergency and Fiscal Uncertainty Reserve and is intended to help the City mitigate risks and respond to financial challenges during economic downturns, emergencies, or cyclical deficits when annual expenditures exceed revenues.

   Examples may include but are not limited to the following:

   a. A catastrophic loss of critical infrastructure
   b. A State or Federally declared state of emergency
   c. Any settlement arising from a claim or judgment
   d. Variation from budgeted revenue projections
   e. Any action by another government that eliminates or shifts revenue from the City
   f. Inability of the City to meet its debt service obligations in any given year
   g. Where its use will prevent a reduction of required services
   h. Other circumstances deemed necessary by City Council to meet the claims and obligations of the City.

This balance is based on the risk assessment methodology for setting reserve levels developed by the Government Finance Officers Association (GFOA) in adequately addressing:

- Revenue source stability, local disasters and other financial hardships or downturns in the local or national economy.
- Contingencies for unseen operating or capital needs, including strategic investment opportunities.
- Unfunded liabilities such as self-insurance, pensions and retiree health obligations.
- Dependency of other funds on the General Fund.
- Institutional changes, such as State budget takeaways and unfunded mandates.
- Cash flow requirements.

2. Whenever the Emergency and Fiscal Uncertainty Reserve falls below this target, the City will strive to restore reserves to this level within five years.

3. GASB identifies reserves for the purposes of revenue stabilization, working capital needs, contingencies or emergencies as unassigned in the General Fund unless they are specifically classified as restricted or committed. The Emergency and Fiscal Uncertainty Reserve shall remain in the unassigned fund balance category.

4. The Emergency and Fiscal Uncertainty Reserve shall be reviewed at the completion of the year-end audit and transfers to other existing reserves will be evaluated based on year-end results and needs. Proposed transfers from the General Fund to increase other reserves or projects will be presented to the City Council for approval.

5. City Council may also commit or assign specific General Fund balance levels above the reserve target for other long-term goals that the Council determines to be in the best interest of the City.

6. In addition to the 30% target for the Emergency and Fiscal Uncertainty Reserve noted above, any residual unrestricted fund balance not committed or assigned shall remain in the unassigned fund balance category as unallocated.

7. The General Fund Emergency and Fiscal Uncertainty Reserve policy shall be reviewed during the Biennial Budget process and updated as needed. The review of this policy is to safeguard its effectiveness and relevance to the City's long-term needs and to ensure that the policy remains current with best practices that are based on sound risk assessment methodology developed by the GFOA.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on June 22, 2023, by _____, who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

RESOLUTION NO. XXXXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE FUND BALANCE AND RESERVE POLICY

WHEREAS, the Governmental Accounting Standards Board (GASB) enacted GASB Statement No. 54 - Fund Balance Reporting and Governmental Fund Type Definitions; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Newark for the City to prudently prepare for emergencies, uncertain economic conditions, and other needs such as capital improvement and equipment replacement; and

WHEREAS, the City determined the appropriate level of reserves based on the Government Finance Association's (GFOA) structured approach for assessing risk, which includes the evaluation of vulnerability to extreme events and public safety concerns, revenue source stability, expenditure stability, leverage, liquidity, dependency on other funds for the General Fund, growth and new development, and unfunded high priority capital projects; and

WHEREAS, Resolution No. 10311 which approved the Fund Balance Policy and Procedure on January 22, 2015, is hereby repealed.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newark, California approves the following actions supporting the Fund Balance and Reserve Policy:

1. The City will strive to maintain a combined minimum reserve target of 30% of final General Fund operating and debt services expenditures (excluding transfers) for fiscal stability, cash flow needs, contingencies, and strategic opportunities. This reserve will be called the Emergency and Fiscal Uncertainty Reserve and is intended to help the City mitigate risks and respond to financial challenges during economic downturns, emergencies, or cyclical deficits when annual expenditures exceed revenues.

   Examples may include but are not limited to the following:

   a. A catastrophic loss of critical infrastructure
   b. A State or Federally declared state of emergency
   c. Any settlement arising from a claim or judgment
   d. Variation from budgeted revenue projections
   e. Any action by another government that eliminates or shifts revenue from the City
   f. Inability of the City to meet its debt service obligations in any given year
   g. Where its use will prevent a reduction of required services
   h. Other circumstances deemed necessary by City Council to meet the claims and obligations of the City.

This balance is based on the risk assessment methodology for setting reserve levels developed by the Government Finance Officers Association (GFOA) in adequately addressing:

- Revenue source stability, local disasters and other financial hardships or downturns in the local or national economy.
- Contingencies for unseen operating or capital needs, including strategic investment opportunities.
- Unfunded liabilities such as self-insurance, pensions and retiree health obligations.
- Dependency of other funds on the General Fund.
- Institutional changes, such as State budget takeaways and unfunded mandates.
- Cash flow requirements.

2. Whenever the Emergency and Fiscal Uncertainty Reserve falls below this target, the City will strive to restore reserves to this level within five years.

3. GASB identifies reserves for the purposes of revenue stabilization, working capital needs, contingencies or emergencies as unassigned in the General Fund unless they are specifically classified as restricted or committed. The Emergency and Fiscal Uncertainty Reserve shall remain in the unassigned fund balance category.

4. The Emergency and Fiscal Uncertainty Reserve shall be reviewed at the completion of the year-end audit and transfers to other existing reserves will be evaluated based on year-end results and needs. Proposed transfers from the General Fund to increase other reserves or projects will be presented to the City Council for approval.

5. City Council may also commit or assign specific General Fund balance levels above the reserve target for other long-term goals that the Council determines to be in the best interest of the City.

6. In addition to the 30% target for the Emergency and Fiscal Uncertainty Reserve noted above, any residual unrestricted fund balance not committed or assigned shall remain in the unassigned fund balance category as unallocated.

7. The General Fund Emergency and Fiscal Uncertainty Reserve policy shall be reviewed during the Biennial Budget process and updated as needed. The review of this policy is to safeguard its effectiveness and relevance to the City's long-term needs and to ensure that the policy remains current with best practices that are based on sound risk assessment methodology developed by the GFOA.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on June 22, 2023, by _____, who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:



General Fund, Fund Balance & Reserve Policy

City Council: June 22, 2023

Fund Balance and Reserve Policy

Overview

- Purpose of Fund Balance and Reserve Policy
- GFOA Assessment Methodology
- GFOA Assessment Outcome
- Recommendations

Fund Balance and Reserve Policy

Purpose

- Prepare for contingencies
- Maintain good standing with credit rating agencies
- Ensure cash availability for core services and infrastructure

Fund Balance and Reserve Policy

GFOA Assessment Methodology

Risk Factors:

- Vulnerability to extreme events
  - earthquakes, recession, pandemic
- Revenue source stability
  - economic downturns or State/Federal takeaways)
- Expenditure stability
  - lawsuits, unfunded mandates
- Unfunded liabilities
  - pension, compensated absences

Fund Balance and Reserve Policy

GFOA Assessment Methodology

Risk Factors:

- Liquidity
  - intra-period cash imbalances
- Dependence of other Funds
  - Recreation, Development, Maintenance
- Growth
  - population and new development
- Capital projects

Fund Balance and Reserve Policy

GFOA Assessment Outcome

City of Newark's reserve target was calculated at 26% to 35%.

GFOA Reserve Rating Scale

Rating	Target Minimum General Fund Reserve
8 -16	Minimal risk to retain through reserves. Consider target equal to the GFOA minimum recommended reserve of 16.6% (two months cash flow) of revenues/expenditures.
17-24	Low to moderate level of risk to retain through reserves. Consider reserve target of 17% to 25%.
25-31	Moderate to high level of risk to retain through reserves. Consider reserve target of 26% to 35%.
32-40	High level of risk to retain through reserves. Consider reserve target greater than 35%.

Fund Balance and Reserve Policy

Recommendations

- Increase the target level from 25% to 30%
- Establish a target time period of 5 years to replenish reserves if used
- Set the review of the fund balance and reserve levels at the completion of the year-end audit
- Establish that the Fund Balance and Reserve policy be reviewed during the Biennial Budget process

STAFF REPORT

Item F. 5.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Waive full reading and, by title only, introduce ordinances repealing and replacing Chapter 3.04, "Purchasing System" of Title 3 "Revenue and Finance" of the Newark Municipal Code in its entirety and adding Chapter 3.05, "Informal Bid Procedures" to Title 3 "Revenue and Finance" of the Newark Municipal Code; adopt a resolution electing to become subject to the Uniform Public Construction Cost Accounting Act; and adopt a resolution establishing expenditure authority

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council take a number of actions to modernize and streamline the City's purchasing policies. Specifically, staff recommends that the City Council:

1. Waive full reading and, by title only, introduce ordinances repealing and replacing Chapter 3.04, "Purchasing System" of Title 3 "Revenue and Finance" of the Newark Municipal Code in its entirety and adding Chapter 3.05, "Informal Bid Procedures" to Title 3 "Revenue and Finance" of the Newark Municipal Code;
2. Adopt a resolution electing to become subject to the Uniform Public Construction Cost Accounting Act; and
3. Adopt a resolution establishing expenditure authority.

These actions will provide clear procurement requirements, modernize the City's procurement policies, and adjust and update expenditure authority thresholds.

The proposed ordinance repealing and replacing Chapter 3.04 to the Municipal Code will result in a complete overhaul of Chapter 3.04 to add clarity and resolve ambiguities regarding the City's procurement requirements and generally increase the thresholds under which more formal procurement procedures are necessary.

The proposed ordinance adding Chapter 3.05 to the Municipal Code and the resolution electing to become subject to the Uniform Public Construction Cost Accounting Act (UPCCAA) will allow the City to more effectively and efficiently proceed with and complete public projects that are $200,000 or less. Specifically, projects that are $60,000 or less can be procured through purchase order without bidding and projects that are $200,000 or less can be procured through informal bidding. Projects greater than $200,000 will still be subject to formal bidding. Currently, the City is required to formally bid all public projects that are more than $5,000. The proposed resolution establishing the expenditure authority would not take effect until the effective date of the above ordinances and would generally increase approval authority to create greater efficiencies.

BACKGROUND

Purchasing Ordinance

California Government Code Sections 54201-54205 require that local agencies adopt policies and procedures governing the purchase of materials, supplies, services, and equipment of all departments, divisions, or services of the local agency.

The City's existing purchasing ordinance has been in place since 1977 - more than 45 years. The City

Council adopted Ordinance No. 142 on March 24, 1977, which established a Purchasing System for the City by adding Chapter 3.04 to the City of Newark Municipal Code ("NMC"). NMC Chapter 3.04 and Resolution No. 10,421, previously adopted by the City Council, set forth the authority and procedures governing the purchase of materials, supplies, services, and equipment.

Uniform Public Construction Cost Accounting Act (UPCCAA)
The City is required to comply with the Public Contract Code when constructing public projects. This requires that the City publicly bid and award public projects in excess of $5,000 to the lowest responsible bidder.

As an alternative, State law allows public agencies to subject themselves to the UPCCAA which provides for the following alternative bidding procedures when an agency performs public project work by contract:

a) Public projects of $60,000 or less may be performed by negotiated contract or by purchase order;
b) Public projects of $200,000 or less may be let to contract by the informal bidding procedures set forth in the UPCCAA;
c) Public projects of more than $200,000 must be let to contract by traditional formal bidding procedures.

As of June 1, 2023, of the approximately 482 incorporated cities in California a majority, 289, have elected to become subject to the UPCCAA and 40 of the 58 counties in California have also elected to become subject to the UPCCAA. In total, 1,545 public agencies have elected to become subject to the UPCCAA. In Alameda County, the following cities have elected to become subject to the UPCCAA: Alameda, Dublin, Emeryville, Fremont, Livermore, Pleasanton, and Union City. Additionally, the County of Alameda has elected to become subject to the UPCCAA.

Expenditure Authority
Resolution No. 10,421, attached hereto for reference, establishes the current authority levels for certain types of contracts and to resolve liability and workers' compensation matters. Generally, the City Manager or Department Heads are authorized to award contracts that are $50,000 or less while all other contracts of greater value must be approved by the City Council. The City Manager is authorized to settle claims up to $25,000 for workers' compensation matters and is authorized to settle claims up to $10,000 for general liability claims. Claims of a greater amount require City Council approval.

Staff conducted a survey regarding expenditure authority in other comparable Alameda County cities. The results of that survey are in the Discussion/Analysis section of this report.

DISCUSSION/ANALYSIS
Newark's competitive bidding and expenditure authority thresholds are low in comparison to other cities as the City's existing thresholds have not been adjusted to account for inflation, which has accelerated in recent years. Staff conducted a survey and compiled information that reveals that many cities have chosen to increase their thresholds to reflect changes in economic conditions over time.

Staff surveyed comparable Alameda County cities and reviewed their purchasing policies. Purchasing guidelines and expenditure authority varies across municipalities and are tailored to each agency. The following table is a sample of certain cities and shows where comparable cities fall in reference to the purchase amount thresholds that trigger requirements for purchase orders (PO), quotes, formal bidding procedures, and Council approval. The table also includes the proposed thresholds for Newark.

City	UPCCAA	PO Required	Informal Quotes Required	Formal Bidding Required	City Manager Authority	City Council Authority
Proposed Newark	Yes	$5k	$5k - $50k	greater than $50k	less than $75k	greater than $75k
Alameda	Yes	$1k	$1k - $25k	greater than $25k	less than $75k	greater than $75k
Dublin	Yes	$5k	$5k - $45k	greater than $45k	less than $45k	greater than $45k
Fremont	Yes	$5k	$5k - $25k	greater than $25k	less than $100k	greater than $100k
Hayward	No	$5k	$5k - $75k	greater than $75k	less than $75k	greater than $75k
Livermore	Yes	$5k	$5k - $50k	greater than $50k	less than $100k	greater than $100k
Pleasanton	Yes	$10k	$10k - $100k	greater than $100k	less than $100k	greater than $100k
San Leandro	No	$5k	$5k - $25k	greater than $25k	less than $50k	greater than $50k
Union City	Yes	$5k	$5k - $50k	greater than $50k	less than $75k	greater than $75k

Proposed Purchasing Ordinance

Staff has prepared a proposed Purchasing Ordinance that provides updated thresholds, aligns with current City practices, and memorializes certain City procedures, such as competitive bidding requirements. The proposed Purchasing Ordinance is a complete repeal and replacement of NMC Chapter 3.04. The existing NMC Chapter 3.04 is attached for reference.

Broadly, NMC Chapter 3.04 provides that the City Council will establish purchasing procedures which have been adopted pursuant to Resolution No. 10,421.

The current procurement requirements pursuant to Resolution No. 10,421 are as follows:

- Up to $10,000: No procedural requirements and can be awarded by City Manager or Department Heads.
- $10,000-$50,000: Awarded by the City Manager to lowest responsible bidder pursuant to formal RFP or RFQ with minimum of 10 calendar days' notice on the City's website.
- Greater than $50,000: Awarded by the City Council to lowest responsible bidder pursuant to formal RFP or RFQ with minimum of 10 calendar days' notice on the City's website.

Certain contracts are exempt from formal bidding including, but not limited to: certain professional services, supplies and services acquired through certified bid lists of other public agencies, services or supplies that are acquired through sole-source (for example, items subject to patent), emergency purchases, and items subject to procurement process mandated by the State or Federal government.

Below is an outline of the significant provisions of the Proposed Ordinance.

Procurement Requirements – General Services, Supplies, and Equipment:

- Less than $5,000: No procedural requirements but competitive pricing expected.
- $5,000 – less than $50,000: Based on a minimum of three bids, unless not possible.
- $50,000 or greater: Formal bidding required to include 14 day website notice, notification to bidder's list and public posting and awarded to lowest responsible bidder.

Procurement Requirements – Professional Services and Exceptions:

Procurement for professional services are exempt from the procedural requirements identified above but certain types of professional services agreements must be awarded pursuant to administrative regulations that assure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices in compliance with state law.

Additionally, below is a non-comprehensive list of procurements that are exempt from the procedures for general services, supplies, and equipment:

- Where the City's requirements can be met solely by a single patented article or process or provider.

- When a contract or purchase involves goods of a technical nature, where it would be difficult for a vendor to bid on a standard set of specifications, and a thorough review of known products and a comparison of features reveals that the product would most closely meet the City's needs at the lowest cost.
- When another public agency has administered a competitive bidding process and has a current valid agreement for the same or substantially similar consultant or professional services, general services, supplies, or equipment.
- When goods or services are available through cooperative purchasing programs or consortiums, with a procurement process that meets or exceeds the City's procedures.
- When a purchase of goods and/or services involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with mandatory applicable federal or state laws or regulations.

Uniform Public Construction Cost Accounting Act (UPCCAA)
The UPCCAA was enacted in 1983 to help promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state. The UPCCAA is a voluntary program available to all public entities in the State, but it applies only to those public agencies that have "opted in" to the provisions set forth by the UPCCAA.

As noted above, the Public Contract Code requires that any public project in excess of $5,000 must be publicly bid and awarded to the lowest responsible bidder. The costs of preparing the necessary documents (including developing plans, specifications and estimates), advertising and award of a publicly bid project can often exceed $10,000. The adoption of UPCCAA can greatly reduce administrative costs and delays, allowing the City to implement and proceed with smaller projects much more efficiently and in compliance with state law. This can also help in avoiding other unquantifiable costs, such as time delays in preparing projects for bid.

As noted above, the thresholds under the UPCCAA are as follows:

a) Public projects of $60,000 or less may be performed by negotiated contract or by purchase order;

b) Public projects of $200,000 or less may be let to contract by the informal bidding procedures set forth in the UPCCAA;

c) Public projects of more than $200,000 must be let to contract by traditional formal bidding procedures.

Every five years, the UPCCAA Commission reviews the informal bid limits for inflation and other factors to determine whether adjustments should be made. If an adjustment is made, the State Controller notifies the affected public agencies. Contracts procured through informal procedures would be awarded by the City Manager, while contracts requiring formal bidding procedures would be awarded by the City Council.

The informal bidding procedures, consistent with state law, require that the City send a notice inviting informal bids to all contractors included on a City list established pursuant to guidance promulgated by the UPCCAA Commission and to all construction trade journals as specified by the Commission.

Staff has prepared a proposed ordinance adding Chapter 3.05 to the NMC (the "UPCCAA Ordinance") and a resolution for the City to "opt-in" to the UPCCAA.

The City's participation in the UPCCAA does not affect the City's obligation to require the payment of prevailing wages for any public project pursuant to State law.

Proposed Expenditure Authority Resolution
Staff has prepared a resolution establishing Expenditure Authority under a variety of circumstances. The proposed resolution establishes the following expenditure limits.

Construction Contracts, Public Works Contracts subject to the Uniform Public Construction Cost Accounting Act and contracts for maintenance.

Approval Authority	Expenditure Limit
1. Public Works Director	up to $60,000
2. City Manager	up to $200,000
3. City Council	greater than $200,000

Purchases of Equipment, Materials and Supplies not governed by the Uniform Public Construction Cost Accounting Act.

Approval Authority	Expenditure Limit
1. Department Directors	up to $15,000
2. City Manager	up to $75,000
3. City Council	greater than $75,000
4. City Manager	greater than $75,000 (utility services)

Contracts for professional, consulting or technical services.

Approval Authority	Expenditure Limit
1. Department Directors	up to $15,000
2. City Manager	up to $75,000
3. City Council	greater than $75,000
4. City Manager	greater than $75,000 (legal fees)

Workers Compensation, Litigation Liability Claims, and Settlement Authority.

Approval Authority	Expenditure Limit
1. City Manager/City Attorney Risk Manager	up to $75,000
2. City Council	greater than $75,000

As noted above, these revisions are consistent with surrounding jurisdictions. The City Manager approval for utility services and legal fees are carryovers from the existing policy. In addition to the updated expenditure authority, the proposed resolution would repeal Resolution No. 10,421 and would not take effect until the effective date of the proposed ordinances repealing and replacing the Purchasing Ordinance and the UPCCAA Ordinance.

FISCAL IMPACT

There is no direct fiscal impact associated with the proposed actions. However, implementation of the proposed ordinance is fiscally prudent as it will result in increased efficiency, which will lead to long term administrative savings.

REVIEW AND APPROVAL

Prepared by - Krysten Lee, Finance Director and Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Current Resolution 10,421 Purchasing
Current NMC Chapter 3.04
Proposed Purchasing Ordinance
Proposed UPCCAA Ordinance
Proposed UPCCAA Resolution
Proposed Expenditure Authority Resolution
Proposed Schedule A Expenditure Authority
Purchasing and Expenditure Authority Presentation

RESOLUTION NO. 10,421

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ADOPTING PURCHASING RULES AND REGULATIONS PURSUANT TO ORDINANCE NO. 142

BE IT HEREBY RESOLVED THAT, in accordance with Ordinance No. 142, entitled "The Purchasing Ordinance," the City Council of the City of Newark adopts the following purchasing rules and regulations:

SECTION 1. PURCHASING PROCEDURE

All purchases of supplies ~~and~~ , equipment and services shall be pursuant to the procedures specified in this resolution.

SECTION 2. FORMAL BIDDING PROCEDURES

Purchases and contracts for supplies and equipment with an estimated value greater than $10,000 shall be by the formal bidding procedure as follows:

a. Notice Inviting Bids. Notices inviting bids shall include a general description of the articles to be purchased, shall state where bid blanks and specifications may be secured, shall state the time and place for opening bids, shall be published at least ten (10) calendar days before the date of opening~~, and shall be published at least once in a newspaper of general circulation in the City~~on the City's website.

b. Bidder's Security. When deemed necessary, a bidder's security may be prescribed by the Purchasing Officer. Bidders shall be entitled to return of their security with the exception that a successful bidder forfeits the bid security upon refusal or failure to execute a contract within ten (10) calendar days after the notice of award of contract has been mailed. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder.

c. Bid Opening Procedure. Sealed bids shall be submitted to the Office of the City Clerk and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notice. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

d. Rejection of Bids. In its discretion, the City Council may reject any and all bids presented and re-advertise for bids.

e. Award of Contracts. Contracts shall be awarded ~~by the City Council~~ to the responsible bidder representing the lowest total cost, net of the value of the sales tax which the City would receive as a result of the sale, except as otherwise provided herein.

f. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, the City ~~Council~~ may accept the one it chooses.

g. Performance Bonds. The City Council shall have the authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interest of the City. If the City Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

SECTION 3. OPEN MARKET PROCEDURE

All purchases of supplies and equipment with an estimated value of $10,000 or less may be made in the open market without observing the procedures prescribed in the formal bidding procedure.

a. Minimum Number of Quotations. All open market purchases shall, whenever possible, be based on at least three (3) competitive quotations and shall be awarded to the responsible bidder representing the lowest total cost.

b. Records Maintained. ~~The Purchasing Officer~~Each department shall keep the record of all open market orders and the quotations submitted in competition thereon, and such records shall be open to public inspection.

SECTION 4. PROFESSIONAL SERVICES

All purchases of professional services with an estimated value of $10,000 or less may be made based on qualifications and negotiated price without a formal process. Sufficient documentation needs to be kept to demonstrate evaluation of qualifications.

a. Professional Services for architecture, landscape architecture, engineering, environmental services, land surveying or construction project management shall be obtained through a Request for Proposal (RFP) process. These contracts shall be awarded based on an RFP to determine the most highly qualified to provide the services as required in accordance with Government Code Sections 4525-4529.

b. Special Professional Services for attorneys, financial advisors or other specialized services not included above can be awarded with a RFP process, a Request for Qualifications (RFQ) process or without a competitive process depending on which

process best fits the needed service. Regardless of the process, these shall be based on qualifications and a negotiated price. Specialized Professional Services are usually needed when the city does not have the personnel resources to perform the services required.

c. An RFP is appropriate when the proposed project has sufficient specifications that a consultant can provide pricing based on those written specifications. An RFP will require detailed pricing to be submitted for the project.

An RFQ is appropriate when the proposed project has broad specifications subject to multiple approaches, many types of consultants might be interested or there is expectation that the specifications will need to be refined during the selection process. An RFQ requires general fees and fee schedules with estimated hours to be submitted for the project.

Any RFP and the RFQ shall include the following information:

1. Specification that best describe the service for the expected scope of work.
2. Proposal submittal date.
3. The selection criteria.
4. The selection process with estimated dates.
5. Pricing information.
6. Insurance requirements.
7. Business license requirements.
8. Sample Consultant Services Agreement.

The RFP or RFQ shall be distributed to interested firms, posted on the City's webpage and posted at other sources where qualified consultants can be attracted.

If questions will be answered during the process, the RFP or RFQ shall include the question and answer process to ensure the all potential proposers have the same information. The RFP/RFQ can include a date for when questions will be accepted then addendum to the RFP or RFQ will be prepared to answer the question and that addendum will be posted in the same manner as the original documents at least 3 days prior to the submittal date.

The evaluation process will generally be based on the following criteria:

1. Professional experience and qualifications.
2. Satisfaction of previous clients.
3. Project scheduling and consultant availability.
4. Evidence of success with similar projects.

5. Ability to address all project requirements.
6. Fees
7. Other needs specific to the proposed project.

SECTION 5. PUBLIC WORKS PROEJCTS

When the expenditure required for a public works project exceeds five thousand ($5,000), it shall be contracted for and let to the lowest responsible bidder after notice, in accordance with requirements of Article 4 of the California Public Contract Code and other such applicable law.

As used in this section, "public works project" shall mean:

1. A project for the erection , improvement, painting or repair of public buildings and works;
2. Work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow;
3. Street or sewer work except maintenance or repair;
4. Furnishing supplies and material for any such project, including maintenance or repair of streets or sewers.

SECTION 46. EMERGENCY PURCHASES

In case of actual emergencies, with the approval of the Purchasing Officer, the head of any using Group /Department may purchase any supplies or equipment whose immediate procurement is essential to prevent delays which may vitally affect the life, health, or convenience of citizens. A written justification shall be filed with the Purchasing Officer for all such purchases within three (3) calendar days of the date of purchase. In situations that are not actual emergencies, the City Council may authorize specific exceptions to the formal bidding process by malting a finding by motion, that an alternate process for the proposed purchase will result in a significant cost savings.

SECTION 57. INSPECTION AND TESTING

The Purchasing Officer shall implement procedures designed to inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract.

The Purchasing Officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

SECTION ~~6~~8. ANNUAL PURCHASE ~~ORDER~~ AGREEMENTS ~~CONTRACTS~~

A special type of contract "Annual Purchase ~~Order Contract~~Agreement" may be used whereby the City does not obligate itself to purchase or to accept a commodity but furnishes the vendor with an estimate of its probable needs as a guide to the amount that may be purchased. The price may be established for the period of the agreement or may be stated as a fixed discount from an ascertainable amount. An annual purchase ~~order contract~~agreement shall not extend beyond the life of one fiscal year, unless approved for renewal by the City Manager. The total estimate for each agreement must be within the City's Manager's approving authority, as outline in Section 14, and the department must have available budgeted funds for the estimate.~~Council during their review, and shall be submitted for the review of the City Council at least thirty (30) calendar days prior to awarding the contract. If after seven (7) days from the time of submittal no member of the City Council objects to a given "A.P.O. Contract," the contract shall be awarded.~~

SECTION ~~7~~9. SURPLUS SUPPLIES AND EQUIPMENT

Groups /Departments shall submit to the Purchasing Officer at such times and in such form as prescribed reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out.

SECTION ~~8~~10. EXEMPTIONS

a. Whenever Federal or State regulations require different purchasing procedures and for those items purchased through other governmental agencies, the provisions of this resolution do not apply.

~~SECTION 9. SINGLE SOURCE EXEMPTION~~

b. Single- Source Exemption: The provisions of this resolution in regard to formal bidding procedures shall not apply in the event that the City Council, by resolution, finds and declares that:

1. Formal bids would work an incongruity and would be unavailing in affecting the final results; and

2. Formal bids would not produce any advantage to the City; or,

3. It is practically impossible to obtain what is required through the formal bidding process; or,

4. The product sought or a significant portion thereof is the subject of a patent and cannot be purchased from any source other than the holder of the patent.

c. Small Purchase Exemption

Single item purchases of supplies and equipment of $500 or less may be made in the open market without observing the procedures prescribed in the formal bidding and open market procedures sections. If multiple numbers of the same item are being purchased, the total must remain less than $500 to qualify for this exemption.

SECTION ~~10~~11. OTHER GOVERNMENTAL PURCHASING AGREEMENT

The Purchasing Officer may, when offered, procure goods and services off of certified bid lists from other governmental agencies.

SECTION ~~11~~12. REPEAL

Resolution Number~~s~~. ~~5456~~ 7053, 7449, , 9816 and 10,016 are hereby repealed.

SECTION ~~12~~13. Acquisition of Equipment with Specialized Services

Both the formal bidding procedure and the open-market procedure may be dispensed with for contracts involving the acquisition and/or installation of equipment, intellectual property or other tangible products (collectively referred to as "products") and the retention of specialized services, such as consulting, training, installing, maintain or servicing the products. A modified procedure for the specialized contract must be approved by the Purchasing Officer.

SECTION 14. Schedule of Purchasing Authority and Authorization to Sign City Contracts and Claims

All limits apply only when budgeted funds are available. Items without a budget must be approved City Council.

	Contracts for Public Works Projects		
	Under $5000	**$5000 to $50,000**	**Over $50,000**
Construction or Improvement of Public Structures, Roads, Grounds, City Building and Facilities, etc.	Dept Head - Quotes	City Manager - Formal Bid	City Council - Formal Bid
	Other Purchasing/Service Contracts and Claims		
	Up to $10,000	**$10,000 to $50,000**	**Over $50,000**
Purchase of Supplies, equipment or services	Dept Head - Quotes	City Manager - Formal Bid	City Council - Formal Bid
Professional Services- Per SECTION 4 of Purchasing Rules and Regulations	Dept Head – RFP/RFQ	City Manager - RFP/RFQ	City Council – RFP/RFQ
Special Professional Services – Per SECTION 4 of Purchasing Rules and Regulation	Dept Head – RFP/RFQ/ Qualifications	City Manager - RFP/RFQ/ Qualifications	City Council – RFP/RFQ/ Qualifications
Collective Value of Contract Amendments, Task Orders, Change Orders. (Unless otherwise noted in the Contract/Agreement)	Dept Head	City Manager	City Council
Legal Fees	City Attorney	City Manager	City Manager
Claim Settlement Authority – Workers Compensation	City Manager – up to ***$25,000***		City Council
Claim Settlement Authority – General Liability Claims	Risk Manager/ City Manager	City Council	City Council
Recreation Contracts	Dept Head	City Manager	City Council
All other Contracts, Agreements, Leases, Joint Power Authorities, etc.	City Council	City Council	City Council
Purchase of Utility Services	City Manager	City Manager	City Manager

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on September 24, 2015, by Council Member Bucci, who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES:	Council Members Hannon, Bucci, Vice Mayor Collazo, and Mayor Nagy
NOES:	None
ABSENT:	Council Member Freitas
SECONDED:	Council Member Hannon

APPROVED:

s/ALAN L. NAGY
Mayor

ATTEST:

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/DAVID J. BENOUN
City Attorney

Chapter 3.04 PURCHASING SYSTEM

Sections:

3.04.010 Adopted.

In order to establish efficient procedures for the purchase of supplies, equipment and services, to secure for the city supplies, equipment and services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is adopted.

(Ord. 142 § 1, 1977)

3.04.020 Short title.

This ordinance shall be known and cited as the "purchasing ordinance of the city of Newark."

(Ord. 142 § 3, 1977)

3.04.030 Purchasing officer.

There is created the position of purchasing officer. The city manager shall be ex officio purchasing officer. The city manager may in writing delegate any of the powers and duties conferred upon him/her as purchasing officer under this chapter to any other officer or employee of the city or may contract for the performance of such duties. The purchasing officer shall have authority to:

A. Purchase or contract for supplies, equipment and services required by any using group or department in accordance with purchasing procedures prescribed by this chapter and such other rules and regulations adopted by the city council and by such administrative regulations as adopted by the purchasing officer;

B. Sell supplies and equipment which cannot be used or which have become unsuitable for city use or to exchange the same for or trade in the same on new supplies and equipment in accordance with state law.

(Ord. 142 § 2, 1977)

3.04.040 Purchase orders.

Purchases of supplies, equipment and services shall be made only by purchase order.

(Ord. 142 § 3, 1977)

3.04.050 Encumbrance of funds.

Except in cases of emergency, the purchasing officer shall not issue any purchase order for supplies, equipment or services unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged.

(Ord. 142 § 4, 1977)

3.04.060 Purchasing procedures.

Purchasing procedures shall be established by resolution of the city council.

(Ord. 142 § 5, 1977)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK REPEALING AND REPLACING CHAPTER 3.04 "PURCHASING SYSTEM" OF TITLE 3 "REVENUE AND FINANCE" OF THE CITY OF NEWARK MUNICIPAL CODE IN ITS ENTIRETY

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances and regulations not in conflict with general laws; and

WHEREAS, Section 54202 *et. seq*. of the Government Code requires the City to adopt policies and procedures, including bidding regulations, governing the purchase by the City of supplies and equipment of all departments, divisions or services of the city government; and

WHEREAS, Chapter 3.04 of the City of Newark Municipal Code ("NMC") sets forth the authority and procedures governing the purchase by the City of supplies and equipment of all departments, divisions or services of the city government; and

WHEREAS, in 1977, the City Council adopted Ordinance No. 142, which established a comprehensive purchasing system for the City by adding Chapter 3.04 to the NMC; and

WHEREAS, the City Council, on the recommendation of the City Manager and the City Attorney, desires to repeal and replace Chapter 3.04 to update and revise the purchasing rules and procedures governing the purchase of materials, supplies, services and equipment for the City; and

WHEREAS, the amendments to the Municipal Code propose to repeal and replace Chapter 3.04 "Purchasing System" of Title 3 "Revenue and Finance" of the NMC in its entirety, as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from environmental review in accordance with California Environmental Quality Act Guidelines section 15061(b)(3), the general exemption for projects with no potential for significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment will have a significant effect on the environment.

SECTION 3. Municipal Code Amendment. The City Council hereby approves the amendments to the NMC, more particularly, repealing Chapter 3.04 "Purchasing System" of Title 3 "Revenue and Finance" of the City of Newark Municipal Code in its entirety, and replacing it with the text shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

EXHIBIT A

Chapter 3.04

PURCHASING SYSTEM

3.04.010 Adoption.

In order to establish procedures for the purchase of materials, supplies, software subscriptions, services, and equipment, to secure for the City materials, supplies, services, and equipment at the lowest possible cost commensurate with the level of quality required, to exercise financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is adopted.

3.04.020 Definitions.

For the purposes of this chapter, the words set out in this section shall have the following meanings:

A. "Consultant or professional services" means the services rendered by architects, attorneys, engineers, doctors, financial consultants, planning or environmental consultants, investment advisors, bank or trustee officers, and other professional or specialized consultants.

B. "Contract" means any agreement to do or not do a certain thing. For the purposes of this chapter, "contract" and "agreement" are synonymous. The term "contract" includes, but is not limited to, a purchase order; a contract for services; an addendum or change order, which means a change or addendum to an executed contract; a letter of agreement; and a memorandum of understanding.

C. "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

D. "General services" means and includes any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including, but not limited to, the following:

1. Maintenance or nonstructural repair of city buildings, structures or improvements which does not require engineering plans, specifications or design, including, but not limited to, unscheduled replacement of broken windowpanes, fire extinguisher maintenance, minor roof repairs, plumbing, elevator maintenance, custodial services and pest control, etc.;

2. Repair, modification and maintenance of city equipment and software;

3. Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of city supplies and equipment;

4. Replanting, care or maintenance of public grounds, including, but not limited to, maintenance of trees, shrubbery, flowers, and lawns;

5. Providing other miscellaneous services to facilitate city operations;

6. Performing repair, demolition or other work required to abate nuisances under this code;

7. Licensing software services;

8. Leasing or rental of equipment (personal property) for use by the City;

9. Maintenance of equipment owned or leased by the City.

"General services" does not include consultant or professional services, or work associated with a public project.

E. "Goods of a technical nature" means hardware, software, or communications equipment, or any item that is substantially similar to the foregoing as determined by the Purchasing Agent.

F. "Materials, Supplies and equipment" means and includes tangible goods, supplies, equipment, vehicles, printing, materials, and furniture and furnishings purchased on behalf of the City.

G. "Public project" shall have the meaning given that term by the Uniform Public Construction Cost Account Act and referenced in Chapter 3.05.

3.04.030 Purchasing Agent designated.

The City Manager is designated as ex officio Purchasing Agent. The Purchasing Agent may delegate all or a portion of the contracting or purchasing duties to any city staff member. The Purchasing Agent shall have the authority to:

A. Contract for or procure consultant or professional services, general services, supplies and equipment required by the City, in accordance with this chapter and as may be established by administrative procedures by the Purchasing Agent;

B. Negotiate and recommend execution of contracts for the purchase of consultant or professional services, general services, supplies and equipment;

C. Act to procure for the City the necessary quality in consultant or professional services, general services, supplies and equipment at the lowest cost to the City;

D. Prepare and recommend to the City Council revisions and amendments to this chapter;

E. Establish and maintain such forms and administrative procedures as are reasonably necessary to the operation of this chapter;

F. Supervise the inspection of all consultant or professional services, general services, supplies and equipment purchased to ensure conformance with specifications;

G. Pursuant to Chapter 2.38 of the Newark Municipal Code, arrange the sale or disposal of all supplies and equipment which cannot be used by the City, or which have become unsuitable for city use;

H. Maintain a bidder's list and other records necessary for the efficient acquisition of consultant or professional services, general services, and supplies and equipment;

I. Join with other governmental agencies in joint purchasing endeavors where the purchasing procedures conform to the provisions of this chapter and state law.

3.04.040 Purchasing award—Factors to be considered for responsiveness and responsibility.

The following factors shall be considered in determining the responsiveness of potential contracts and purchases and the responsibility of vendors and bidders in accordance with applicable law:

A. The amount of the contract or the purchase price;

B. The ability, capacity and skill of the bidder or vendor to perform the contract or provide the service required;

C. The ability of the bidder or vendor to perform the contract or provide the service promptly, or within the time specified, without delay or interference;

D. The reputation and experience of the bidder or vendor;

E. The previous experience of the City with the bidder or vendor;

F. The previous and existing compliance by the bidder or vendor with applicable laws and ordinances;

G. The sufficiency of the bidder's or vendor's financial resources and ability to perform the contract or provide the service;

H. The quality, availability, and adaptability of the supplies or contractual services to the particular use required;

I. The ability of the bidder or vendor to provide future maintenance and service for the subject of the contract or purchase;

J. The number and scope of conditions attached to the contract or purchase;

K. The purchase of supplies, whenever feasible, containing the highest amount of postconsumer and recovered materials practicable. In all cases, these products must meet reasonable performance standards, and be readily available at a competitive price. In addition, all equipment bought, leased or rented shall, wherever feasible, be compatible with the use of other recycled products purchased by the City;

L. In the event that two (2) or more potential contracts or bids are received from responsible bidders or vendors for the same total amount or unit price, quality and service being equal, preference shall be given to the local vendor, or the City may accept the lowest bid made by negotiation with the tie bidders and the Purchasing Agent.

3.04.050 Contracts and purchases of general services, supplies and equipment - Less than five thousand dollars ($5,000).

For purchases of general services or supplies and equipment of less than five thousand dollars ($5,000), informal quotations should be obtained. Comparative pricing is expected to secure the lowest price.

3.04.060 Contracts and purchases of general services, supplies, and equipment—Greater than or equal to five thousand dollars ($5,000) and less than fifty thousand dollars ($50,000).

A. Purchases of general services, supplies and equipment greater than or equal to five thousand dollars ($5,000) and less than fifty thousand dollars ($50,000) shall be based on at least three (3) quotations unless the Purchasing Agent determines that it is not possible to obtain three (3) quotations based on existing circumstances. The quotations shall be in writing, which writings may include electronic mail transmissions. Quotations with the required documentation shall be submitted to the Finance Department for approval by the Purchasing Agent. The purchase of any general services, supplies and equipment greater than or equal to five thousand dollars ($5,000) and less than fifty thousand dollars ($50,000) shall be consistent with the factors stated in Section 3.04.040.

B. At the discretion of the Purchasing Agent, the competitive bidding procedure set forth in Section 3.04.070 may be used for any acquisition of general services, supplies and equipment, regardless of the value.

3.04.070 Contracts and purchases of general services, supplies, and equipment— Greater than or equal to fifty thousand dollars ($50,000).

Purchases of general services and supplies and equipment with a cost greater than or equal to fifty thousand dollars ($50,000) shall comply with the competitive bidding procedure set forth in this section, except as provided in Section 3.04.080.

A. Notices inviting bids shall include a general description of the services and/or articles to be purchased or sold, where bid blanks and specifications may be obtained, the time and place for bid openings, and whether a bid deposit or bond and a faithful performance bond will be required.

B. Notices inviting bids shall be posted in at least one (1) public place in the City and posted on the City’s website at least fourteen (14) calendar days before the date of opening the bids.

C. The Purchasing Agent shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidder’s list and may advertise the notice inviting bids in applicable publications readily accessible to the public.

D. When deemed necessary by the Purchasing Agent, any bidder may be required to submit a bid deposit or bond in an amount determined by the Purchasing Agent. A successful bidder (and his surety, if a bond is furnished) shall be liable for any damages upon the bidder’s failure to enter into a contract with the City or upon the bidder’s failure to perform in accordance with the tenor of their bid.

E. When deemed necessary by the Purchasing Agent or City Council, any person or entity entering into a contract with the City may be required to furnish a faithful performance deposit or bond in an amount determined by the Purchasing Agent or City Council.

F. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

G. At its discretion, the City may reject all bids presented and re-advertise for bids.

H. Contracts shall be awarded by the City to the lowest responsive, responsible bidder, except as otherwise provided herein.

I. If two (2) or more bids received from responsible bidders are for the same total amount or unit price, quality and service being equal, preference shall be given to the local vendor.

3.04.080 Exceptions.

A. Contracts or purchases involving the acquisition of consultant or professional services are exempt from the provisions of this chapter; however, the procurement of such services shall be subject to the following:

1. With respect to contracts for or procurement of professional services from private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms, the Purchasing Agent shall establish administrative procedures to assure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices in compliance with Government Code Section 4526.
2. The Purchasing Agent may utilize a request for quotation or request for proposal to ensure the services are matched with the needs of the City.

B. Any request for an exception under this subsection shall identify the nature of the contract or purchase, amount of the contract or purchase, and the reasons why competitive bidding is not feasible and shall be subject to Purchasing Agent approval. The provisions of this chapter approval shall not apply to the following:

1. Where the City's requirements can be met solely by a single patented article or process or provider;
2. Situations where no bids have been received following bid announcements conducted pursuant to the provisions of this chapter;
3. When an emergency requires that an order be placed without complying with this chapter;
4. When a contract or purchase involves goods of a technical nature, where it would be difficult for a vendor to bid on a standard set of specifications, and the Purchasing Agent undertakes a thorough review of known products and a comparison of features which would most closely meet the City's needs at the lowest cost;
5. Public projects, pursuant to Chapter 3.05;
6. When another public agency has administered a competitive bidding process substantially similar to the City's process as determined by the Purchasing Agent and has a current valid agreement for the

same or substantially similar consultant or professional services, general services, supplies or equipment;

7. When goods or services are available through cooperative purchasing programs or consortiums, provided the City's Purchasing Agent approves of such participation or if the underlying purchase was made using quotation or bid procedure at least as restrictive as outlined in this chapter;
8. When a purchase of goods and/or services involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with mandatory applicable federal or state laws or regulations. Such laws or regulations may be incorporated in administrative policies, and periodically updated, as required.
9. When formal bids would work an incongruity and would be unavailing in affecting the final results and formal bids would not produce any advantage to the City.

3.04.090 Splitting orders prohibited.

The purchasing dollar limits set forth in this chapter are determined on a per order basis. It is unlawful to split or separate into smaller orders the contract or purchase of general services, supplies and equipment for the purpose of evading the competitive bidding provisions of this chapter.

3.04.100 Purchase orders.

Purchases greater than or equal to five thousand dollars ($5,000) shall be documented by purchase orders prepared by the Purchasing Agent in accordance with adopted administrative policies.

3.04.110 Availability of sufficient funds.

No purchase shall be transacted until it has been ascertained that there is, to the credit of the department of the City for whose benefit such purchase is to be made, a sufficient appropriated balance in excess of all unpaid obligations to defray the amount of such purchase.

3.04.120 Inspection and review.

The Purchasing Agent shall require the inspection of supplies and equipment delivered, and contractual services performed, to determine their conformance with the specifications and requirements set forth in the purchase order or contract.

3.04.130 Public projects.

Public projects as defined by the Uniform Public Construction Cost Accounting Act (Section 22000 et seq. of the California Public Contract Code) shall follow the purchasing procedures as set forth in Section 22032 et seq. of the Public Contract Code.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK ADDING CHAPTER 3.05 TO THE NEWARK MUNICIPAL CODE TO PROVIDE INFORMAL BIDDING PROCEDURES UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (SECTION 22000, ET SEQ. OF THE PUBLIC CONTRACT CODE)

WHEREAS, the City of Newark is subject to the provisions of the California Public Contract Code governing how and when contracts for public projects are to be advertised, bid and awarded; and

WHEREAS, the Public Contract Code generally requires that public projects with a value of $5,000 or more must be publically bid; and

WHEREAS, the public bidding process requires the City to comply with complex procedures and process; and

WHEREAS, the public bidding process is time consuming and for small projects can impose requirements that are out of proportion to the value of the work being contracted; and

WHEREAS, the Uniform Public Construction Cost Accounting Act, Public Contract Code section 22000 *et seq.* (the "Act"), authorizes the Uniform Construction Cost Accounting Commission (the "Commission") which has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of, or in the contracting for, construction of public projects; and

WHEREAS, the Act allows public agencies that elect to follow these uniform public construction cost accounting procedures to use alternative methods for the bidding of public projects; and

WHEREAS, these alternative procedures, among other things, would allow the City to use informal procedures to contract for certain public projects with a value greater than $5,000; and

WHEREAS, the City Council desires to elect to become subject to the Uniform Public Construction Cost Accounting Act.

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

Section 1: Municipal Code Amendment

Chapter 3.05 is hereby added to the Municipal Code of the City of Newark to provide as follows:

"CHAPTER 3.05 – INFORMAL BID PROCEDURES

Section 3.05.010 - Informal Bid Procedures.

Public projects, as defined by the Uniform Public Construction Cost Accounting Act ("ACT") and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

Section 3.05.020 - Contractors List.

A list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

Section 3.05.030 - Notice Inviting Informal Bids.

Where a public project is to be performed which is subject to the provisions of this Chapter, a notice inviting informal bids shall be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 3.05.020, and to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the Director of Public Works, provided however:

A. If there is no list of qualified contractors maintained by the City for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.

B. If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting bids may be sent exclusively to such contractor or contractors.

Section 3.05.040 - Award of Contracts.

The City Manager is authorized to award informal contracts pursuant to this Section."

Section 2: Publication and Effective Date. This Ordinance shall take effect thirty (30) days from the date of its adoption. Before expiration of fifteen (15) days after its adoption, this Ordinance shall be published in The Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ELECTING TO BECOME SUBJECT TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code section 22000, et seq., the Uniform Public Construction Cost Accounting Act (the "Act"), establishes such a uniform cost accounting standard; and

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the construction of public projects; and

WHEREAS, the City intends to subject itself to the Act.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby elects under Public Contract Code Section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs that the City Clerk notify the State Controller forthwith of this election.

CITY COUNCIL RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ESTABLISHING EXPENDITURE AUTHORITY

WHEREAS, the City Council previously adopted a resolution establishing certain limits of expenditure authority; and

WHEREAS, the City Council now desires to adjust the City's expenditure authority schedule to increase efficiencies of work through the reduction of limitations and approval processes; and

WHEREAS, the contracts and purchases subject to this resolution must first be approved by the City Council through the budget appropriation process.

NOW THEREFORE, BE IT RESOLVED, as follows:

1. That the City Council of the City of Newark amends and establishes a Schedule of Expenditure Authority for City Agreements as set forth in Schedule A, which is attached hereto and incorporated herein.

2. That those Agreements not specified in Schedule A requiring the expenditure of funds shall be approved by the City Council.

3. That the City Council of the City of Newark is, concurrently with adoption of this Resolution, introducing ordinances repealing and replacing Chapter 3.04, "Purchasing System" and adding Chapter 3.05, "Informal Bid Procedures" to Title 3 "Revenue and Finance" of the Newark Municipal Code (the "Ordinances").

4. That, upon approval by the City Council, and following the effective date of the Ordinances, this Resolution shall supersede and repeal Resolution No. 10,421.

5. That the Mayor, or in the Mayor's absence, the Vice-Mayor, and the City Manager, and their duly authorized delegate, are authorized to execute all agreements that bind the City of Newark. All agreements shall be attested and witnessed by the City Clerk and shall be in a form and substance approved by the City Attorney.

6. The City Manager, City Attorney and City Clerk are authorized to make all approvals, expend funds, enter into any agreements, and take any and all actions necessary or appropriate to carry out and implement the terms of this Resolution and to administer the City's obligations, responsibilities and duties to be performed herein.

Schedule A

Schedule of Expenditure Authority for City Agreements

The City Council establishes this schedule setting forth expenditure authority at certain monetary levels. Expenditure authority assumes that services and/or purchases are budgeted. Unless delegated in writing, only the Mayor and the City Manager may execute an agreement binding the City of Newark. All agreements must be attested and witnessed by the City Clerk and approved as to form and legal substance by the City Attorney. The expenditure limits include the total contract value including any amendments and/or change orders.

A. Construction Contracts, Public Works Contracts subject to the Uniform Public Construction Cost Accounting Act and contracts for maintenance.

Approval Authority	Expenditure Limit
1. Public Works Director	up to $60,000
2. City Manager	up to $200,000
3. City Council	greater than $200,000

B. Purchases of Equipment, Materials and Supplies not governed by the Uniform Public Construction Cost Accounting Act.

Approval Authority	Expenditure Limit
1. Department Directors	up to $15,000
2. City Manager	up to $75,000
3. City Council	greater than $75,000
4. City Manager	greater than $75,000 (utility services)

C. Contracts for professional, consulting or technical services.

Approval Authority	Expenditure Limit
1. Department Directors	up to $15,000
2. City Manager	up to $75,000
3. City Council	greater than $75,000
4. City Manager	greater than $75,000 (legal fees)

D. Workers Compensation, Litigation Liability Claims, and Settlement Authority.

Approval Authority	Expenditure Limit
1. City Manager/City Attorney Risk Manager	up to $75,000
2. City Council	greater than $75,000



Purchasing Policy Revisions and Construction Cost Accounting Act

City Council: June 22, 2023

Overview

City Council: June 22, 2023

- Ordinance Repealing and Replacing Chapter 3.04 “Purchasing System”
- Ordinance Adding Chapter 3.05 “Informal Bid Procedures”
- Adopt a Resolution Electing to Become Subject to the Uniform Public Construction Cost Accounting Act
- Adopt a Resolution Establishing Expenditure Authority

Purchasing Ordinance

City Council: June 22, 2023

- Government Code Sections 54202 et seq. require the City to adopt policies and procedures governing the City's purchase of supplies and equipment for all departments, divisions or services.
- The City Council adopted the current purchasing ordinance in 1977.
- The City Council's existing purchasing resolution was adopted in 2015.

Purchasing Ordinance

City Council: June 22, 2023

Current Bidding Requirements for General Services, Supplies and Equipment

- Up to $10,000: No procedural requirements
- Greater than $10,000: Formal Request For Proposal (RFP) or Request for Qualifications (RFQ) with minimum of 10 calendar days' notice on the City's website

Purchasing Ordinance

City Council: June 22, 2023

Non-Comprehensive Exceptions to Formal Bidding

- Certain professional services
- Emergency purchases
- Supplies and services purchased through certified bid lists
- Items subject to patent or other sole source basis
- Cooperative purchasing agreements

Purchasing Ordinance

City Council: June 22, 2023

Proposed Ordinance

- Less than $5,000: No procedural requirements
- $5,000-$49,999: Based on a minimum of three bids unless infeasible
- $50,000 or greater: Formal RFP or RFQ with minimum of 14 calendar days' notice on the City's website and public posting

Purchasing Ordinance

City Council: June 22, 2023

Non-Comprehensive Exceptions to Formal Bidding

- Certain professional services
- Goods of a technical nature
- Emergency purchases
- Supplies and services purchased through certified bid lists
- Items subject to patent or other sole source basis
- Cooperative purchasing agreements

Uniform Public Construction Cost Accounting Act

City Council: June 22, 2023

Background

- Public Contract Code: Formal bidding for all projects in excess of $5,000
- 289 of 482 cities participate in the UPCCAA including Alameda, Dublin, Emeryville, Fremont, Livermore, Pleasanton and Union City
- 1,545 total public agencies participate in the UPCCAA

Uniform Public Construction Cost Accounting Act

City Council: June 22, 2023

Proposed Ordinance and Resolution

- $60,000 or less: Negotiated contract or purchase order
- $200,000 or less: Informal bidding procedures under State law
- Greater than $200,000: Formal Request for Proposal (RFP)

Expenditure Authority

City Council: June 22, 2023

Current Expenditure Authority

- Up to $10,000: Department Head Approval
- Up to $50,000: City Manager Approval
- Greater than $50,000: City Council Approval
- Workers' Compensation Claims up to $25,000: City Manager Approval
- General Claims up to $10,000: City Manager Approval

Expenditure Authority

City Council: June 22, 2023

Proposed Expenditure Authority

- Up to $15,000: Department Head Approval
- Up to $75,000: City Manager Approval
- Greater than $75,000: City Council Approval
- Workers' Compensation Claims up to $75,000: City Manager Approval
- General Claims up to $75,000: City Manager Approval

Expenditure Authority

City Council: June 22, 2023

Proposed Expenditure Authority

- Repeal Resolution No. 10,421
- Take effect upon the effective date of the proposed ordinances

Recommendation

City Council: June 22, 2023

Staff recommendation

- Ordinance Repealing and Replacing Chapter 3.04 “Purchasing System”
- Ordinance Adding Chapter 3.05 “Informal Bid Procedures”
- Adopt a Resolution Electing to Become Subject to the Uniform Public Construction Cost Accounting Act
- Adopt a Resolution Establishing Expenditure Authority

STAFF REPORT

Item H. 1.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	David Benoun, City Manager
SUBJECT	Closed Session pursuant to Government Code Section 54957, Public Employee Performance Evaluation, Title: City Manager

STAFF REPORT

Item H. 2.

DATE	06/22/2023
TO	Honorable Mayor and City Council Members
FROM	David Benoun, City Manager
SUBJECT	Closed session for conference with Labor Negotiator pursuant to California Government Code Section 54957.6. Agency Designated Representative: Mayor Hannon, Unrepresented employee: City Manager Benoun