CITY OF NEWARK
CITY COUNCIL

City Administration Building, City Council Chambers

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

AGENDA

Thursday, February 27, 2025
7:00 P.M.

Michael K. Hannon, Mayor
Eve Marie Little, Vice Mayor
Matthew Jorgens, Council Member
Terrence Grindall, Council Member
Julie Del Catancio, Council Member

A. ROLL CALL

B. PRESENTATIONS

1. Alameda County Mosquito Abatement District 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 February 13, 2025, minutes

3. Adopt a resolution approving the Consulting Services Agreement with Lance, Soll & Lunghard, LLP (LSL), Certified Public Accountants, for Professional Auditing Services

4. Adopt a resolution approving a modification to a contractual services agreement with Surf to Snow Environmental Resource Management, Inc. to conduct inspections of industrial and commercial facilities as required by the City's stormwater discharge permit

5. Adopt a resolution authorizing the City Manager to execute Contractual Service Agreements for On-Call Civil Engineering Services with the following consultants: Coastland Civil Engineering, LLP, CSW-Stuber Stroeh Engineering Group, Inc., Haley & Aldrich, Inc., and F.J. Kennedy and Associates, Inc.

6. Adopt a resolution acknowledging receipt of the report made by the Fire Chief of the Alameda County Fire Department regarding the inspection of certain occupancies required to perform annual inspections pursuant to California Health and Safety Code Section 13146.2 and 13146.3, which includes educational and residential occupancies

E. PUBLIC HEARINGS

1. Consideration of an Appeal from the decision of the Public Works Director to issue a tree removal permit to the Waterford Association authorizing removal of a Eucalyptus Tree on private property located at 6200 Buena Vista Drive

F. OTHER BUSINESS

1. Adopt a resolution authorizing the City Manager to execute the amendment to the Affordable Housing Loan Agreement for the Thornton Avenue Apartments project, including the Purchase and Sale Agreement, deed of trust and all related documents necessary to complete the purchase and conveyance of property located at 6347-6375 Thornton Avenue, a Short-Term Lease Agreement with Thornton, L.P. and a Lease Option Agreement with Thornton, L.P. for said property, and adopt a resolution to declare the property exempt surplus land. Exempt from the CEQA per CEQA Guidelines Sections 15061(b)(3) and 15312.

2. Community Preservation Presentation

3. Adopt a resolution to appoint Corazon Dino as an Interim Human Resources Director pursuant to Government Code section 21221(h)

G. CITY MANAGER UPDATES

H. 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.

1. Adopt a resolution approving the Mayor's appointments to the Planning Commission and Measure GG Tax Oversight Committee

I. CLOSED SESSION

1. Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6.

   Agency designated representatives: Assistant City Manager Hovorka, Interim Human Resources Director Dino, and Special Counsel Jesse Lad
   Employee Organization: The Newark Police Association

   Agency designated representatives: Assistant City Manager Hovorka, and Interim Human Resources Director Dino
   Employee Organizations: The Newark Police Management Association and the Newark Association of Miscellaneous Employees
   Unrepresented Employees: Employees subject to the Compensation and Benefit Plan for the Confidential Employee Group

   Agency designated representative: Interim Human Resources Director Dino
   Unrepresented Employees: Employees subject to the Compensation and Benefit Plan for the Management, Supervisory, and Professional Employee Group

J. ADJOURNMENT

MEETING INFORMATION

Members of the public may attend the meeting in person, watch online, or watch on Cable Channel 26. The ability to observe online 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.

Cable Channel 26 - if the meeting does not broadcast live, please contact your service provider and request the City of Newark channel lineup.

Zoom will no longer be available for public participation unless required by Assembly Bill 2449. Should a Council Member or the Mayor attend the meeting via Zoom pursuant to Assembly Bill 2449, then the Webinar ID No. 875 3973 0896 will be activated. The Mayor will make an announcement at the beginning of the meeting that the City will be allowing public comment via Zoom. Raise your virtual hand to notify the City Clerk that you would like to speak during the item that you wish to speak on.

How to submit written Public Comment:
Send an email to City Clerk by 3:00 p.m. the day of the meeting. Please identify the agenda item number in the subject line of your email. Emails will be compiled into one file and will be distributed to the City Council before the meeting.

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 https://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.

Mission Statement
It is our mission to serve and partner with our community to continually enhance the quality of life of everyone in Newark.

Executive Team Members

David J. Benoun City Manager	**Lenka Hovorka** Assistant City Manager
Kristopher J. Kokotaylo City Attorney	**Steven Turner** Community Development Director
Jonathan Arguello Police Chief	**Edwin Miranda** CIO/Information Technology Director
Howard Young Public Works Director	**Cora Dino** Interim Human Resources Director
Krysten Lee Finance Director	**Ryan Nishimoto** ACFD Deputy Chief
Nicholas Cuevas, Recreation and Community Services Director	

STAFF REPORT

Item B. 1.

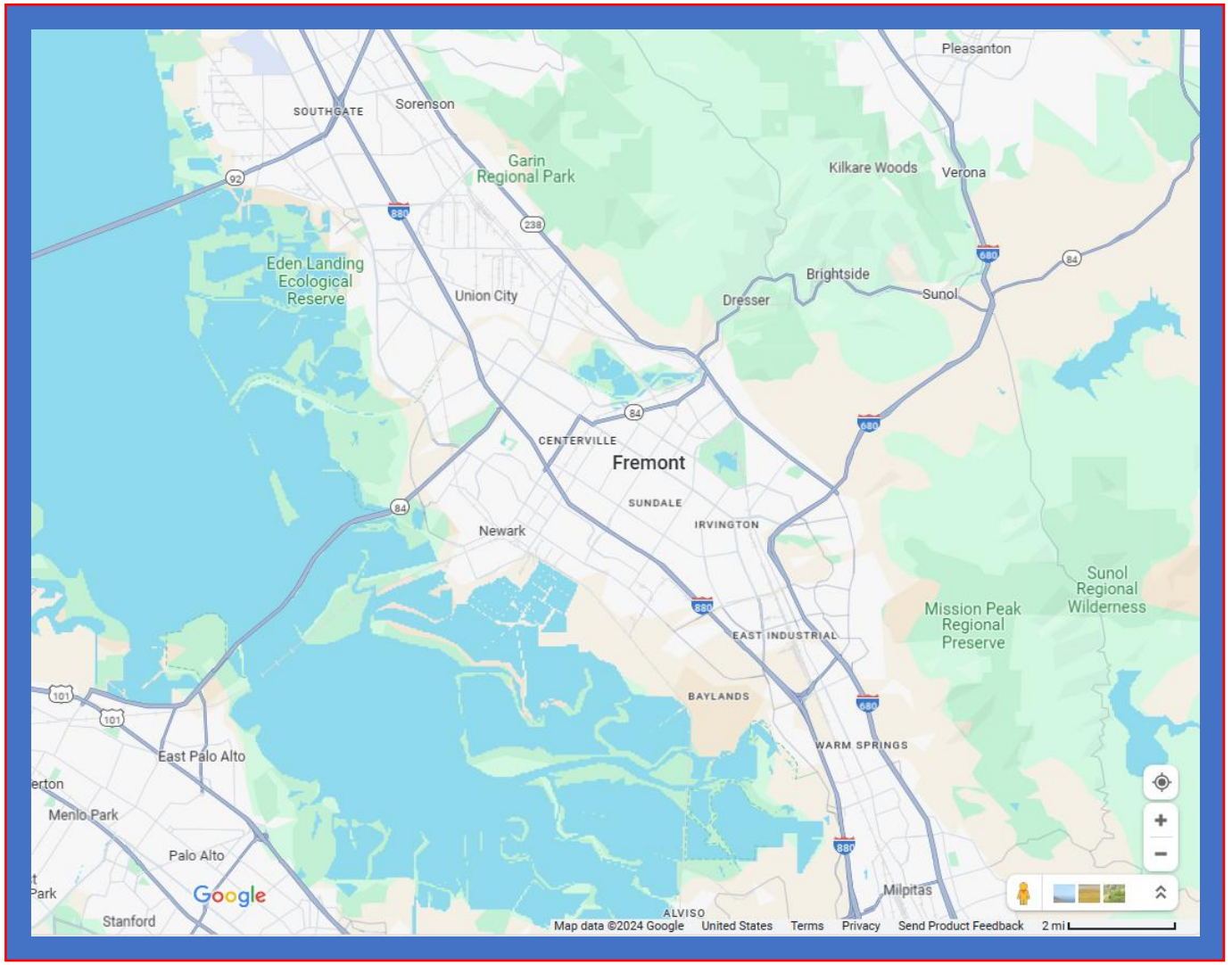
DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Alameda County Mosquito Abatement District Presentation

It is the overall goal of the Alameda County Mosquito Abatement District (District) to provide for the public's health and comfort by carrying on a program of mosquito control and source reduction. Public Outreach Manager Judith Pierce and Board Trustee Eric Hentschke will provide a presentation on the District's activities.

Attachments

Presentation
Insect Identification
Newark Information

Mosquitoes and Newark



Presentation Overview

- Introduction to district and to Judith Pierce, Public Outreach Coordinator
- Why are mosquitoes so common in Newark?
- What can we do to decrease mosquitoes?
- What can community engagement look like?

Why are mosquitoes so common here?







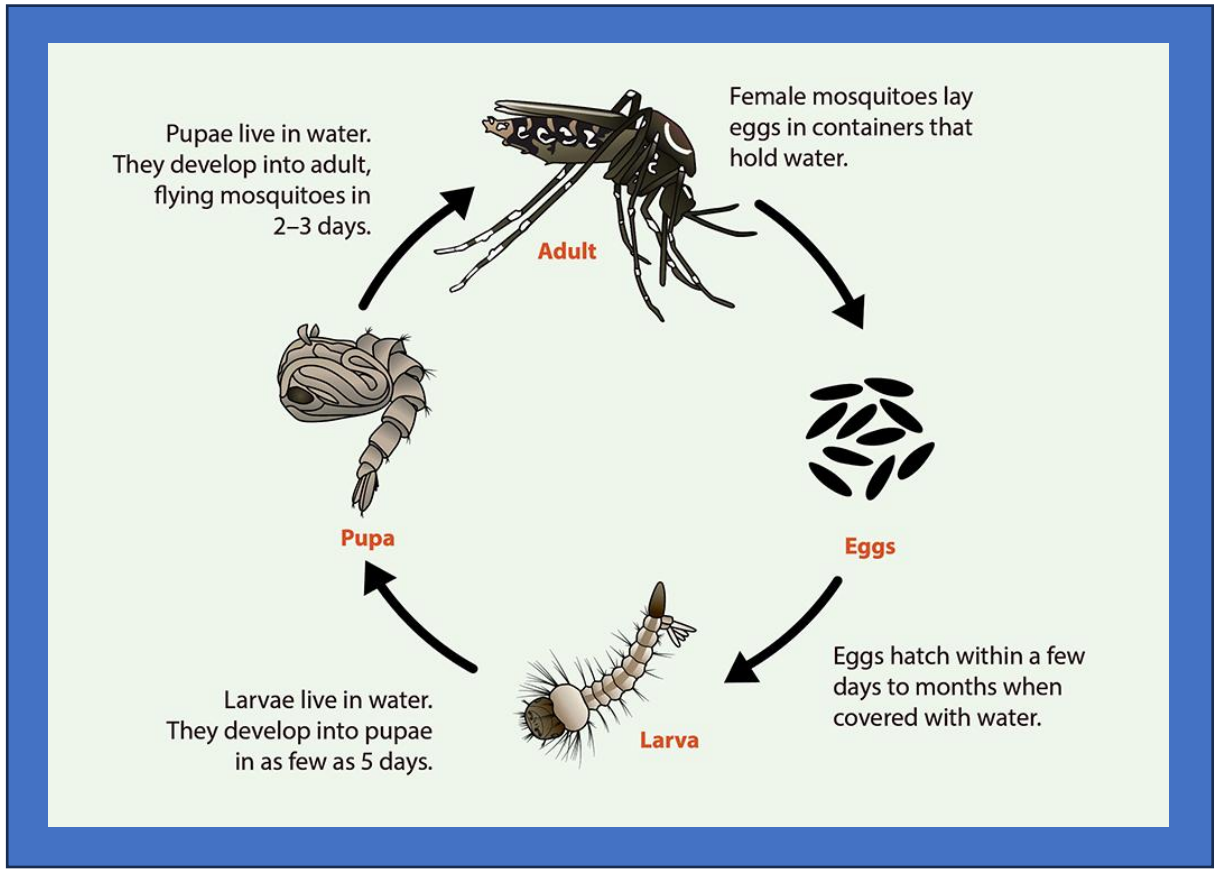








Mosquito life-cycle



Residents can interrupt the cycle



What Do Mosquitoes Need to Reproduce?

- Standing water to lay eggs
  - can be as small as a bottle cap of water
- 1 to 2 weeks to hatch and develop
- A blood meal from animals or humans to produce eggs





We need help to reduce mosquitoes in Newark



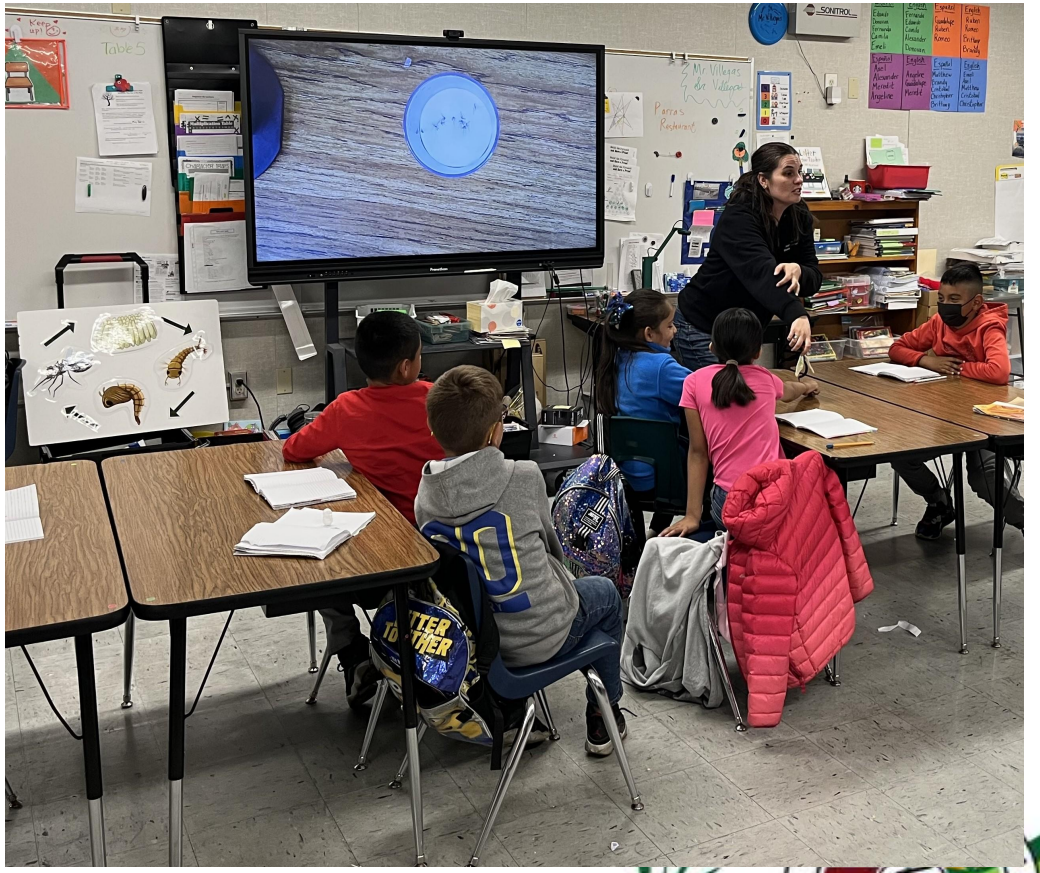





What does an integrated pest management approach to mosquito control look like?







Local officials are ideal partners in community action and education



Assist mosquito control technicians with education and connection to neighbors

Engaging with groups that can provide support and insight for community needs such as languages, media outreach, safety concerns etc.

Through partnership, local officials can help us do our jobs better

- Clear up questions about mosquitoes versus other insects
- Referring to ACMAD when appropriate
- Asking us to participate in events and community outreach

Thank you for your time!



Contact:

Judith Pierce, Public Education Officer

510-783-7744

www.mosquitoes.org

WHAT IS FLYING NEAR THE MARSH?

When you live near a wetland, you will see and experience many insects, most of which are harmless. Often individuals will confuse midges, gnats, crane flies, or other flying insects with mosquitoes because these insects also live near water.







Mosquitoes: smaller than a thumbnail, high pitched buzzing sound, typically do not swarm, females bite



Crane Fly



Midge



Midge Swarm



Wood Gnat

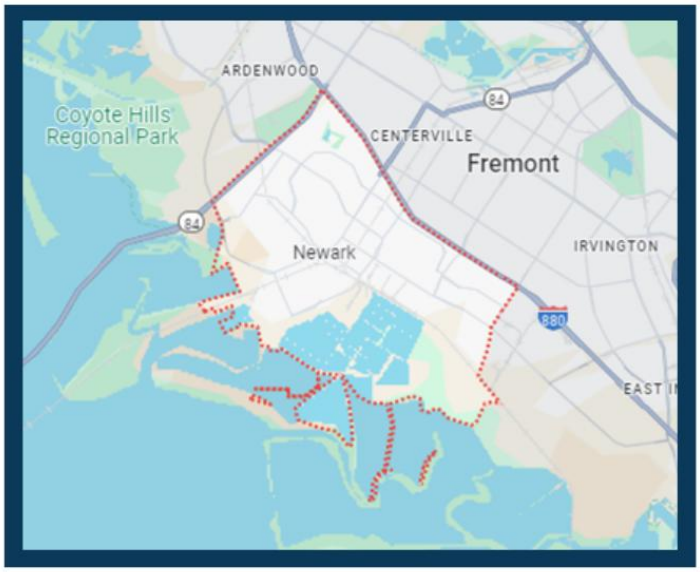
These all look similar to mosquitoes, but they are insects do not bite humans. They live in areas with standing water. They do not carry harmful diseases to animals or humans.

Alameda County Mosquito Abatement District
510-783-7744 www.mosquitoes.org

Alameda County Mosquito Abatement District

ACMAD Mission Statement

Alameda County Mosquito Abatement District is committed to improving the health and comfort of Alameda County residents by controlling mosquitoes and limiting the transmission of mosquito-borne diseases.



Newark's location along the SF Bay makes the city prone to aggressive saltmarsh mosquitoes, such as *Aedes dorsalis*. The marsh also produces midges, crane flies and other insects residents often mistake for mosquitoes.

In 2024 the District found a number of unmaintained swimming pools in Newark. These pools can be a major source of mosquitoes, specifically *Culex tarsalis* mosquitoes, which can spread West Nile virus.

The District uses a variety of environmentally sensitive and specific methods to control mosquitoes in and around Newark.



(Left) Mosquito larvae in a lab. *(Right)* Larvae found in a pot outside.



The best way to prevent mosquitoes is to limit standing water. Mosquitoes can develop from eggs to adults in very small amounts of water. Without standing water, mosquitoes cannot complete their life cycle.



The Alameda County Mosquito Abatement District regularly engages in outreach and education activities including the Newark Days festival (*left*) and in classroom education (*right*)



ACMAD Vector Biologist for Newark: Erick Gaona

ACMAD Board of Trustees Representative: Eric Hentschke

23187 Connecticut St. Hayward, CA 94545 (510) 783-7744 www.mosquitoes.org

STAFF REPORT

Item D. 1.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Approval of Audited Demands

Attachments

Audited Demands 01.30.25
Audited Demands 02.06.25

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 01/30/2025

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE						
Check	01/30/2025	13147	Accounts Payable	AIRGAS USA, LLC		105.09
	Invoice	Date	Description		Check Sort Code	Amount
	5513558639	12/31/2024	CYL ACETYLENE RENTAL 12/31/24			105.09
Check	01/30/2025	13148	Accounts Payable	ALAMEDA COUNTY FIRE DEPARTMENT		1,146,323.08
	Invoice	Date	Description		Check Sort Code	Amount
	2024-25-204	01/07/2025	CONTRACT FIRE SERVICES - 01/25			1,146,323.08
Check	01/30/2025	13149	Accounts Payable	APPLIED LANDSCAPE MATERIALS, INC.		4,597.13
	Invoice	Date	Description		Check Sort Code	Amount
	15672	01/02/2025	PLAYGROUND FIBER BYINGTON PARK 01/02/25			4,597.13
Check	01/30/2025	13150	Accounts Payable	ARROWHEAD FORENSICS		167.76
	Invoice	Date	Description		Check Sort Code	Amount
	177110	01/08/2025	EVIDENCE SUPPLIES			167.76
Check	01/30/2025	13151	Accounts Payable	ASCENT ENVIRONMENTAL, INC.		27,335.00
	Invoice	Date	Description		Check Sort Code	Amount
	20230149.01-9	12/31/2024	CLIMATE ACTION PLAN DEVELOPMENT 11/24			19,547.50
	20230149.01-8	11/13/2024	CLIMATE ACTION PLAN DEVELOPMENT 10/24			7,787.50
Check	01/30/2025	13152	Accounts Payable	BAILEY FENCE COMPANY INC		3,091.00
	Invoice	Date	Description		Check Sort Code	Amount
	86860	12/16/2024	COMMUNITY PARK FENCE REPAIR AND REPLACEMENT 12/16/24			3,091.00
Check	01/30/2025	13153	Accounts Payable	COMMUNITY PLANNING COLLABORATIVE		7,537.25
	Invoice	Date	Description		Check Sort Code	Amount
	1824	01/06/2025	ON CALL SVCS/INCLUSIONARY HSNG/TENANT PROTECTIONS - 12/24			7,537.25
Check	01/30/2025	13154	Accounts Payable	BATTERY SYSTEMS INC		893.64
	Invoice	Date	Description		Check Sort Code	Amount
	5696155	01/07/2025	BATTERIES			827.83
	5725258	01/07/2025	BATTERIES			65.81
Check	01/30/2025	13155	Accounts Payable	BAY CENTRAL PRINTING		123.54
	Invoice	Date	Description		Check Sort Code	Amount
	201033	01/07/2025	BUSINESS CARD BLANKS			123.54
Check	01/30/2025	13156	Accounts Payable	STATE DISBURSEMENT UNIT		1.38

	Invoice	Date	Description	Check Sort Code	Amount
	PPE 1.18.25	01/22/2025	GARNISH - CASE 200000002128365 - 1/5/25-1/18/25		1.38
Check	01/30/2025	13157 Accounts Payable	CATO		250.00
	Invoice	Date	Description	Check Sort Code	Amount
	3000931	01/07/2025	TACTICAL OPERATIONS LIABILITY-G. ARROYO		250.00
Check	01/30/2025	13158 Accounts Payable	CINDY K. HULL & ASSOCIATES - FORENSIC CONSULTING		650.00
	Invoice	Date	Description	Check Sort Code	Amount
	153	07/15/2024	LATENT PRINT ANALYSIS JULY 2024		650.00
Check	01/30/2025	13159 Accounts Payable	CITY OF FREMONT		18,637.00
	Invoice	Date	Description	Check Sort Code	Amount
	336304	01/06/2025	SHELTER OPERATING EXP JANUARY 2025		18,637.00
Check	01/30/2025	13160 Accounts Payable	COMCAST		788.21
	Invoice	Date	Description	Check Sort Code	Amount
	8821-012825	12/24/2024	TELEVISION & PUBLIC WIFI ACCESS 12/29/24-01/28/25		788.21
Check	01/30/2025	13161 Accounts Payable	CRIME SCENE CLEANERS INC		130.00
	Invoice	Date	Description	Check Sort Code	Amount
	93039	01/07/2025	CRIME SCENE CLEANING 01/07/25		130.00
Check	01/30/2025	13162 Accounts Payable	CSG CONSULTANTS, INC.		1,979.79
	Invoice	Date	Description	Check Sort Code	Amount
	B242211	12/02/2024	BI FIELD INSPECTION AND RELATED PROFESSIONAL SVCS 11/01-11/30/24		1,979.79
Check	01/30/2025	13163 Accounts Payable	EAST BAY LAWN MOWER		267.27
	Invoice	Date	Description	Check Sort Code	Amount
	42196	01/21/2025	FLEET GUARD ASSEMBLY AND CLAMP WITH FREIGHT IN		178.20
	42206	01/21/2025	FLEET BRACKET SHIELDS AND SCREWS WITH FREIGHT IN		89.07
Check	01/30/2025	13164 Accounts Payable	ECS IMAGING, INC.		3,690.00
	Invoice	Date	Description	Check Sort Code	Amount
	19371	01/10/2025	ADDITIONAL LASERFICHE LICENSES FY25		3,690.00
Check	01/30/2025	13165 Accounts Payable	EPLUS TECHNOLOGY, INC.		20,003.50
	Invoice	Date	Description	Check Sort Code	Amount
	V2918208	12/10/2024	CROWDSTRIKE RENEWAL 24-25 -NASPO AR2472 - 12/15/24-12/14/25		20,003.50
Check	01/30/2025	13166 Accounts Payable	EQUIFAX INFORMATION SVCS LLC		52.64
	Invoice	Date	Description	Check Sort Code	Amount
	2063839552	01/07/2025	CREDIT BUREAU REPORT FEES - 1/7/25		52.64
Check	01/30/2025	13167 Accounts Payable	FRONTIER BUILDING PRODUCTS PACIFIC, INC		823.00
	Invoice	Date	Description	Check Sort Code	Amount
	11-6-1064596	11/06/2024	FIRE STATION 29 REMOTE SERVICE 11/06/24		823.00
Check	01/30/2025	13168 Accounts Payable	GOOD CITY COMPANY		18,257.50
	Invoice	Date	Description	Check Sort Code	Amount

	3827	10/31/2024	GENERAL PLANNING SERVICES - SVCS 10/01 - 10/31/24		18,257.50
Check	01/30/2025	13169 Accounts Payable	MARK GOTHARD		750.00
	Invoice	Date	Description	Check Sort Code	Amount
	91924100324	01/21/2025	SENIOR CHAIR FITNESS 9/19-10/17/24		750.00
Check	01/30/2025	13170 Accounts Payable	GRAINGER		285.35
	Invoice	Date	Description	Check Sort Code	Amount
	9368380029	01/10/2025	SILLIMAN FLOODLIGHT		285.35
Check	01/30/2025	13171 Accounts Payable	HDL SOFTWARE, LLC		2,080.00
	Invoice	Date	Description	Check Sort Code	Amount
	SIN046209	12/31/2024	UUT SUPPORT & INDUSTRY MONITORING - DEC 2024		2,080.00
Check	01/30/2025	13172 Accounts Payable	HINDERLITER DE LLAMAS & ASSOCIATES		318.92
	Invoice	Date	Description	Check Sort Code	Amount
	SIN046046	12/21/2024	TRANSACTION TAX - AUDIT & CONTRACT SERVICES Q2/2024		318.92
Check	01/30/2025	13173 Accounts Payable	HOME DEPOT CREDIT SERVICES		365.53
	Invoice	Date	Description	Check Sort Code	Amount
	JAN'25	01/13/2025	HOME DEPOT CC PURCHASE 12/13/24-01/10/25		365.53
Check	01/30/2025	13174 Accounts Payable	MAGNUM ELECTRONICS, INC		385.14
	Invoice	Date	Description	Check Sort Code	Amount
	INV/2025/00316	01/07/2025	REPLACEMENT CORD		385.14
Check	01/30/2025	13175 Accounts Payable	MUNICIPAL MAINTENANCE EQUIPMENT INC		215.93
	Invoice	Date	Description	Check Sort Code	Amount
	031079	01/07/2025	FLEET SUPPLIES - TURNBUCKLE		215.93
Check	01/30/2025	13176 Accounts Payable	AT&T		7,667.99
	Invoice	Date	Description	Check Sort Code	Amount
	000022830878	01/01/2025	BAN 9391056598 - 12/01-12/31/24		889.96
	000022836684	01/01/2025	BAN 9391083983 - 12/01-12/31/24		6,778.03
Check	01/30/2025	13177 Accounts Payable	PET BENEFIT SOLUTION		60.50
	Invoice	Date	Description	Check Sort Code	Amount
	188876	01/22/2025	TOTAL PET PLAN - JANUARY 2025 PREMIUMS		60.50
Check	01/30/2025	13178 Accounts Payable	REYES COCA-COLA BOTTLING LLC.		714.34
	Invoice	Date	Description	Check Sort Code	Amount
	44189674013	11/08/2024	CAFE FOOD AND BEVERAGE SUPPLIES		714.34
Check	01/30/2025	13179 Accounts Payable	SAVAGE TRAINING GROUP LLC		610.00
	Invoice	Date	Description	Check Sort Code	Amount
	2941	01/10/2025	FIELD TRAINING SUPERVISOR -ANDREW MUSANTRY 04/07-04/09/24		610.00
Check	01/30/2025	13180 Accounts Payable	SMITH & SONS ELECTRIC, INC.		2,461.00
	Invoice	Date	Description	Check Sort Code	Amount
	24060	12/06/2024	SILLIMAN FLAG POLE LIGHT 12/6/24		671.00
	24069	12/06/2024	SILLIMAN TV OUTLET 12/6/24		1,790.00

Check	01/30/2025	13181	Accounts Payable	S.B.R.P.S.T.C.		589.00

Invoice	Date	Description	Check Sort Code	Amount
225346	01/09/2025	BASIC DISPATCH COURSE-E.DEGUZMAN-QUINTERO 10/7-11/1/24		589.00

Check	01/30/2025	13182	Accounts Payable	SURF TO SNOW ENVIRONMENTAL RESOURCE		1,157.50

Invoice	Date	Description	Check Sort Code	Amount
14015	01/07/2025	MUNICIPAL STORMWATER INSPECTION SERVICE (11/01-11/30/24)		1,157.50

Check	01/30/2025	13183	Accounts Payable	TRUE NORTH COMPLIANCE SERVICES, INC.		260.00

Invoice	Date	Description	Check Sort Code	Amount
24-12-032	01/01/2025	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES 12/24		260.00

Check	01/30/2025	13184	Accounts Payable	U.S. BANK CORPORATE PAYMENT SYSTEMS		37,977.50

Invoice	Date	Description	Check Sort Code	Amount
012225STMT	01/22/2025	CC PAYMENT 01/22/25		37,977.50

Check	01/30/2025	13185	Accounts Payable	BOSCO OIL INC DBA VALLEY OIL		23,512.12

Invoice	Date	Description	Check Sort Code	Amount
204369	01/23/2025	GASOLINE 01/23/25		18,249.86
204368	01/23/2025	DIESEL FUEL 01/23/25		5,262.26

Check	01/30/2025	13186	Accounts Payable	VERIZON WIRELESS		11,983.83

Invoice	Date	Description	Check Sort Code	Amount
6103872018	01/18/2025	WIRELESS SERVICE 12/19/24-01/18/25		11,983.83

Check	01/30/2025	13187	Accounts Payable	WHITEWATER WEST INDUSTRIES LTD		3,395.46

Invoice	Date	Description	Check Sort Code	Amount
SOINV-005312	01/06/2025	SILLIMAN REPLACEMENT POOL PADS		3,395.46

Check	01/30/2025	13188	Accounts Payable	BAYLON , HAMILTON		1,000.00

Invoice	Date	Description	Check Sort Code	Amount
2023-5852	01/28/2025	ENCP2023-0139 RFND		1,000.00

EFT	01/30/2025	1395	Accounts Payable	CLIENTFIRST TECHNOLOGY CONSULTING	122037760 / 001064667052	971.25

Invoice	Date	Description	Check Sort Code	Amount
17620	11/30/2024	TELECOM IMPLEMENTATION 11/01-11/30/24		971.25

EFT	01/30/2025	1396	Accounts Payable	REDWOOD PUBLIC LAW, LLP	121000358 / 325192270245	6,080.30

Invoice	Date	Description	Check Sort Code	Amount
13042	11/30/2024	LEGAL SERVICES FOR MOWRY VILLAGE PROJECT - SVCS THRU 11/30/24		3,473.30
13305	12/31/2024	LEGAL SERVICES FOR MOWRY VILLAGE PROJECT - SVCS THRU 12/31/24		2,607.00

EFT	01/30/2025	1397	Accounts Payable	SUMMIT UNIFORMS, LLC	121000358 / 325183513607	118.13

Invoice	Date	Description	Check Sort Code	Amount
22209	01/08/2025	UNIFORM AND ACCESSORIES-ALISEO		118.13

AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 45	$1,358,663.57

Checks:	42	$1,351,493.89
EFTs:	3	$7,169.68

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 02/06/2025

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE						
Check	02/06/2025	13189	Accounts Payable	ABACUS PRODUCTS INC		954.14
	Invoice		Date	Description	Check Sort Code	Amount
	B78867		01/16/2025	EVIDENCE SUPPLIES		954.14
Check	02/06/2025	13190	Accounts Payable	AFLAC		1,106.24
	Invoice		Date	Description	Check Sort Code	Amount
	729125		02/05/2025	AFLAC - JANUARY 2025 PREMIUMS		1,106.24
Check	02/06/2025	13191	Accounts Payable	ALAMEDA COUNTY MAYORS CONFERENCE		4,960.00
	Invoice		Date	Description	Check Sort Code	Amount
	573		01/17/2025	2025 MEMBERSHIP DUES		4,960.00
Check	02/06/2025	13192	Accounts Payable	TREASURER OF ALAMEDA COUNTY		1,747.00
	Invoice		Date	Description	Check Sort Code	Amount
	NOV 24		12/04/2024	CRIME LAB FEES NOV 2024		1,747.00
Check	02/06/2025	13193	Accounts Payable	BATTERY SYSTEMS INC		1,010.94
	Invoice		Date	Description	Check Sort Code	Amount
	35312501101349		01/14/2025	BATTERY REPLACEMENT		1,010.94
Check	02/06/2025	13194	Accounts Payable	BAY CENTRAL PRINTING		170.65
	Invoice		Date	Description	Check Sort Code	Amount
	201196		01/28/2025	BUSINESS CARD IMPRINTING-M. COULOM & Y. HUYNH		170.65
Check	02/06/2025	13195	Accounts Payable	BOUND TREE MEDICAL, LLC		66.03
	Invoice		Date	Description	Check Sort Code	Amount
	85627193		01/16/2025	BANDAGES		66.03
Check	02/06/2025	13196	Accounts Payable	CENTRAL TOWING & TRANSPORT LLC		150.00
	Invoice		Date	Description	Check Sort Code	Amount
	9563632-1		12/29/2024	TOWING SVCS 12/29/24		65.00
	9558524-1		12/17/2024	TOWING SVCS - M-27 MOTORCYCLE 12/17/24		85.00
Check	02/06/2025	13197	Accounts Payable	CENTRAL VALLEY TOXICOLOGY, INC.		1,009.00
	Invoice		Date	Description	Check Sort Code	Amount
	338826		01/22/2025	LAB TESTS 12/20/2024		270.00
	338641		01/22/2025	LAB TESTS 12/10/2024		244.00

	338638	01/22/2025	LAB TESTS 12/10/2024			44.00
	338307	01/22/2025	LAB TESTS 11/15/2024			231.00
	338828	01/22/2025	LAB TESTS 12/20/2024			44.00
	338529	01/22/2025	LAB TESTS 12/02/2024			44.00
	338640	01/22/2025	LAB TESTS 12/10/2024			44.00
	338639	01/22/2025	LAB TESTS 12/10/2024			44.00
	338642	01/22/2025	LAB TESTS 12/10/2024			44.00
Check	02/06/2025	13198 Accounts Payable	APRO LLC			85.00
	Invoice	Date	Description		Check Sort Code	Amount
	120124-123124	12/31/2024	CAR WASH 12/01-12/31/24			85.00
Check	02/06/2025	13199 Accounts Payable	ALAMEDA COUNTY INFORMATION TECHNOLOGY DEPARTMENT			3,613.50
	Invoice	Date	Description		Check Sort Code	Amount
	112-2412036	01/11/2025	AWS ACCESS FEE DECEMBER 2024			3,613.50
Check	02/06/2025	13200 Accounts Payable	CSW I ST2			69,218.43
	Invoice	Date	Description		Check Sort Code	Amount
	2411123	11/30/2024	DESIGN SERVICES FOR OLD TOWN STREETSCAPE IMPROVEMENTS 10/24			23,010.00
	2412095	12/31/2024	DESIGN SERVICES FOR OLD TOWN STREETSCAPE IMPROVEMENTS 11/24			46,208.43
Check	02/06/2025	13201 Accounts Payable	CUMMING MANAGEMENT GROUP, INC.			10,786.00
	Invoice	Date	Description		Check Sort Code	Amount
	160927	12/31/2024	NEWARK RESOURCE CENTER PROFESSIONAL SERVICES FROM DEC 1-31, 2024			10,786.00
Check	02/06/2025	13202 Accounts Payable	DELTA DENTAL OF CALIFORNIA			17,972.23
	Invoice	Date	Description		Check Sort Code	Amount
	BE006411472	02/05/2025	DELTA PPO/BUY-UP - FEBRUARY 2025 PREMIUMS			17,972.23
Check	02/06/2025	13203 Accounts Payable	DELTA DENTAL INSURANCE COMPANY			164.51
	Invoice	Date	Description		Check Sort Code	Amount
	BE006409746	02/05/2025	DELTA CARE - FEBRUARY 2025 PREMIUMS			164.51
Check	02/06/2025	13204 Accounts Payable	DPREP INC.			799.00
	Invoice	Date	Description		Check Sort Code	Amount
	BCN20250407-11	01/15/2025	BASIC CRISIS NEGOTIATION-LOMELI 04/07-04/11/25			799.00
Check	02/06/2025	13205 Accounts Payable	ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE INC			3,648.00
	Invoice	Date	Description		Check Sort Code	Amount
	94834712	11/04/2024	ESRI TRAINING PASS 11/04/24 - 11/03/25			3,648.00
Check	02/06/2025	13206 Accounts Payable	EYEP-SOLUTIONS INC			198,272.27
	Invoice	Date	Description		Check Sort Code	Amount
	24-883	12/31/2024	SECURITY INSTALL PROGRESS BILLING 2 - 12/31/24			198,272.27
Check	02/06/2025	13207 Accounts Payable	FEDEX			60.24
	Invoice	Date	Description		Check Sort Code	Amount
	8-703-53667	01/22/2025	PACKAGE DELIVERY 11/26/24			19.00

	8-743-19164	01/22/2025	PACKAGE DELIVERY 1/7/25			20.92
	8-710-50355	12/13/2024	PACKAGE DELIVERY 12/9/24			20.32
Check	02/06/2025	13208 Accounts Payable	FEHR & PEERS			12,258.76
	Invoice	Date	Description		Check Sort Code	Amount
	181445	12/15/2024	TASK ORDER #9 - TRUCK REROUTING STUDY 10/26-11/29/24			1,669.50
	182145	01/09/2025	TASK ORDER #10 - ACTIVE TRANSPORTATION PLAN 10/26-12/27/24			10,589.26
Check	02/06/2025	13209 Accounts Payable	FIDELITY SECURITY LIFE INSURANCE/EYEMED			2,305.19
	Invoice	Date	Description		Check Sort Code	Amount
	166642133	02/05/2025	EYEMED - COBRA FEBRUARY 2025 PREMIUMS			28.96
	166660861	02/05/2025	EYEMED - FEBRUARY 2025 PREMIUMS			2,276.23
Check	02/06/2025	13210 Accounts Payable	FITGUARD, INC			95.00
	Invoice	Date	Description		Check Sort Code	Amount
	0000217624	07/31/2024	PREVENTATIVE MAINTENANCE 07/31/24			95.00
Check	02/06/2025	13211 Accounts Payable	FOUR SEASONS POOL SERVICE			1,808.64
	Invoice	Date	Description		Check Sort Code	Amount
	57598	12/12/2024	SILLIMAN POOL LIGHT FIXTURE SERVICE 12/12/24			1,505.47
	57848	01/16/2025	SILLIMAN PUMP SHAFT SEAL			303.17
Check	02/06/2025	13212 Accounts Payable	MITCHELL FRENTESCU			2,418.05
	Invoice	Date	Description		Check Sort Code	Amount
	1014-102524EXP	01/13/2025	BASIC MOTOR SCHOOL 10/14-10/25/24			2,418.05
Check	02/06/2025	13213 Accounts Payable	G BORTOLOTTO & CO INC			1,105,839.47
	Invoice	Date	Description		Check Sort Code	Amount
	5194	12/11/2024	2024 ASPHALT CONCRETE STREET OVERLAY, PRJ 1344 09/29-12/07/24			1,105,839.47
Check	02/06/2025	13214 Accounts Payable	GEOCON CONSULTANTS, INC.			11,802.50
	Invoice	Date	Description		Check Sort Code	Amount
	224120384	12/23/2024	ON-CALL MATERIAL TESTING SERVICES THRU 12/01/24			11,207.50
	224080407	09/05/2024	GEOTECHNICAL ENGINEERING AND PEER REVIEW SERVICES THRU 08/11/24			595.00
Check	02/06/2025	13215 Accounts Payable	GHD INC.			6,713.53
	Invoice	Date	Description		Check Sort Code	Amount
	380-0062956	12/20/2024	TASK ORDER NO. 5 - MOWRY AVE AT CHERRY STREET (THROUGH 09/28/24)			1,181.48
	380-0063102	12/26/2024	TASK ORDER NO. 4 - NEWARK QUIET ZONES 12/24			5,532.05
Check	02/06/2025	13216 Accounts Payable	GYM DOCTORS			225.00
	Invoice	Date	Description		Check Sort Code	Amount
	00163284	01/16/2025	FITNESS CENTER MAINTENANCE 01/15/25			225.00
Check	02/06/2025	13217 Accounts Payable	HDL SOFTWARE, LLC			2,327.20
	Invoice	Date	Description		Check Sort Code	Amount
	SIN046587 - A	12/31/2024	UUT RETURNS PROCESSED - DEC 2024			1,487.20
	SIN046587 - B	12/31/2024	UUT EXEMPTION ACCOUNTS PROCESSED - JULY 2024 - DEC 2024			840.00
Check	02/06/2025	13218 Accounts Payable	ANTHONY HECKMAN			929.52

	Invoice		Date	Description	Check Sort Code	Amount
	0115-011925EXP		01/27/2025	RECRUITING EVENT 01/15-01/19/25		929.52
Check	02/06/2025	13219	Accounts Payable	HELIX ENVIRONMENTAL PLANNING, INC.		3,335.00
	Invoice		Date	Description	Check Sort Code	Amount
	125647		11/15/2024	CEQA NEWPARK MALL RD STARBUCKS - KAIDENCE - SVCS THRU 11/10/24		3,335.00
Check	02/06/2025	13220	Accounts Payable	INDUSTRIAL PLUMBING SUPPLY, LLC.		18,503.07
	Invoice		Date	Description	Check Sort Code	Amount
	118993		11/08/2024	COMMUNITY ADA FOLDING SHOWER SEATS, ELONGATED TOILETS, GRAB BAR		4,567.71
	119221		11/19/2024	COMMUNITY BATHROOM RESTORATION PARTS, TOILETS, BARS, WALL MOUNT		8,398.39
	119288		11/21/2024	COMMUNITY BATHROOM RESTORATION PARTS, HINY HIDER		5,271.11
	119960		12/26/2024	CIVIC CENTER SOLENOID AND PISTON		265.86
Check	02/06/2025	13221	Accounts Payable	JEFF'S MOBILE GLASS INC.		482.25
	Invoice		Date	Description	Check Sort Code	Amount
	IJMG-0121-85095		01/21/2025	GLASS REPAIR #1004 2020 CHEV TAHOE 1/21/25		482.25
Check	02/06/2025	13222	Accounts Payable	J4 SYSTEMS		47.50
	Invoice		Date	Description	Check Sort Code	Amount
	20621		01/13/2025	INTUNE SETUP - ASH BAKER 01/12/25		47.50
Check	02/06/2025	13223	Accounts Payable	KELLY SPICERS FACILITIES SOLUTIONS		5,297.63
	Invoice		Date	Description	Check Sort Code	Amount
	70025920		01/15/2025	PARKS FACILITIES LINERS		5,297.63
Check	02/06/2025	13224	Accounts Payable	AMERICAN EAGLE ENTERPRISES		2,650.00
	Invoice		Date	Description	Check Sort Code	Amount
	8384		12/10/2024	SILLIMAN GYM BLEACHER SERVICE 12/04/24		2,650.00
Check	02/06/2025	13225	Accounts Payable	KNORR SYSTEMS INTERNATIONAL		550.50
	Invoice		Date	Description	Check Sort Code	Amount
	258637		01/13/2025	SILLIMAN TROUBLESHOOT SPCS 1/7/25		550.50
Check	02/06/2025	13226	Accounts Payable	L.N. CURTIS & SONS		155.03
	Invoice		Date	Description	Check Sort Code	Amount
	INV905854		01/15/2025	UNIFORM-SHAFFER		155.03
Check	02/06/2025	13227	Accounts Payable	LELAND CONSULTING GROUP, INC.		4,689.00
	Invoice		Date	Description	Check Sort Code	Amount
	6470.1.5		01/15/2025	NEWARK HOTEL STUDY - 7/24 - 12/24		4,689.00
Check	02/06/2025	13228	Accounts Payable	MNS ENGINEERS INC		69,671.07
	Invoice		Date	Description	Check Sort Code	Amount
	88044		11/19/2024	CONSTRUCTION MANAGEMENT SERVICES 10/24		325.00
	87228		08/28/2024	CONSTRUCTION MANAGEMENT SERVICES 07/24		2,106.11
	87912		11/11/2024	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 10/24		4,086.18
	87911		11/11/2024	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 10/24		24,466.34
	88320		12/18/2024	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 11/24		12,712.97

	88322	12/18/2024	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 11/24			1,217.16
	88321	12/18/2024	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 11/24			5,911.92
	88562	01/13/2025	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 12/24			18,149.87
	88563	01/13/2025	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 12/24			695.52
Check	02/06/2025	13229 Accounts Payable	AVENU INSIGHTS & ANALYTICS			1,300.00
	Invoice	Date	Description		Check Sort Code	Amount
	INV06-020273	01/13/2025	ACFR - PRINCIPAL EMPLOYERS REPORT 12/24			1,300.00
Check	02/06/2025	13230 Accounts Payable	NICHOLS CONSULTING ENGINEERS, CHTD			3,777.50
	Invoice	Date	Description		Check Sort Code	Amount
	123055504	12/13/2024	TASK ORDER NO. 2 - THORNTON AVE. PAVEMENT REHAB 11/24			3,777.50
Check	02/06/2025	13231 Accounts Payable	NUTRIEN AG SOLUTIONS, INC.			4,396.12
	Invoice	Date	Description		Check Sort Code	Amount
	56175254	01/27/2025	PARK SPRAY CHEMICALS AND PESTICIDES			4,396.12
Check	02/06/2025	13232 Accounts Payable	OWEN EQUIPMENT CO			61.17
	Invoice	Date	Description		Check Sort Code	Amount
	00065108	10/04/2024	PYROPLEX			61.17
Check	02/06/2025	13233 Accounts Payable	PACIFIC GAS & ELECTRIC			838.97
	Invoice	Date	Description		Check Sort Code	Amount
	7786-012125	01/21/2025	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 12/14-01/14/25			838.97
Check	02/06/2025	13234 Accounts Payable	PAKPOUR CONSULTING GROUP, INC.			72,235.29
	Invoice	Date	Description		Check Sort Code	Amount
	4577	10/03/2024	PRJ MANAGEMENT SVCS - CENTRAL AVE OVERPASS PRJ 09/01-09/30/24			19,679.63
	4606	11/07/2024	PRJ MANAGEMENT SVCS - CENTRAL AVE OVERPASS PRJ 10/01-10/31/24			32,130.00
	4626	12/03/2024	PRJ MANAGEMENT SVCS - CENTRAL AVE OVERPASS PRJ 11/01-11/30/24			19,679.63
	4645	01/07/2025	ON-CALL CIVIL ENGINEERING PLAN REVIEW SERVICES 12/01-12/31/24			746.03
Check	02/06/2025	13235 Accounts Payable	THE PERMANENTE MEDICAL GROUP, INC.			1,807.00
	Invoice	Date	Description		Check Sort Code	Amount
	1000801952	01/14/2025	PRE-EMPLOYMENT/ DOT PHYSICALS - 12/05/24-12/13/24			1,807.00
Check	02/06/2025	13236 Accounts Payable	PHOENIX GROUP INFORMATION SYSTEMS			313.05
	Invoice	Date	Description		Check Sort Code	Amount
	122024101	01/10/2025	PARKING CITATION PROGRAM DECEMBER 2024			313.05
Check	02/06/2025	13237 Accounts Payable	REYES COCA-COLA BOTTLING LLC.			396.36
	Invoice	Date	Description		Check Sort Code	Amount
	45223192015	01/17/2025	CAFE FOOD AND BEVERAGE SUPPLIES			396.36
Check	02/06/2025	13238 Accounts Payable	RUGGERI-JENSEN-AZAR			7,339.00
	Invoice	Date	Description		Check Sort Code	Amount
	94018	09/05/2024	ON-CALL CIVIL ENGINEERING DEVELOPMENT PLAN REVIEW SERVICES 08/24			2,216.00
	94834	12/10/2024	ON-CALL CIVIL ENGINEERING DEVELOPMENT PLAN REVIEW SERVICES 11/24			4,015.00

	94833	12/10/2024	ON-CALL CIVIL ENGINEERING DEVELOPMENT PLAN REVIEW SERVICES 11/24			1,108.00
Check	02/06/2025	13239 Accounts Payable	S&H CONSTRUCTION, INC.			402,108.40
	Invoice	Date	Description		Check Sort Code	Amount
	1	01/04/2025	NEWARK RESOURCE CENTER RENOVATIONS PRJ 1360 12/31/24			402,108.40
Check	02/06/2025	13240 Accounts Payable	SAVAGE TRAINING GROUP LLC			889.00
	Invoice	Date	Description		Check Sort Code	Amount
	0310-031425FH	01/22/2025	FIELD TRAINING OFFICER -FRANK HERBERT 03/10-03/14/25			889.00
Check	02/06/2025	13241 Accounts Payable	LINCOLN AQUATICS			842.47
	Invoice	Date	Description		Check Sort Code	Amount
	SL050950	12/31/2024	POOL CHEMICALS			842.47
Check	02/06/2025	13242 Accounts Payable	SIRCHIE ACQUISITION COMPANY, LLC			239.01
	Invoice	Date	Description		Check Sort Code	Amount
	0676515-IN	01/22/2025	EVIDENCE BAGS			239.01
Check	02/06/2025	13243 Accounts Payable	ST. FRANCIS ELECTRIC, LLC			17,383.40
	Invoice	Date	Description		Check Sort Code	Amount
	24054508	12/31/2024	TRAFFIC SIGNAL & STREET LIGHT MAINTENANCE - 12/31/24			8,625.00
	24054509	01/14/2025	TRAFFIC SIGNAL & STREET LIGHT MAINTENANCE - 01/31/25			4,379.20
	24054510	01/15/2025	TRAFFIC SIGNAL & STREET LIGHT MAINTENANCE - 01/31/25			4,379.20
Check	02/06/2025	13244 Accounts Payable	STANDARD INSURANCE COMPANY			4,454.53
	Invoice	Date	Description		Check Sort Code	Amount
	BILLING-OCT 24	10/01/2024	EMPLOYEE LIFE INSURANCE AND AD&D COVERAGE PREMIUMS-10/1-10/31/24			954.00
	BILLING-NOV 24	11/01/2024	EMPLOYEE LIFE INSURANCE AND AD&D COVERAGE PREMIUMS-11/1-11/30/24			948.00
	BILLING-DEC 24	12/01/2024	EMPLOYEE LIFE INSURANCE AND AD&D COVERAGE PREMIUMS-12/1-12/31/24			966.00
	FEBRUARY 2025	02/05/2025	STANDARD - FEBRUARY 2025 PREMIUMS			1,586.53
Check	02/06/2025	13245 Accounts Payable	STAPLES			885.57
	Invoice	Date	Description		Check Sort Code	Amount
	7003718934	01/15/2025	OFFICE SUPPLIES 01/06-01/14/25 (APS #25-24)			885.57
Check	02/06/2025	13246 Accounts Payable	LEHR			1,351.30
	Invoice	Date	Description		Check Sort Code	Amount
	SI110010	09/30/2024	FLEET PATROL POWER TIMER			385.41
	SI111134	10/28/2024	FLEET FEDERAL SIGNAL SMARTSIREN CONTROL HEAD			731.94
	SI111808	11/12/2024	FLEET WHELEN SIREN SPEAKER			233.95
Check	02/06/2025	13247 Accounts Payable	STOP STICK, LTD			204.63
	Invoice	Date	Description		Check Sort Code	Amount
	0036606-IN	01/16/2025	PIRANHA-PATROL			204.63
Check	02/06/2025	13248 Accounts Payable	TEMPERATURE TECHNOLOGY INC.			5,790.74
	Invoice	Date	Description		Check Sort Code	Amount
	I3600	10/16/2024	SVC CTR HVAC SERVICE 10/16/24			679.00
	I3568	10/08/2024	SILLIMAN PUMP SEAL LEAKING 10/1/24			3,705.63

	I3709	12/20/2024	SENIOR CENTER HEATER SERVICE 12/9/24		1,406.11
Check	02/06/2025	13249 Accounts Payable	THE ED JONES CO INC		70.93
	Invoice	Date	Description	Check Sort Code	Amount
	57826	01/24/2025	TOP NAME RIBBON-E. TANAKA		70.93
Check	02/06/2025	13250 Accounts Payable	THE KPA GROUP		4,115.00
	Invoice	Date	Description	Check Sort Code	Amount
	013	12/31/2024	ON-CALL ARCHITECTURAL SERVICES TASK ORDER 1D 12/01-12/31/24		4,115.00
Check	02/06/2025	13251 Accounts Payable	TIREHUB, LLC		2,915.46
	Invoice	Date	Description	Check Sort Code	Amount
	46043073	11/22/2024	TIRES - GY EAGLE ENFORCER		266.86
	45798403	11/13/2024	TIRES - GY EAGLE ENFORCER		907.65
	45802253	11/13/2024	TIRES - GY ASSUR ALL SEASON		312.46
	45439751	10/30/2024	TIRES - GY EAGLE ENFORCER		1,428.49
Check	02/06/2025	13252 Accounts Payable	TMT ENTERPRISES INC		3,480.31
	Invoice	Date	Description	Check Sort Code	Amount
	21931	11/11/2024	COMPOST PURCHASE		3,679.67
	22096	11/30/2024	COMPOST CREDIT FROM PREVIOUS PURCAHSE		(199.36)
Check	02/06/2025	13253 Accounts Payable	JENNIFER TRAN		2,089.13
	Invoice	Date	Description	Check Sort Code	Amount
	EDUREIMB-FY25-#3	02/03/2025	EDUCATIONAL REIMBURSEMENT- FY25 - 10/28-12/22/24		2,089.13
Check	02/06/2025	13254 Accounts Payable	TURF STAR, INC.		1,302.78
	Invoice	Date	Description	Check Sort Code	Amount
	INV065789	01/17/2025	FLEET-MOWER TIRE AND WHEEL		1,302.78
Check	02/06/2025	13255 Accounts Payable	MATTHEW WARREN		3,276.16
	Invoice	Date	Description	Check Sort Code	Amount
	1201-121324	12/17/2024	ICI HOMICIDE 12/01-12/13/24		3,276.16
Check	02/06/2025	13256 Accounts Payable	DAILY JOURNAL CORPORATION		370.00
	Invoice	Date	Description	Check Sort Code	Amount
	B3839599	08/13/2024	LEGAL ADVERTISING - PROJECT 1360 8/13/24		370.00
Check	02/06/2025	13257 Accounts Payable	REDIA WRIGHT		40.00
	Invoice	Date	Description	Check Sort Code	Amount
	EXPREIMB-11/22	02/03/2025	LIVE SCAN-FINGERPRINTS		40.00
Check	02/06/2025	13258 Accounts Payable	ORION SECURITY		2,301.38
	Invoice	Date	Description	Check Sort Code	Amount
	130132	01/25/2025	UNARMED, UNIFORMED SECURITY GUARD 01/21/25-01/24/25		1,155.20
	130300	02/01/2025	UNARMED, UNIFORMED SECURITY GUARD 01/27/25-01/30/25		1,146.18
Check	02/06/2025	13259 Accounts Payable	ZNAP FLY, LLC		11,290.00
	Invoice	Date	Description	Check Sort Code	Amount
	1164	11/29/2024	HAZARDOUS MATERIALS TESTING & REPORT 11/29/24		11,290.00
Check	02/06/2025	13260 Accounts Payable	BETTER ROOTER		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount

	2023-5709	01/28/2025	ENCP2023-0125 RFND			1,000.00
Check	02/06/2025	13261 Accounts Payable	GOLD WING ENGINEERING			1,000.00
	Invoice	Date	Description		Check Sort Code	Amount
	2023-5818	01/28/2025	ENCP2023-0118 RFND			1,000.00
Check	02/06/2025	13262 Accounts Payable	MCTIGHE LANDSCAPING INC			1,200.00
	Invoice	Date	Description		Check Sort Code	Amount
	2023-5713	01/28/2025	ENCP2023-0129 RFND			1,200.00
Check	02/06/2025	13263 Accounts Payable	NORTHCOTE , MICHAEL			1,000.00
	Invoice	Date	Description		Check Sort Code	Amount
	2023-5164	01/28/2025	ENCP2023-0099 RFND			1,000.00
Check	02/06/2025	13264 Accounts Payable	WELTEROTH , JOHN			1,000.00
	Invoice	Date	Description		Check Sort Code	Amount
	2023-5533	01/28/2025	ENCP2023-0112 RFND			1,000.00
EFT	02/06/2025	1402 Accounts Payable	QUADIENT FINANCE USA, INC.	011900254 / 385015844484		6,270.81
	Invoice	Date	Description		Check Sort Code	Amount
	4857 - NOV '24	11/15/2024	POSTAGE - NOV '24			4,051.53
	4857 - DEC '24	12/16/2024	POSTAGE - DEC '24			1,079.80
	4857 - JAN '25	01/16/2025	POSTAGE - JAN '25			1,139.48
EFT	02/06/2025	1403 Accounts Payable	REDWOOD PUBLIC LAW, LLP	121000358 / 325192270245		107.00
	Invoice	Date	Description		Check Sort Code	Amount
	13311	12/31/2024	LEGAL SVCS - SRINGERI SHARADA PROJECT - SVCS THRU 12/31/24			107.00

AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 78	$2,137,339.56
Checks:	76	$2,130,961.75	
EFTs:	2	$6,377.81	

STAFF REPORT

Item D. 2.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Approval of February 13, 2025, minutes

Attachments

Minutes

CITY OF NEWARK
CITY COUNCIL
City Administration Building, City Council Chambers

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

Minutes

Thursday, February 13, 2025
7:00 P.M.

A. ROLL CALL

Mayor Hannon called the meeting to order at 7:05 p.m. Council Members Grindall, Jorgens, Catancio, and Vice Mayor Little were present.

B. PRESENTATIONS

1. Introduction of employee(s)

   Mayor Hannon introduced: Andrew Musantry, Sergeant, Jason Masters, Public Safety Dispatcher, Morgan Pedersen, Management Analyst, and Naz Jalalidin, Management Analyst.

2. Proclaim February as Black History Month

   Mayor Hannon presented the proclamation to: Jean Ficklin, Danielle Cranon-Jones, Recreation Coordinator, Raquel Thomas, Collections Assistant, Adriene Frazier-Burrell, Fire Code Compliance Officer, and Tianna Jones, Administrative Support Specialist II.

3. Presentation on Eden I & R, Inc. 2-1-1 information and referral services

   Mayor Hannon announced that this presentation would be rescheduled for a future meeting.

Mayor Hannon amended the agenda to move item H.1 Consideration of a resolution reaffirming Newark as a Welcoming City
Resolution No. 11724

Mayor Hannon gave a presentation on the history of Newark as a Welcoming City and the need to reaffirm. (Presentation on file with City Clerk.)

Mayor Hannon and Vice Mayor Little read aloud, in English and Spanish, Resolution No. 10,598, which declared Newark a Welcoming City in 2017.

The City Council discussed the resolution and the need for it to be reaffirmed.

Sucy Collazo shared a story of a student who did not want to go to school because she feared deportation. She thanked the City Council for making the country feel safer.

Jacinta Arteaga thanked Mayor Hannon bringing this item forward and making the community feel safer. She stated that some residents do not realize this is a welcoming city.

Mayor Hannon requested that community leaders inform the community of the Welcoming City affirmation.

Vice Mayor Little moved, Council Member Catancio seconded, to adopt a resolution Reaffirming Newark as a Welcoming City. The motion passed, 5 AYES.

Mayor Hannon called for a recess at 8:01 p.m. The meeting resumed at 8:10 p.m.

4. Presentation on Eden Council for Hope and Opportunity (ECHO Housing)

Christina M. Soto, Executive Director of ECHO Housing gave the presentation. Presentation on file with the City Clerk. ECHO Housing provides fair housing services, tenant/property owner services, rental assistance program, homebuyer education program, home seeking/Project Share, shared housing and placement, and rent review for some jurisdictions.

No one from the public requested to speak.

The City Council thanked Ms. Soto for the presentation and information.

Mayor Hannon requested that ECHO Housing consider proactive inspection of rental units.

C. PUBLIC COMMENT

No one requested to speak.

D. CONSENT CALENDAR

Council Member Jorgens moved, Council Member Grindall seconded, to approve Consent Calendar items D.1 to D.3, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 5 AYES.

1. Approval of Audited Demands

2. Approval of January 16, 2025, special meeting and January 23, 2025, regular meeting minutes

3. Adopt a resolution approving agreement with HdL Coren & Cone for Property Tax Management Services
Resolution No. 11725

E. PUBLIC HEARINGS

F. OTHER BUSINESS

G. CITY MANAGER UPDATES

City Manager Benoun announced: an Objective Design Standards Community Open House on February 26 at the library and a Recreation and Community Services Department Hiring Faire on February 21 at the Silliman Center.

H. CITY COUNCIL MATTERS

1. Consideration of a resolution reaffirming Newark as a Welcoming City

This item was considered out of order.

Council Member Catancio stated that she attended the Black History and Lunar New Year events. She announced that a Special Olympics event would be held at Newark Memorial High School.

Council Member Grindall stated that he attended the Alameda County Housing Committee meeting and noted that 35,000 applications were submitted for 200 housing units. He proposed that the City Council reaffirm the City's inclusive community status for the LGBTQ community. The City Council concurred to place this on a future agenda.

Council Member Grindall announced that Promotores and Newark Police Department would meet on February 25, 2025, for Pan Dulce to discuss community concerns. He stated the next Coffee with a Council Member would be held at the Newark Boulevard Starbucks on February 15, 2025.

Vice Mayor Little stated that she has organized the following events: four VIP Pokémon parties at the 88 Card House, Senior Citizen workshops on May 6, 2025, to discuss cybersecurity and identify theft and May 1, 2025, to discuss social security. Earth Day Clean up event on March 15, 2025, at Don Edwards Wildlife Refuge. Mission Peak Yoyo Day on March 31, 2025. Details and RSVP information available at evemarielittle.com

Mayor Hannon congratulated the Newark Rotary Club for their annual Crab Feed, the money raised helps community nonprofits. He thanked the Newark Interact Club for their assistance. He wished everyone a Happy Valentine's Day.

I. CLOSED SESSION

J. ADJOURNMENT

Mayor Hannon adjourned the meeting at 8:41 p.m.

STAFF REPORT

Item D. 3.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Siobhan Henderson, Accounting Assistant II
SUBJECT	Adopt a resolution approving the Consulting Services Agreement with Lance, Soll & Lunghard, LLP (LSL), Certified Public Accountants, for Professional Auditing Services

SUMMARY AND RECOMMENDATION

Lance, Soll & Lunghard, LLP (LSL) has served as the City of Newark's independent auditor for six fiscal years, providing high-quality service and expertise in governmental audits. The current contract expired at the end of Fiscal Year 2024.

To maintain continuity and compliance with best practices, staff recommends approving a new six-year contract with LSL through Fiscal Year 2030, with a total not-to-exceed amount of $599,257.

While audit firm rotation was once encouraged, current best practices emphasize rotating engagement partners or senior staff within the same firm to ensure independence while preserving institutional knowledge. Given the shortage of government-specialized audit firms, this approach aligns with recommendations from the Government Finance Officers Association (GFOA), Government Accountability Office (GAO), and the American Institute of Certified Public Accountants (AICPA).

To uphold audit quality and independence, the City will implement staff rotation measures:

- A new lead audit partner will be assigned for the Fiscal Year 2025 audit.
- A new audit manager will be appointed for the Fiscal Year 2027 audit.

Staff recommends that the City Council adopt a resolution approving this agreement to ensure continued regulatory compliance, transparency, and fiscal accountability.

BACKGROUND

The Government Finance Officers Association (GFOA) recommends that local governments obtain independent financial audits to ensure transparency, regulatory compliance, and public accountability.

The City of Newark engaged LSL through a competitive selection process in 2019, with an initial contract not to exceed $347,927. In November 2023, the contract was

extended for two years through June 30, 2024, with an additional $175,931.

To maintain continuity and uphold high auditing standards, staff recommends approving a new six-year contractual services agreement with LSL through Fiscal Year 2030, for a total not-to-exceed amount of $599,257.

DISCUSSION/ANALYSIS

Independent audits are essential for ensuring financial transparency and regulatory compliance.

Since April 2019, LSL has provided the City with:

- Annual Financial Audits – Reviewing the Annual Comprehensive Financial Report (ACFR), ensuring eligibility for the GFOA Award for Excellence in Financial Reporting.
- Financial & Compliance Audits – Confirming compliance with Measure B/BB, Measure GG, VRF, UUT, and TDA funding requirements.
- State Controller's Report Preparation – Assisting with financial report submissions.
- Single Audits – Conducting audits in accordance with federal Uniform Guidance for grant-related funding.

The Government Finance Officers Association (GFOA) advises adherence to Governmental Accounting Standards Board (GASB) guidelines. While rotating audit firms was once encouraged, best practices now emphasize rotating engagement partners or senior staff within the same firm to maintain independence while preserving institutional knowledge.

The GFOA does not mandate firm rotation, and the AICPA requires partner rotation every five years for public companies, though this is not required for municipalities. The GAO's Yellow Book recommends monitoring long audit firm tenure and implementing safeguards, such as rotating key personnel, to balance continuity, cost efficiency, and auditor independence. While California does not require audit firm rotation, many cities adopt these best practices to enhance transparency and efficiency.

Given the shortage of audit firms specializing in governmental audits, rotating engagement partners or senior audit staff has become the preferred approach.

To align with best practices and maintain audit quality, staff rotation will be implemented:

- A new lead audit partner will be assigned for the Fiscal Year 2025 audit.
- A new audit manager will be appointed for the Fiscal Year 2027 audit.

The proposed contractual services agreement ensures the City's continued compliance with GASB and Government Code Section 12410.6(b), while LSL will provide ongoing technical assistance to address evolving accounting standards.

FISCAL IMPACT

The current 2024-2026 Biennial Budget and Capital Improvement Plan includes sufficient funding for this agreement through the end of FY 2026. This is a multi-year agreement with the remaining years to be appropriated in future biennial budget processes.

REVIEW AND APPROVAL

Prepared by - Siobhan Henderson, Accounting Assistant
Reviewed by - Gloria del Rosario, Deputy Finance Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Resolution
Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE CONSULTING SERVICES AGREEMENT WITH LANCE, SOLL & LUNGHARD, LLP FOR PROFESSIONAL AUDITING SERVICES

WHEREAS, the City of Newark requires independent financial audits to ensure transparency, regulatory compliance, and public accountability in accordance with the Government Finance Officers Association (GFOA) best practices and Governmental Accounting Standards Board (GASB) guidelines; an

WHEREAS, the City of Newark requires independent financial audits to ensure transparency, regulatory compliance, and public accountability in accordance with best practices set forth by the Government Finance Officers Association (GFOA) and Governmental Accounting Standards Board (GASB) guidelines; and

WHEREAS, the City previously awarded a multi-year Consulting Services Agreement ("Agreement") to Lance, Soll & Lunghard, LLP (LSL) for professional auditing services, with an initial term through June 30, 2022, and a not-to-exceed amount of $347,927; and

WHEREAS, due to LSL's satisfactory performance, the City exercised the two optional years, extending the Agreement through June 30, 2024, and increasing the not-to-exceed amount by $175,931; and

WHEREAS, to maintain continuity, uphold high auditing standards, and align with current best practices, staff recommends approving a new six-year Contractual Services Agreement with LSL through Fiscal Year 2030, with a total not-to-exceed amount of $599,257; and

WHEREAS, while audit firm rotation was once encouraged, current best practices emphasize rotating engagement partners or senior staff within the same firm to maintain independence while preserving institutional knowledge, as recommended by the GFOA, the Government Accountability Office (GAO), and the American Institute of Certified Public Accountants (AICPA); and

WHEREAS, the 2024-2026 Biennial Budget and Capital Improvement Plan includes sufficient funding for this agreement through the end of Fiscal Year 2026, with future years to be appropriated in subsequent budget cycles.

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

1. The City Council hereby approves the Agreement with LSL for professional auditing services for a six-year term through Fiscal Year 2030, with a total not-to-exceed contract amount of $599,257, and authorizes the City Manager to execute the Agreement with Lance, Soll & Lunghard, LLP, in a form approved by the City Attorney.

2. The City Manager, together with the Finance Director, is authorized to take all necessary actions to implement the agreement, including approving annual engagement letters and overseeing engagement partner rotations in compliance with best practices.

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF NEWARK
AND
LANCE, SOLL & LUNGHARD, LLP
FOR PROFESSIONAL AUDITING SERVICES

This Agreement for consulting services ("Agreement") is made by and between the City of Newark, a municipal corporation, ("City") and Lance, Soll & Lunghard LLP, a limited liability company, with offices located at 2151 River Plaza Dr., Suite 150, Sacramento, CA 95833, ("Consultant"), (together referred to as the "Parties") as of February 27, 2025 (the "Effective Date").

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

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2030, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8. Funding for services beyond the current fiscal year will be included in future City budgets but is subject to City Council approval of annual appropriations.]

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

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

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

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed five hundred ninety-nine thousand two hundred fifty-seven dollars, ($599,257) notwithstanding any contrary indications that may be contained in Consultant's proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

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

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

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

COVERAGE	TYPE OF INSURANCE	MINIMUM LIMITS
A	**Commercial General Liability** Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	$2,000,000 per occurrence; Bodily Injury and Property Damage $4,000,000 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis
B	**Commercial or Business Automobile Liability** All owned vehicles, hired or leased vehicles, non-owned,	$1,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as

	borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
C	**Workers' Compensation (WC) and Employers Liability (EL)** Required for all contractors with employees	WC: Statutory Limits EL: $100,000 per accident for bodily injury or disease. Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement
D	**Professional Liability/Errors & Omissions** Includes endorsements of contractual liability	$2,000,000 per occurrence $4,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed $150,000 per claim

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

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

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

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and

volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

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

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

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

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

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

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

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

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

4.3 All Policies Requirements.

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

b. Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the

insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

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

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

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

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

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

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

Section 6. STATUS OF CONSULTANT.

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

6.2 Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

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

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

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

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

7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender, or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

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

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of

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

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

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

8.6.1 Immediately terminate the Agreement;

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

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

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

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

Section 9. KEEPING AND STATUS OF RECORDS.

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

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records should be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.

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

Section 10 MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant

in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

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

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

Any written notice to Consultant shall be sent to:

Lance, Soll & Lunghard, LLP

Attn: Brandon Young, Partner

2151 River Plaza Dr., Suite 150

Sacramento, CA 95833

All other written notices to City shall be sent to:

_____ _____ City of Newark 37101 Newark Blvd. Newark, CA 94560	with a copy to	Kristopher J. Kokotaylo, City Attorney City of Newark 37101 Newark Blvd. Newark, CA 94560

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

_____ Seal and Signature of Registered Professional with report/design responsibility.

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

Exhibit A	Scope of Services
Exhibit B	Cost Proposal

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

SIGNATURES ON FOLLOWING PAGE

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

CITY OF NEWARK

_____
_____, CITY MANAGER

ATTEST:

_____
_____, CITY CLERK

APPROVED AS TO FORM:

_____
KRISTOPHER J. KOKOTAYLO
CITY ATTORNEY

LANCE, SOLL & LUNGHARD, LLP

_____

Title: _____

5638310.1
Version 3.2.21

EXHIBIT A

SCOPE OF SERVICES

LSL CPAs, LLP

AUDIT SCOPE AND PROVISIONS

The following services will be performed for the City of Newark by LSL:

1. Express an opinion on the fair presentation of its basic financial statement in conformity with generally accepted accounting principles.

2. Express an opinion on the fair presentation of the City's its combining and individual fund statements and schedules in conformity with generally accepted accounting principles. The auditor is not required to audit the supporting schedules contained on the comprehensive annual financial report. However, the auditor is to provide an "in-relation-to" opinion on the supporting schedules based on the auditing procedures applied during the audit of the basic financial statements and the combining and individual fund financial statements and schedules. The auditor is not required to audit the statistical section of the report. The City's Financial Statements will be prepared and processed by the audit firm.

3. Express an opinion on the City's compliance with the Single Audit Act and the provisions of OMB Circular A-133 and other applicable laws and regulations. In addition to the audit of federal awards, the auditor will review any materials included in the reporting package accompanying the data collection form. The City will prepare the Schedule of Expenditures of Federal Awards. The auditors will prepare the single audit report and provide one (1) electronic copy in PDF format and three (3) bound copies each year. The auditors will complete the data collection form and required filing with the Federal Audit Clearinghouse and provide

the City with one (1) electronic copy in PDF format of the data collection form each year.

4. Prepare the Annual Report of Financial Transaction (State Controller's Report) for the City.

5. Perform Agreed-Upon Procedures in connection with the annual calculation of the appropriation limit (Gann), as required by Section 1.5 of the Article XIIIB of the California Constitution. The auditor will be responsible for rendering their opinion and provide the City with one (1) electronic copy in PDF format.

6. Examine the City's internal accounting controls and accounting procedures and render written reports of their findings and recommendations to the City Council and a brief presentation to City Council.

7. If the auditor finds indications of defalcation or other circumstances requiring an extension of procedures beyond the scope of the examination, which would be sufficient under ordinary circumstances, the auditors will provide the Finance Manager with all readily ascertainable facts relative to such extraordinary circumstances together with an estimate for the additional cost of investigating same. Fees relating to such additional services are not contemplated as being within the scope of services to be performed under the paragraphs above and will be subject to approval by the City Council.

8. Irregularities and illegal acts. Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

David Benoun, City Manager
Kristopher Kokotaylo, City Attorney

9. The auditor will meet regularly with the Finance Manager as needed to discuss preliminary audit findings and/or progress. This part of the auditor involvement is essential to make sure the City clearly understands rollup issues, auditor entries, and groupings made by the auditor in the CAFR. Prior to issuing their final reports, the auditor will meet with representatives of the Finance Department in an exit conference format. All audit reports will be addressed to the City Council. The auditor may be consulted occasionally throughout the year as an information resource. The auditors may be asked to provide guidance on implementation of Government Accounting Standards Board (GASB) requirements and specifics of federal and state regulations as they may affect local government accounting.

10. Format and produce 15 copies of the CAFR and 10 copies of other component reports. The City will provide at their expense all necessary binder covers, tabs, spines along with chosen theme to accommodate auditor's production of the CAFR.

In addition, the auditors will provide a camera- ready PDF version of the CAFR so that the City may upload to its website and provide to outside parties electronically, including GFOA for award purposes.

Specific Deliverables for the City

1. Audit of the basic financial statements and deliver opinion letter for the CAFR by December 15.

2. Produce the CAFR to meet the GFOA December 31 deadline for the Excellence in Financial Reporting award program.

3. Testing programs for compliance with the Single Audit Act and applicable laws and regulations and issuance of an audit report by March 1.

4. Testing of compliance for Transportation Development Act programs and preparation of required audit report by December 1.

5. Audit of the Vehicle Registration Fee Program (VRF) and preparation of required audit report by December 1st.

6. Testing of compliance with the Agreement for Distribution of Measure B and Measure BB Transportation Improvement Funds and issuance of required audit report by December 1.

7. Audit of the component unit financial statements for the Newark Public Financing Authority by December 1.

8. Audit of the Measure GG financial statements and preparation of required audit report by December 1.

9. Audit of the Utility User Tax (UUT) financial statements and preparation of required audit report by December 1.

10. Perform procedures and issue agreed upon procedures opinion by December 1 to comply with Proposition 111 Appropriation Limit increment requirements.

11. The audit firm shall issue a separate Management letter and recommendations for improvements to internal control, accounting procedures, and other significant observations that are considered to be non-reportable conditions and deliver by December 1.

12. Prepare and submit State Controller's Report by January 15.

LSL is aware of the Cities Additional Provisions listed in the RFP, section V1.

Please refer to the Specific Audit Approach section, page 7 of this proposal, for detail on the scope of audit work, as well as time estimates.

SPECIFIC AUDIT APPROACH

PROPOSED SEGMENTATION OF THE ENGAGEMENT

The services will be divided into three segments.

Segment 1 - Planning and Obtaining an Understanding:

LSL will provide an annual audit communication letter, engagement letter, and Government Audit Quality Center Information letter. The audit communication letter is to be provided to the Governing Board. In addition, this can be communicated orally to the Governing Board or sub-committee, if requested. This communication will discuss the planning stages, the responsibilities of the Governing Board, Auditors, and Management, and provide an opportunity for communication with us as the auditors.

LSL's audit team will meet prior to our initial on-site visit to brainstorm and discuss economic conditions, industry elements, and new standards that will affect the City of Newark. A trial balance is requested for our planning meeting to assist the LSL team in obtaining knowledge and preparing expectations for the audit year. We will compile a list of "Prepared by Client" ("PBC") items based on our review of prior year financial statements and information gathered. This will be provided to the City of Newark one month prior to our visit or earlier if requested. We operate on a paperless software system and provide a secured cloud-based portal for all clients. The City of Newark will have its own folder which can be customized to organize, and upload requested schedules, support documents, etc. Estimated time to complete Segment one is approximately 155 hours.

Segment 2 - Financial Audit Testing:

Based on the information gathered each year thus far, we will utilize a customized audit program based on the risk assessment developed during our assessment of the City's internal controls and government auditing standards. The primary benefit of a tailored program is a focused set of procedures to address relevant areas. We believe that this approach will be the most effective and efficient by linking financial statement assertions, audit objectives, and procedures that are basic to most governmental audit engagements and critical to the compliance with other material laws and regulations. We will annually compile another customized "Prepared by Client" (PBC) list for the year-end on-site visit provide at least one month prior or earlier if requested. We will request a trial balance for our analytical review to be provided one week prior to our arrival. Year-end fieldwork will include testing of the balance sheet, revenue and expenditures accounts, confirmation of selected balances, analytical procedures, evaluation of the internal controls and preparation of reports and letters. Estimated time to complete Segment two is approximately 280 hours.

Segment 3 - Conclusion:

Based on our year-end exit meeting we will schedule a plan to finalize the CAFR in the timetable of the City. We will schedule dates for the initial and final drafts including time for the City review and approval of the financial statements. In addition, this will account for the review of the engagement partner and quality assurance partner. After the review and receipt of the signed Representation Letter from the City, we will provide the final Reports by December 1st each year. Estimated time to complete Segment three is approximately 90 hours for all required reports and letters.

SAMPLE SIZE

Our approach may be to utilize statistical sampling in the areas of receipts, disbursements, utility billing and payroll. Here we develop a statistical conclusion based upon an initial computer selected random sample which is based on the population and other risk factors identified. If errors are noted in the sample, the sample size will be expanded. We believe that a random selection can be efficient, while providing each item in the population an equal chance of being selected. Additionally, we may select a stratified sample of all transactions over a specified dollar limit for review. This allows us to cover all high dollar value transactions not otherwise selected in the random sample. Our samples are selected randomly utilizing IDEA data analysis software.

ANALYTICAL PROCEDURES

For the audits of the financial statements, we will use analytical procedures as an overall review of the financial information in the preliminary and final stages of the audits. These procedures are designed to assist us in planning our audits and in assessing the propriety of the conclusions reached, and in the evaluation of the overall financial statement presentation. The procedures to be utilized consist of determining expectations for changes to significant revenue, expenditure and balance sheet accounts, reading the financial statements and related notes,

reviewing the budget and related material and focusing on overall relationships within the financial statements. Once determined, these are reviewed to evaluate if the changes appear reasonable or require further analysis. For all significant differences, explanations are obtained as to why the situation occurred and additional substantive procedures may be applied and related evidence gathered to resolve concerns and questions.

If the City of Newark can provide a check register electronically for July 1st forward (period after the audit year), then we can pre-select our sample for accounts payable cut-off test work and provide that information ahead of time. Our PBC list will detail out schedules we would like provided, which is directed straight from the audit report. Support requested and sampling for these schedules will be assessed each year based on the strengths and weaknesses of the internal control processes of the City, and the materiality level of the account. We will discuss our analytical variances with the City and obtain documentation that provides support for the accounts.

UNDERSTANDING OF THE CITY'S INTERNAL CONTROL STRUCTURE OVER FINANCIAL REPORTING

To gain an understanding of the internal control structure over the financial statements, we will perform procedures as required by SAS 122-125. This will include review of internal controls in the areas of financial reporting; cash; revenues and receivables; expenditures and accounts payable; payroll; capital assets; long-term debt; or grant reporting, as applicable.

Based on the result of our review, we will issue a management letter (SAS 115 Letter) that will identify any significant deficiencies and/or material weaknesses noted. This report is required by the *Government Auditing Standards* issued by the Comptroller General of the United States. Auditing Standards require auditors to obtain an understanding of the Entity and its Environment along with Assessing the Risks of Material Misstatements. LSL obtains an understanding through a variety of ways all throughout the year, but the most pertinent time each year is during our interim on-site visit. We will conduct interviews with management of finance along with each audit section responsible party (e.g. cashier, accounts payable clerk, payroll clerk, etc.) to review the processes and controls through observation and discussions. Based on our observations, we will sample as we observe a "walk-through" to verify the system of control is working in accordance with policies and procedures.

We will provide a list each year of randomly selected employees of the City of Newark to interview for fraud interviews (SAS 99), which will consist of all levels of the City across all departments.

After our interim on-site visit, we will have an exit meeting to discuss potential weaknesses, if any, and provide any feedback for improvements or valuable information we have gathered from our outside clientele that would benefit the City of Newark.

DETERMINING LAWS AND REGULATIONS SUBJECT TO AUDIT TEST WORK

The Laws and Regulations that will be subject to audit test work are determined from the applicable laws, regulations, contracts, and grant agreements which we identify through the understanding we obtain of the City of Newark and our extensive experience with governmental entities.

LSL

CPAs AND ADVISORS

USE OF COMPUTER SOFTWARE IN THE ENGAGEMENT

We use specialized auditing software to perform our audit in addition to Data Analysis Software to perform audit testing. We also use secure web portals to communicate information.

DRAWING AUDIT SAMPLES

For tests of controls, we use audit sampling. Tests of controls are procedures directed towards determining the effectiveness of the design or operation of an internal structure policy or procedures. Normally, audit sampling is used for tests of controls and tests of compliance that involve inspection of documents and reports indicating performance of the applicable policy or procedures and compliance with the applicable laws and regulations. These sampling procedures test the operating effectiveness of an internal control structure policy or procedures by determining how the policy or procedure was applied, the consistency with which it was applied during the audit period, and by whom it was applied. To achieve this goal, we will draw samples for disbursements, receipts and payroll when applicable. Each document selected will be tested for various attributes that are designed to verify compliance with different aspects of internal controls and applicable laws and regulations. Additionally, each sample item will be tested for coding to the proper accounts and posting to the general ledger. Sample sizes vary based on the population and risk-based calculations.

QUALITY ASSURANCE POLICY AND PROCEDURES

LSL has established strict review procedures to ensure quality reporting in accordance with the standards. These procedures are designed to maximize adherence to quality.

IDENTIFICATION OF ANTICIPATED POTENTIAL AUDIT PROBLEMS

With our familiarity with similar governments, we do not anticipate unusual audit problems, except implementing GASB No 84, 86, and 87. We do anticipate some implementation challenges. To address these challenges, we offer training, experience with similar governments, and implementation experts within the firm and the team.

COST DATA

Cost Data is available on the following pages.

EXHIBIT B

COMPENSATION SCHEDULE

All-Inclusive Maximum Price by Report						
Report	**2024-25**	**2025-26**	**2026-27**	**2027-28**	**2028-29 *(Optional)***	**2029-30 *(Optional)***
City Audit & Related Reports	$62,000	$62,000	$62,000	$62,000	$65,100	$68,355
Successor Agency Audit	$3,300	$3,300	$3,300	$3,300	$3,465	$3,638
Single Audit (if applicable)*	$5,000	$5,000	$5,000	$5,000	$5,250	$5,513
Appropriations Limit Calculation (GANN)	$600	$600	$600	$600	$630	$662
Measure B Audit	$3,000	$3,000	$3,000	$3,000	$3,150	$3,308
Measure BB Audit	$3,000	$3,000	$3,000	$3,000	$3,150	$3,308
Vehicle Registration Fee Audit	$2,000	$2,000	$2,000	$2,000	$2,100	$2,205
Utility User Tax Audit	$1,500	$1,500	$1,500	$1,500	$1,575	$1,654
Measure GG Audit	$1,500	$1,500	$1,500	$1,500	$1,575	$1,654
TDA Audit	$1,500	$1,500	$1,500	$1,500	$1,575	$1,654
Newark Betterment Corporation Audit	$5,000	$5,000	$5,000	$5,000	$5,250	$5,513
City SCR Report	$4,000	$4,000	$4,000	$4,000	$4,200	$4,410
ACFR Preparation (OPTIONAL)	$5,000	$5,000	$5,000	$5,000	$5,250	$5,513
Out-of-Pocket Expenses	*Included*	*Included*	*Included*	*Included*	*Included*	*Included*
Total for Fiscal Year (Not-to-Exceed)	**$97,400**	**$97,400**	**$97,400**	**$97,400**	**$102,270**	**$107,387**

**Price includes 1 major program. Each additional program is $4,000.*

STAFF REPORT

Item D. 4.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	James Scanlin, Environmental Services Manager
SUBJECT	Adopt a resolution approving a modification to a contractual services agreement with Surf to Snow Environmental Resource Management, Inc. to conduct inspections of industrial and commercial facilities as required by the City's stormwater discharge permit

SUMMARY AND RECOMMENDATION

The San Francisco Bay Regional Water Quality Control Board (Water Board) issues stormwater discharge permits to the City. These permits require the City to conduct inspections of commercial and industrial facilities to ensure that the facilities are implementing management practices to prevent pollutants from contaminating stormwater discharges. In 2022, the City released a request for proposals (RFP) to conduct these inspections. Surf to Snow Environmental Resource Management, Inc. (Surf to Snow) was selected to provide these services. The City executed a contract with Surf to Snow in July 2022 for $55,120. The Agreement was for a one-year term with the option to extend the Agreement for two additional one-year terms. In August 2023, the City modified the contract (First Amendment) to extend the contract termination date to June 30, 2024, and increased the contract amount by $65,000 for a new not-to-exceed amount of $120,120. In July 2024, the City extended the contract termination date to June 30, 2025 (Second Amendment) without providing additional funding. Staff proposes a Third Amendment to increase the contract amount by $59,000 for a new not-to-exceed amount of $179,120 to allow Surf to Snow to conduct inspections through June 30, 2025.

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

BACKGROUND

The City, along with the other cities, unincorporated areas, and flood control districts in Alameda, Contra Costa, Santa Clara, and San Mateo counties, is issued a National Pollutant Discharge Elimination System (NPDES) Permit from the Water Board for discharges from its storm sewer system to the San Francisco Bay. This permit is referred to as the Municipal Regional Stormwater Permit or MRP. The Water Board adopted a revised MRP on May 11, 2022 which went into effect on July 1, 2022. The MRP requires the City to implement numerous activities to prevent pollutants from contaminating its stormwater discharges including: (1) inspect all the installed stormwater treatment systems to ensure that they are operating properly and to require additional maintenance if needed; (2) inspect all industrial and commercial sites that could cause or contribute to pollution of stormwater discharges to ensure that proper best management practices (BMPs) are being implemented and to require corrective action as needed; (3) effectively prohibit non-stormwater discharges from entering the storm drain system and to respond to any discharges or complaints of discharges, and to ensure the discharges cease and are cleaned up; and (4) eliminate the discharge of trash to its storm drain system by June 30, 2025. Failure to comply with these permit requirements could result in fines from the State or in third-party lawsuits.

DISCUSSION/ANALYSIS

Surf to Snow was selected through a competitive selection process and has provided excellent service. The Agreement allows for extending the contract termination date through June 30, 2025. Approving this contract modification will allow the City to meet the State's requirements to inspect commercial and industrial facilities to ensure pollution control management practices are implemented.

FISCAL IMPACT

The 2024-2026 Biennial Budget and Capital Improvement Plan contains sufficient funding for this scope of work. No budget modifications are necessary.

REVIEW AND APPROVAL

Prepared by - James Scanlin, Environmental Services Division Manager
Reviewed by - Howard Young, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Original Agreement
1st Amendment to Agreement
S2S 2nd Amendment
Surf to Snow Resolution 3rd Amendment
S2S Third Amendment
Exhibit B-Revised Rate Schedule

DocuSign Envelope ID: 9A883508-28E4-49ED-A88D-3373245BFD7D

C22053
R11393

CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 1st day of August, 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and Surf to Snow Environmental Research Management, Inc., a California corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

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

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Public Works Department and incorporated herein by reference; and, after negotiations, Consultant agreed to perform the "Services" more particularly described in Exhibit "A" ("Services"), in return for the compensation described in this Agreement and Exhibit "B".

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

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3. **COMPENSATION.**

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

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

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

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

Invoices shall be sent to:

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

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

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

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

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

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

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be

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signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require and obtain complete, certified copies of all required insurance policies and endorsements at any time. Failure to exercise this right at any time shall not constitute a waiver of right to exercise later. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

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

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

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

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

C. Minimum Limits of Insurance.

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

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers, or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City.

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

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

I. Other Insurance Provisions.

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

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

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

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

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

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

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

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

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

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

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

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

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

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

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

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

16. TERM/TERMINATION.

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

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

B. Notwithstanding the provisions of paragraph 16 section A above, City may terminate this Agreement at any time and without cause upon written notification to the Consultant. Consultant may cancel this Agreement upon thirty (30) day's written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

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

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

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

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

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

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

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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

DocuSigned by:
Lenka Hovorka
5DAB8ABE4F2D491...
for

David J. Benoun

City Manager

Dated 7/29/2022

Surf to Snow Environmental Resource Management, Inc.

DocuSigned by:
Elizabeth Franta
85DAC22861C54EC...

Chief Operating Officer

Dated 7/29/2022

Attest:

DocuSigned by:
Sheila Harrington
AD90989DBABE45E...
Clerk

Dated 8/1/2022

Approved as to form:

DocuSigned by:
Kristopher Kokotaylo
ABFC8AFEC9714E4...

Kristopher Kokotaylo, City Attorney

Dated 7/29/2022

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EXHIBIT A

SCOPE OF SERVICES

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

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

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

Related tasks include, but are not limited to:

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

MRP C.5 Illicit Discharge Response

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

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EXHIBIT B

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Surf to Snow Environmental Resource Management, Inc.

Pricing Summary

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

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

MRP Provision C.4 Business Inspections (Unit Rate)

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

Spill & Discharge Response (Unit Rate)

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

Post-Inspection Reporting & Deliverables (T&M)

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

Project Management & QAQC (T&M)

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

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

T&M Rates

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

Assumptions

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

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

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

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

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

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

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

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

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

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Certificate Of Completion

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Subject: Please DocuSign: C22053 Surf to Snow.pdf
Source Envelope:
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Certificate Pages: 5
AutoNav: Enabled
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Signatures: 4
Initials: 0

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Envelope Originator:
Kathy Slafter
37101 Newark Boulevard
Newark, CA 94560
kathy.slafter@newark.org
IP Address: 206.128.122.185

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Status: Original
7/29/2022 1:47:04 PM

Holder: Kathy Slafter
kathy.slafter@newark.org

Location: DocuSign

Signer Events	Signature	Timestamp
Elizabeth Frantz elizabeth.frantz@s2serm.com Security Level: Email, Account Authentication (None)	DocuSigned by: Elizabeth Frantz 85DAC22861C54EC... Signature Adoption: Pre-selected Style Using IP Address: 67.188.217.72	Sent: 7/29/2022 1:57:14 PM Viewed: 7/29/2022 1:58:32 PM Signed: 7/29/2022 1:58:57 PM
Electronic Record and Signature Disclosure: Accepted: 7/29/2022 1:58:32 PM ID: 01d16e72-04a1-4a58-ad4b-11ba5921f084		
Kristopher Kokotaylo kkokotaylo@meyersnave.com Security Level: Email, Account Authentication (None)	DocuSigned by: kristopher kokotaylo ABFC8AFEC9714E4... Signature Adoption: Pre-selected Style Using IP Address: 206.169.145.130	Sent: 7/29/2022 1:58:59 PM Viewed: 7/29/2022 2:12:44 PM Signed: 7/29/2022 2:13:25 PM
Electronic Record and Signature Disclosure: Accepted: 7/29/2022 2:12:44 PM ID: dcebceb4-42e5-4aa4-9c2f-3cd86cf67f92		
Lenka Hovorka lenka.hovorka@newark.org Security Level: Email, Account Authentication (None)	DocuSigned by: Lenka Hovorka 5DAB8ABE4F2D491... Signature Adoption: Pre-selected Style Using IP Address: 206.128.122.185	Sent: 7/29/2022 2:13:27 PM Viewed: 7/29/2022 4:17:07 PM Signed: 7/29/2022 4:18:14 PM
Electronic Record and Signature Disclosure: Accepted: 7/29/2022 4:17:07 PM ID: 5eae3712-9d34-41ec-8815-7468acf0dece		
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: 206.128.122.185	Sent: 7/29/2022 4:18:16 PM Viewed: 8/1/2022 7:38:35 AM Signed: 8/1/2022 7:40:21 AM
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Editor Delivery Events	**Status**	**Timestamp**
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Intermediary Delivery Events	**Status**	**Timestamp**
Certified Delivery Events	**Status**	**Timestamp**
Carbon Copy Events	**Status**	**Timestamp**
James Scanlin james.scanlin@newark.org Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 8/1/2022 7:40:23 AM Viewed: 8/1/2022 7:58:40 AM
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**
Envelope Summary Events	**Status**	**Timestamps**
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Certified Delivered	Security Checked	8/1/2022 7:38:35 AM
Signing Complete	Security Checked	8/1/2022 7:40:21 AM
Completed	Security Checked	8/1/2022 7:40:23 AM
Payment Events	**Status**	**Timestamps**
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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.

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FIRST AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND SURF TO SNOW ENVIRONMENTAL RESOURCES, INC.

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Surf to Snow Environmental Resources, Inc., ("Consultant") dated July 28, 2022 (the "Agreement"), is entered into as of 9/27/2023, 2023 for the provision of Municipal Stormwater Inspection Services.

RECITALS

WHEREAS, the City and Surf to Snow Environmental Resources, Inc. ("Consultant") entered into an Agreement between City and Consultant for Municipal Stormwater Inspection Services effective July 28, 2022 (Agreement); and

WHEREAS, Consultant has satisfactorily completed the scope of services in the Municipal Stormwater Inspection Services Agreement; and

WHEREAS, Municipal Stormwater Inspections are required by the City's Municipal Regional Stormwater Permit to be conducted annually; and

WHEREAS, the City intends, upon mutual written agreement by both parties to renew the agreement for an additional year as provided for in the Agreement.

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

(1) Notwithstanding Section 1 of the Agreement, the parties hereby agree to add additional funding in the amount of $65,000.00 to the Agreement for a new not to exceed the amount of $120,120.00.
(2) Notwithstanding Section 3 of the Agreement, the parties hereby agree to revise the payment schedule of the Agreement to the payment schedule as contained in Exhibit B.
(3) Notwithstanding Section 16 of the Agreement, the parties hereby agree to revise the Term/Termination date of the agreement to June 30, 2024.

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

DocuSign Envelope ID: F68F7F4F-077A-45B2-84A3-F28B01347098

City of Newark

DocuSigned by:
0757678B2C2304C4...

David J. Benoun
City Manager

Dated 9/27/2023

Consultant

DocuSigned by:
Elizabeth Franz
85DAC22861C54EC...

Elizabeth Franz
Chief Operating Officer

Dated 9/4/2023

Attest:

DocuSigned by:
Sheila Harrington
AD90989DBABE45E...

Sheila Harrington
City Clerk

Approved as to Form:

DocuSigned by:
Kristopher Kokotaylo
ABFC8AFEC97J4E4...

Kristopher J. Kokotaylo
City Attorney

DocuSign

Certificate Of Completion

Envelope Id: F68F7F4F077A45B284A3F28B01347098
Subject: Complete with DocuSign: S2s first amendment.pdf
Source Envelope:
Document Pages: 2
Certificate Pages: 5
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Signatures: 4
Initials: 0

Status: Completed

Envelope Originator:
Brett Oeverndiek
37101 Newark Boulevard
Newark, CA 94560
brett.oeverndiek@newark.org
IP Address: 206.128.122.185

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brett.oeverndiek@newark.org

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Signer Events	Signature	Timestamp
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Kristopher Kokotaylo kkokotaylo@meyersnave.com City Attorney Security Level: Email, Account Authentication (None)	DocuSigned by: kristopher kokotaylo ABFC8AFEC9714E4...	Sent: 9/4/2023 9:38:51 AM Viewed: 9/6/2023 9:57:30 AM Signed: 9/6/2023 9:57:48 AM
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David J. Benoun david.benoun@newark.org NEWARK CITY MANAGER David Benoun Security Level: Email, Account Authentication (None)	DocuSigned by: 075767B2C2304C4...	Sent: 9/6/2023 9:57:49 AM Resent: 9/27/2023 11:08:00 AM Viewed: 9/27/2023 1:06:17 PM Signed: 9/27/2023 1:06:22 PM
	Signature Adoption: Drawn on Device Using IP Address: 71.202.42.62	
Electronic Record and Signature Disclosure: Accepted: 9/27/2023 1:06:17 PM ID: f2cf7806-fd87-444b-b17b-4afe53b46211		
Sheila Harrington sheila.harrington@newark.org City Clerk City of Newark Security Level: Email, Account Authentication (None)	DocuSigned by: Sheila Harrington AD90989DBABE45E...	Sent: 9/27/2023 1:06:23 PM Viewed: 9/27/2023 1:08:55 PM Signed: 9/27/2023 1:09:04 PM
	Signature Adoption: Pre-selected Style Using IP Address: 206.128.122.185	
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Editor Delivery Events	**Status**	**Timestamp**
Agent Delivery Events	**Status**	**Timestamp**
Intermediary Delivery Events	**Status**	**Timestamp**
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Carbon Copy Events	**Status**	**Timestamp**
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**
Envelope Summary Events	**Status**	**Timestamps**
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Certified Delivered	Security Checked	9/27/2023 1:08:55 PM
Signing Complete	Security Checked	9/27/2023 1:09:04 PM
Completed	Security Checked	9/27/2023 1:09:04 PM
Payment Events	**Status**	**Timestamps**

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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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

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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

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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.

CITY OF NEWARK
NEWARK california
37101 Newark Boulevard, Newark, CA 94560
www.newark.org

July 30, 2024

Surf to Snow
2246 Camino Ramon
San Ramon, CA 94583
ATTN: Elizabeth Frantz

RE: Extension of Contractual Services Agreement

Dear Ms. Frantz:

Per the First Amendment (dated September 27, 2023) to the Contractual Services Agreement (dated July 28, 2022), Surf to Snow Environmental Resources, Inc. is under contract to perform stormwater inspection services for a period ending June 30, 2024.

This letter is to provide notice pursuant to Section 16 of the Agreement entitled, "Term/Termination" that the City is electing to extend the Agreement for an additional one (1) year term from July 1, 2024 through June 30, 2025.

All other terms and conditions of the Agreement shall remain in effect.

If you have any questions or need additional information, please contact James Scanlin at (510) 578-4539 or james.scanlin@newark.org.

Sincerely,

Howard Young
City of Newark
Public Works Director

Acknowledgment By:

Print Name: Elizabeth Frantz Elizabeth Frantz
Date: August 1, 2024

RESOLUTION NO.

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

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

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

WHEREAS, the City and Surf to Snow Environmental Resources, Inc. ("Consultant") entered into an Agreement between City and Consultant for Municipal Stormwater Inspection Services effective July 28, 2022 (Agreement) in the amount of $55,120; and

WHEREAS, the City previously amended the Agreement through a First Amendment in August 2023 to increase the contract amount by $65,000, bringing the total not-to-exceed amount to $120,120, and extending the contract term to June 30, 2024; and

WHEREAS, a Second Amendment in July 2024 further extended the contract termination date to June 30, 2025 to continue compliance with the City's Municipal Regional Stormwater Permit (MRP); and

WHEREAS, Consultant has satisfactorily completed the scope of services in the Municipal Stormwater Inspection Services Agreement and the Amendments; and

WHEREAS, Municipal Stormwater Inspections are required by the City’s Municipal Regional Stormwater Permit to be conducted annually; and

WHEREAS, the City intends, upon mutual written agreement by both parties, to revise the payment schedule as provided for in the Agreement; and

WHEREAS, the City now desires to further amend the Agreement through a Third Amendment to provide additional funding of $59,000, increasing the total contract not-to-exceed amount to $179,120, ensuring continued compliance with the Municipal Regional Stormwater Permit requirements.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute the Third Amendment to the Contractual Services Agreement with Surf to Snow Environmental Resource Management, Inc., in a form approved by the City Attorney, increasing the total contract not-to-exceed amount to $179,120, and to execute any necessary documents and take all actions necessary to effectuate the intent of this Resolution.

THIRD AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND SURF TO SNOW ENVIRONMENTAL RESOURCES, INC.

This Third Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Surf to Snow Environmental Resources, Inc., ("Consultant") dated July 28, 2022 (the "Agreement"), is entered into as of _____, 2025 for the provision of Municipal Stormwater Inspection Services.

RECITALS

WHEREAS, the City and Surf to Snow Environmental Resources, Inc. ("Consultant") entered into an Agreement between City and Consultant for Municipal Stormwater Inspection Services effective July 28, 2022 (Agreement); and

WHEREAS, The Agreement was amended to provide additional inspection services, increase funding, and revise the Term/Termination date to June 30, 2025.

WHEREAS, Consultant has satisfactorily completed the scope of services in the Municipal Stormwater Inspection Services Agreement and the Amendments; and

WHEREAS, Municipal Stormwater Inspections are required by the City's Municipal Regional Stormwater Permit to be conducted annually; and

WHEREAS, the City intends, upon mutual written agreement by both parties, to revise the payment schedule as provided for in the Agreement.

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

(1) Notwithstanding Section 1 of the Agreement, the parties hereby agree to add additional funding in the amount of $59,000.00 to the Agreement for a new not to exceed the amount of $179,120.00.
(2) Notwithstanding Section 3 of the Agreement, the parties hereby agree to revise the payment schedule of the Agreement to the payment schedule as contained in Exhibit B.

The Third Amendment of the Agreement for Municipal Stormwater Inspection Services has been executed by the parties as of the date first set forth above.

City of Newark

David J. Benoun
City Manager

Dated_____

Consultant

Elizabeth Franz
Chief Operating Officer

Dated_____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

Surf to Snow Environmental Resource Management, Inc.

Pricing Summary

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

Units	Unit Rate	Number of Locations per Year	Total Estimate per Year
C.3 O&M Inspection (Initial)	$326.97	31.00	$10,136.07
C.3 O&M Inspection (1st Re-Insp)	$259.50	10.00	$2,595.00
C.3 O&M Inspection (2nd Re-Insp)	$259.50	-	$0.00
		C.3 Inspection Total	**$12,731.07**

MRP Provision C.4 Business Inspections (Unit Rate)

Units	Unit Rate	Number of Locations per Year	Total Estimate per Year
C.4 Business Inspection (Initial)	$326.97	60.00	$19,618.20
C.4 Business Inspection (1st Re-Insp)	$259.50	8.00	$2,076.00
C.4 Business Inspection (2nd Re-Insp)	$259.50	-	$0.00
		C.4 Inspection Total	**$21,694.20**

Spill & Discharge Response (Unit Rate)

Task	Unit Rate	Number of Locations per Year	Total Estimate per Year
Illicit Discharge - Typical Spill Response	$741.13	6.00	$4,446.78
Illicit Discharge - Emergency Weekend/After-Hours Spill Response	$1,379.50	1.00	$1,379.50
		Spill & Discharge Response Total	**$5,826.28**

Trash Assessments for Private Land Drainage Areas (Unit Rate)

Task	Unit Rate	Number of Locations per Year	Total Estimate per Year
Trash Assessments for Private Land Drainage Areas (PLDAs)-Combined with C.4 Inspections	$106.40	35.00	$3,724.00
		Trash Assessment for Private Land Drainage Areas Total	**$3,724.00**

Post-Inspection Reporting & Deliverables (T&M)

Task	Total Estimate per Year
Monthly Reporting	$871.92
Weekly Reporting	$3,736.80
Post-Inspection Reporting & Deliverable Total	**$4,608.72**

Project Management & QAQC (T&M)

Task	Total Estimate per Year
Project Management & QAQC	$7,951.08
Communication with City (meetings/calls)	$887.49
Project Management & QAQC Total	**$8,838.57**

Total Estimated Cost Per Year (C.3 + C.4 + Spill + PLDA + Mobile Business + PM + Weekly/Monthly Reporting)	**$57,422.84**

Assumptions

1. A proposal has been requested to continue services for the City of Newark. This proposal includes tasks and rates for the 2024-2025 reporting year (Year 1), with the possibility of 2 additional years (Year 2 and Year 3).
2. Assume no escalation for Year 2 rates. Assume an escalation will be approved for Year 3 rates for a cost of living adjustment based on current year escalation rate.
3. Initial C.3/C.4 inspection units include time for research, scheduling, onsite inspection, reporting, & time to collect GIS data for the City's database. Assume total of 3 hours per inspection on average.
4. C.3/C.4 re-inspection units include time for research, scheduling, onsite inspection, & reporting. Assume total of 2.5 hours per inspection on average.
5. Assume 60 initial C.4 inspections yearly. Assume 8 total reinspections are needed before 6/30/25.
6. Assume 31 initial C.3 inspections yearly. Assume 10 total reinspections are needed before 6/30/25.
7. Assume 7 spill responses yearly. Assume 4 hours per inspection per site, 1.5 hours follow up per site, & 60 miles roundtrip. The Weekend/After-Hours Spill Response rate includes 1.5xhourly rate for inspection & assumes follow up after inspection occurs during normal working hours.
8. Proposal includes a new task for trash assessments on private land drainage areas (PLDA). Assume all PLDA assessments assigned to S2S will be performed with a C.4 inspection. When this assessment is paired with a C.4 inspection, only the additional reporting time will need to be covered. The PLDA unit included is for reporting only.
9. Assume inspection of Mobile Business may be needed. If any occur, the inspection billing will be covered by an Illicit Discharge unit (if out in the field) or an Initial Inspection unit (if at the business base location).
10. Assume QA/QC required for each Inspection/Spill Response/PLDA/Mobile Business report. Assume 0.25 hours per report.
11. Assume project support active for 5 months of the year. Assume 2 hours per month of PM time will be required during these active months.
12. Assume up to 3 meetings with the City yearly (kickoff meeting, meeting to discuss database, & meeting 60 days prior to end of contract term).
13. Proposal assumptions assume a 3-year duration. If performance period extends beyond 3 years, assumptions and rates will be subject to change.

T&M Rates	Hourlys Rate	
Labor Category	**Regular**	**Weekend/ After Hours**
Contract Manager	$171.27	$256.91
Assistant PM/Field POC	$124.56	$186.84
QSD	$145.32	$217.98
QSP	$114.18	$171.27
DI	$98.61	$147.92
GIS	$101.73	$152.60

STAFF REPORT
Item D. 5.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Daniel Sequeira, City Engineer
SUBJECT	Adopt a resolution authorizing the City Manager to execute Contractual Service Agreements for On-Call Civil Engineering Services with the following consultants: Coastland Civil Engineering, LLP, CSW-Stuber Stroeh Engineering Group, Inc., Haley & Aldrich, Inc., and F.J. Kennedy and Associates, Inc.

SUMMARY AND RECOMMENDATION

In accordance with the City's Purchasing Ordinance and procedures, staff prepared and initiated an open and competitive Request for Qualifications (RFQ) for on-call Civil Engineering Services. The RFQ specified that selection would be made based on quality and completeness of submissions as well as each firm's experience with engagements of similar scope and complexity, satisfaction of previous clients, and proposed rate schedule.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute Contractual Service Agreements, in a form approved by the City Attorney, with the four consultants for on-call Civil Engineering Services for the firms that staff determined most qualified.

BACKGROUND

The Public Works Department has significant projects pending and four vacancies in the Engineering Division: two Senior Civil Engineers, one Associate Civil Engineer, and one Engineering Technician. Staff is in the recruitment process but has a current and ongoing need for specialized skills to augment existing staff to manage the Capital Improvement Program and multiple land development projects. Accordingly, on December 23, 2024, staff released an RFQ for on-call Civil Engineering Services. The on-call scope of services for the RFQ is described below:

Civil Engineering Services
1. Prepare plans, specifications and estimate for the Slurry Seal 2025 Project.
2. Prepare the 5-Year Capital Improvement Program.
3. Update the City's Standard Details.
4. Provide construction management and inspections services for paving projects, utility installation and replacement, and storm drain systems.

5. Provide staff augmentation for the Land Development and Capital Improvement Program sections.
6. Serve as City Surveyor in reviewing, signing and stamping subdivision maps, Certificates of Correction, Lot Line Adjustments and Abandonments in conformance with City, State, County requirements.
7. Other duties as assigned by City Engineer.

DISCUSSION/ANALYSIS

Statement of Qualifications (SOQs) from interested consultants were submitted to the City on January 7, 2024.

A total of seven SOQs were received. Staff evaluated the SOQs and ranked them based on the firm's understanding of the City's desires and approach to completing the work, experience with contracts of similar scope, complexity and magnitude, qualifications of the staff being assigned, proposed rate schedule, satisfaction of previous clients, and the firm's ability to work effectively with City staff. The SOQs were received from the following firms:

BKF Engineers
Coastland I DCCM
CSWST
Haley & Aldrich, Inc.
Interwest Consulting Group
Kennedy and Associates
Ruggeri-Jensen-Azar

The professional services fees is generally consistent and does not significanty vary among the consultants that submitted SOQs.

Staff is recommending the approval of Contractual Services Agreements with four different consultant firms, each with a not to exceed amount as indicated below:

Coastland I DCCM: $750,000
CSWST2: $750,000
Haley & Aldrich: $900,000
Kennedy and Associates: $500,000

The contract amounts recommended by staff is based on the scope of services staff is planning to assign to each consultant in order to deliver certain CIP and land development projects during the contract term.

All agreements will be for a four-year term, expiring on June 30, 2029. Under the terms of the agreements, the selected firms will provide the requested services based on the adopted compensation rates.

FISCAL IMPACT

The proposed action will not have any direct impact on the General Fund at this time. Funds to pay for services related to Capital Improvement Program (CIP) projects will be provided by each individual CIP project budget approved by the City Council when it adopted the Biennial Budget for 2024-2026 (Budget). Funds to pay for the preparation of the 5-Year CIP will be provided by the Public Works – Engineering operating budget, also approved by the City Council when it adopted the Budget. Funds to pay for services related to land development projects will be offset by Development Services fees provided for in the Master Fee Schedule adopted by the City Council on November 14, 2024, and effective January 13, 2025.

REVIEW AND APPROVAL

Prepared by - Brett Oeverndiek, Management Analyst II
Prepared for - Daniel A. Sequeira, PE, City Engineer
Reviewed by - Howard Young, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

RFQ
Resolution

REQUEST FOR QUALIFICATIONS

On-Call Civil Engineering Services

STATEMENTS OF QUALIFICATIONS MUST BE RECEIVED BY E-MAIL:

TUESDAY, JANUARY 7, 2024 at 5:00 PM

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

Point of Contact:
Daniel A. Sequeira, PE
City Engineer
daniel.sequeira@newarkca.gov

REQUEST FOR QUALIFICATIONS (RFQ)
ON-CALL CIVIL ENGINEERING SERVICES

1. INTRODUCTION

The City of Newark (City) is seeking experienced and qualified Civil Engineering firm(s) (Consultant) to perform civil engineering services to augment City staff. The Consultant will be expected to perform various civil engineering duties and to work collaboratively with City staff. The Consultant(s) will be expected to act on behalf, and as an extension, of City staff, in the interests of the City and safety of its residents.

2. BACKGROUND

The City of Newark is located in Southern Alameda County at the east end of the Dumbarton Bridge, 30 miles south of Oakland, 15 miles north of San Jose. Newark was incorporated as a General Law City in 1955 and has a Council/Manager form of government. Newark's population is approximately 49,149, with an encompassed area of approximately 13 square miles. Other information regarding the City of Newark can be found on the City's website – www.newark.org.

3. GENERAL

The selected firm(s) will work under the general direction of the Public Works Director or designee to perform services as they are required. Consultant selection will be at the sole discretion of the City. No consultant is guaranteed work.

The selected consultant(s) will enter into a Contractual Services Agreement which will specify the billing rates, personnel to be assigned, and other terms. No monthly retainer is anticipated. Additional services may be authorized by Task Orders issued by the City in the form of a written request.

The City is requesting services for a minimum term of two (2) years, renewable for two additional one (1) year periods, upon mutual consent of the City and Consultant. Approximately 60 days prior to the end of each agreement period, a meeting may be held between the Consultant(s) and City of Newark staff to conduct a performance review, revise the scope and/or language of the agreement, and submit the Consultants' most current rate schedules. The Contractual Services Agreement requires the City Council's approval. Extensions to the term of the agreement, as allowed, will be subject to review and approval of the Public Works Director, City Manager and/or City Council.

4. SCOPE OF SERVICES

The desired scope of civil engineering services encompasses a wide range of activities and may include the following:

1. Prepare plans, specifications and estimate for the Slurry Seal 2025 Project, scheduled for construction in summer 2025. Due to the compressed schedule, the consultant must be willing to start work prior to City Council approval of the contract through authorization of a Letter of Intent.
2. Prepare the 5-Year Capital Improvement Program, scheduled for City Council adoption in June 2025. The current CIP: https://www.newark.org/home/showpublisheddocument/8775/637974495915500000

3. Update the City's Standard Details. The current Standard Details: https://www.newark.org/home/showpublisheddocument/9135/638252047500478108
4. Provide construction management and inspections services for asphalt concrete paving, utility installations, trench backfill and compaction, and storm drain systems.
5. Provide staff augmentation for the Land Development and Capital Improvement Program sections.
6. Serve as City Surveyor in reviewing, signing and stamping (seal) all maps, plats, legal description and other documents and providing technical map checking, review Certificates of Correction, Lot Line Adjustments and Abandonments for technical correctness and conformance with State, County and City requirements.
7. Other duties as assigned by City Engineer.

Consultant(s) hereby agree to furnish any and all materials, labor and equipment to perform the inspection services.

Additionally, Consultant(s) will be expected to work collaboratively with Public Works staff and other City departments, such as Planning, Building, and Fire. External agencies that may also require effective communication include Union Sanitary District, Alameda County Water District, Alameda County Flood Control, PG&E, and other dry utility companies. The above list is not exhaustive, but rather an overview of primary-level expectations.

If the consulting firm includes more than one Consultant in their RFQ, selected Consultants will be required to maintain adequate communication between one another to remain fully cognizant of their assigned projects' progression. The Consultant(s) will be expected to represent the City, protecting the interests of the City and its residents in communications with City staff, residents and developers/contractors/applicants.

5. STATEMENT OF QUALIFICATIONS/PROPOSAL FORMAT AND CONTENT

The proposal shall be brief, precise, and shall not include unnecessary promotional material. The proposal shall not exceed 10 pages, excluding resumes.

The proposal should contain the following elements in the exact order and segmentation listed below:

a. *Cover Letter*. Describe your firm or team's interest and commitment in providing On-Call Civil Engineering services to the City. Specify which item numbers, e.g., 1, 2, and 3, in Section 4 above your firm would like to be considered for. The letter shall be signed by a person authorized to negotiate a contract with the City.

b. *Staffing, Team Experience and Understanding of Requested Services & Objectives*. Describe the qualifications and experience of the team members expected to be assigned to this project. The description shall include previous experience with similar contracts. Include an organization chart and provide a matrix including which projects team members have worked on together in the past. Provide a discussion demonstrating the firm's understanding of the services to be provided and their significance to the overall City goals.

c. *Experience providing similar services*. The Consultant must present significant evidence of successful completion of similar services provided for local government clients over the past five years.

d. *Resumes*. Include single page resumes of the key personnel to be assigned to the consultant team. It is expected that designated key staff will remain for the duration of the agreement. Key staff substitution will be allowed only after consultation and concurrence with the City.

e. *References*. Provide at least three references (name, agency, title, address and telephone number) for recent similar or related work.

f. *Rate Schedule.* Present proposed compensation rate schedule for services.

g. *City's Standard Contractual Services Agreement*. A sample of the City's Standard Contractual Services Agreement (Agreement), including insurance requirements, is provided as **Attachment A**. If the interested firm would like to request amendments or exceptions to the Agreement and/or insurance requirements, these shall be specifically noted in the Statement of Qualifications. Otherwise, provide confirmation of your firm's ability to meet the City's Standard Contractual Services Agreement and insurance requirements. Requested amendments and exceptions will be taken into consideration in evaluating the Statement of Qualifications. Requests for amendments and/or exceptions to the Agreement will not be considered if not included in the submitted Statement of Qualifications.

h. *Other Relevant Information*. Provide additional relevant information that may be helpful in the selection process.

6. SELECTION CRITERIA AND SELECTION PROCESS WITH ESTIMATED DATES

Statements of Qualifications will be screened, and the top candidate(s) will be reviewed by a selection committee. The qualifications for the top candidates will be verified and references will be checked. In reviewing the Statements of Qualifications, the City will carefully weigh:

- Consultant's understanding of the City's desires and general approach to completing the work
- Consultant's experience with contracts of similar scope, complexity and magnitude
- Qualifications of the staff being assigned to this project
- Demonstrated ability of the Consultant to perform high quality work, to control costs and to meet time schedules
- Satisfaction of previous clients
- Ability to work effectively with City staff
- Proposed rate schedule

The City retains sole discretion to evaluate qualifications and may award the Consultant(s) the City deems to have the most responsive Statement of Qualifications. Receipt of qualifications in response to this RFQ does not obligate the City in any way to engage any Consultant and the City reserves the right to reject any or all qualifications, wholly or in part, at any time, without penalty. The City shall retain the right to abandon the qualification process at any time prior to the actual execution of a contract with a Consultant, and the City shall bear no financial or other responsibility in the event of such abandonment. The City reserves the right to negotiate all final terms and conditions of any agreements entered into. The City's target dates are as follows:

Release of RFQ:	December 23, 2024
Statement of Qualifications due:	January 7, 2025
Services Agreement scheduled for City Council approval:	February 2025

7. SUBMITTAL GUIDELINES

Consultants shall **e-mail** an **electronic pdf file** of the Statement of Qualification with a subject line "City of Newark – Statement of Qualifications for Civil Engineering Services" to:

Daniel A. Sequeira, PE
City Engineer
daniel.sequeira@newarkca.org

Proposals shall be received by **5:00 p.m. on January 7, 2025.**

HARD COPIES AND FAX SUBMISSIONS WILL NOT BE ACCEPTED.

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

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

All inquiries regarding the RFQ should be directed to Daniel A. Sequeira, PE, City Engineer, by email at daniel.sequeira@newarkca.org.

Additional Submittal Information

The City assumes no responsibility for delays caused by delivery service.

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

If awarded a contract, the Consultant shall maintain insurance coverage, including errors and omissions and worker's compensation, reflecting the minimum amounts and conditions specified by the City as outlined in the attached Contractual Services Agreement. Consultants are liable for all errors or omissions contained in their Statement of Qualifications. By submitting a Statement of Qualifications, interested firms represent that they: (1) have thoroughly examined and become familiar with the Work required under this RFQ; (2) comprehend all conditions that may impact the requested scope of services; (3) have reviewed of all addenda, if any; and (4) are capable of providing the equipment, goods and services necessary to perform the requested scope of services and/or meet the specifications outlined in this RFQ, in a manner that meets the City's objectives. Failure to examine the documents and inform itself shall be at firms' own risk. A Proposer shall have no claim against the City based upon ignorance of or misunderstanding of the RFQ documents. Once the award has been made, failure of a firm to have read all of the conditions and instructions of the RFQ and/or the Agreement shall not be cause to alter any term of the Agreement nor shall such failure provide valid grounds for a firm to withdraw its Statement of Qualifications or to seek additional compensation.

Additionally, if awarded a contract, the Consultant shall maintain a valid City of Newark business license at all times during the performance of work under the contract.

All Statements of Qualifications and rates set forth therein shall be deemed to include applicable taxes. Interested firms shall be appropriately licensed in accordance with the laws of the State of California for the work to be performed. The cost for any required licenses or permits shall be the responsibility of the selected firm(s). The selected firm(s) is liable for any and all taxes due as a result of the agreement.

ATTACHMENT A

CITY OF NEWARK
STANDARD SERVICES AGREEMENT

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 _, 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:

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

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

WHEREAS, Consultant had agreed to and has been performing similar services for City during the period between _____ and _____ pursuant to the award of consecutive service agreements.

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 _____ and No/100 Dollars ($_____.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.

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

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:

_____	**CITY OF NEWARK**
_____	_____
Consultant	**Administrator**
Address: _____	City of Newark
_____	Attn: _____
_____	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 _____

_____
_____

By _____
Consultant

Date _____

_____
Printed Name

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

PAYMENT

EXHIBIT C

QUALIFICATIONS

EXHIBIT C

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.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A CONTRACTUAL SERVICES AGREEMENTS FOR ON-CALL CIVIL ENGINEERING SERVICES WITH THE FOLLOWING CONSULTANTS: COASTLAND CIVIL ENGINEERING, INC.; CSW-STUBER STROEH ENGINEERING GROUP, INC.; HALEY & ALDRICH, INC.; F.J. KENNEDY AND ASSOCIATES, INC.

WHEREAS, the Public Works Department has four vacancies in the Engineering Division: two Senior Civil Engineers, one Associate Civil Engineer, and one Engineering Technician; and

WHEREAS, recruitments for these positions have started; however, there is a need to augment existing staff to manage Capital Improvement Program and Land Development projects; and

WHEREAS, the City of Newark Public Works Department issued a Request for Qualifications for on-call civil engineering services to augment City staff; and

WHEREAS, a total of seven (7) statements of qualifications were received and evaluated by staff on their cost of services, qualifications and experience of firm and staff identified, the firm's understanding of the City's desires and general approach to completing the work, and other factors; and

WHEREAS, based on staff's evaluation, the following firms were determined to be the most qualified to provide the services requested:

- Coastland Civil Engineering, LLP
- CSW-Stuber Stroeh Engineering Group, Inc.
- Haley & Aldrich, Inc.
- F.J. Kennedy and Associates, Inc.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby authorize the City Manager to negotiate and enter into a Contractual Services Agreements, in a form approved by the City Attorney, with the firms listed below for the stated not to exceed amounts:

- Coastland Civil Engineering, LLP – $750,000
- CSW-Stuber Stroeh Engineering Group, Inc. – $750,000
- Haley & Aldrich, Inc. – $900,000
- F.J. Kennedy and Associates, Inc. – $500,000

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.

STAFF REPORT

Item D. 6.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Ryan Nishimoto, ACFD Deputy Chief
SUBJECT	Adopt a resolution acknowledging receipt of the report made by the Fire Chief of the Alameda County Fire Department regarding the inspection of certain occupancies required to perform annual inspections pursuant to California Health and Safety Code Section 13146.2 and 13146.3, which includes educational and residential occupancies

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council by resolution, expressly acknowledge the measure of compliance of the Alameda County Fire Department with Health and Safety Code Section 1316.2 and 13146.3 in the area encompassed by the City of Newark.

BACKGROUND

California Senate Bill 1205 (SB 1205) was signed into law in 2018 after the tragic Ghost Ship Fire brought national attention to California and put a spotlight on fire safety laws as well as the performance of fire inspections. SB 1205 took effect on January 1, 2019 and amended California law to require fire departments that are required to perform annual inspections to annually report to City Councils (or other relevant legislative bodies) on their compliance with the annual inspection requirement. As required by SB 1205, the Alameda County Fire Department submits this report to the City Council outlining the Alameda County Fire Department's compliance with the annual inspection requirements set forth in California Health and Safety Code Sections 13146.2 and 13146.3.

The annual report of these inspections includes every building within the City of Newark used as a public or private school, hotel, motel, lodging house, apartment house, and certain residential care facilities for compliance with building standards.

DISCUSSION/ANALYSIS

The purpose of annual fire and life safety inspections is to mitigate known hazards, reduce risk to the community, and ensure reasonable compliance with the California Fire Code. As noted above, California Health and Safety Code Sections 13146.2 and 13146.3 mandate that the Alameda County Fire Department inspect all public or private schools, hotels, motels, lodging houses, apartment houses, and certain

residential care facilities annually.

These occupancies fall under Groups E (Educational) and R (Residential R1 and R2) identified in the proposed City Council resolution. The Alameda County Fire Department personnel completed 31 inspections of educational Group E occupancies and 191 residential Group R occupancies during fiscal year 2023/2024. This represents a 100% compliance rate. A list of the inspections including dates is attached. The inspections revealed that the occupancies were either in compliance or had minor correctable violations with no significant violations requiring closure.

Alameda County Fire Department's compliance with the annual inspection requirements was 100% completed for fiscal year 2023/2024.

FISCAL IMPACT

None

REVIEW AND APPROVAL

Prepared by - Ryan Nishimoto, Deputy Chief
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

SB1205 FY23-24
Resolution 23/24 SB 1205

Newark SB1205 FY23-24

Street Number	Street Name	Street Type	Occupant Name	Occu.	Inspection Date
6309	Baine	Avenue	Apt 8 Units	R	10/13/2023
6327	Baine	Avenue	Apt 8 Units	R	10/13/2023
6345	Baine	Avenue	Apt 7 Units	R	10/13/2023
6361	Baine	Avenue	Apt 7 Units	R	10/13/2023
6377	Baine	Avenue	Apt 7 Units	R	10/13/2023
6393	Baine	Avenue	Apt 7 Units	R	10/13/2023
6401	Baine	Avenue	Apt 4 Units	R	8/31/2023
6411	Baine	Avenue	Apt 4 Units	R	8/31/2023
6437	Baine	Avenue	Apt 7 Units	R	10/23/2023
6453	Baine	Avenue	Apt 7 Units	R	10/13/2023
35660	Cedar	Avenue	Montessori School of Newark	E	3/25/2024
39600	Cedar	Avenue	Challenger Pre-School	E	3/4/2024
39821-39887	Cedar	Avenue	Murieta Condos	R	12/21/2023
6544	Clark	Avenue	4-Plex	R	3/8/2024
6564	Clark	Avenue	4-Plex	R	3/6/2024
35487	Dumbarton	Avenue	Challenger Elementary/Middle School	E	2/14/2024
6537	Graham	Avenue	Apartment	R	7/29/2023
6561	Graham	Avenue	Apt 6 Units	R	5/16/2024
6585	Graham	Avenue	4-Plex	R	5/19/2024
6623	Graham	Avenue	Apt 6 Units	R	8/19/2023
6671	Graham	Avenue	Apartments	R	7/29/2023
6737	Graham	Avenue	Triplex	R	8/19/2023
6749	Graham	Avenue	3-Plex	R	3/8/2024
6761	Graham	Avenue	3-Plex	R	5/30/2024
6773	Graham	Avenue	3-Plex	R	11/19/2023
5801	Jarvis	Avenue	Little Flowers Learning Center/Montessori	E	3/25/2024
6201	Lafayette	Avenue	Newark Junior High School	E	5/2/2024
5977	Mowry	Avenue	Comfort Inn & Suites	R	4/1/2024
5735	Musick	Avenue	Musick	E	2/14/2024
5735	Musick	Avenue	Musick Childcare	E	2/14/2024
6071	Smith	Avenue	Birch Grove Primary (TK-2nd)	E	1/25/2024
5318	St Mark	Avenue	Apt 16 Units	R	11/22/2023
5366	St Mark	Avenue	Apt 16 Units	R	11/22/2023
5424	St Mark	Avenue	5424 St Mark Ave	R	11/22/2023
5464	St Mark	Avenue	Apt 16 Units	R	11/22/2023
5788	Thornton	Avenue	St Edwards Catholic School	E	3/4/2024
7881	Thornton	Avenue	Apt 4 Units	R	1/29/2024
7629	Wells	Avenue	Apt 4 Units	R	8/18/2023
7881	Wells	Avenue	Apt 5 Units	R	10/13/2023
7475-91	Wells	Avenue	Apt 4 Units	R	1/29/2024
6054	Cedar	Boulevard	Apt 12 Units	R	8/30/2023
6168	Cedar	Boulevard	Apt 16 Units	R	11/9/2023
35501	Cedar	Boulevard	Newark Community Center Preschool	E	3/26/2024
35753	Cedar	Boulevard	Bridgepoint	E	3/4/2024
35777	Cedar	Boulevard	Newark Adult School	E	3/4/2024
37177	Cedar	Boulevard	Apt 4 Units	R	8/31/2023
37203	Cedar	Boulevard	Apt 6 Units	R	8/19/2023
37221	Cedar	Boulevard	Apt 4 Units	R	8/31/2023
37235	Cedar	Boulevard	Apt 4 Units	R	5/16/2024
38325	Cedar	Boulevard	Kings Kids Preschool	E	3/26/2024
39150	Cedar	Boulevard	Chase (Newark) Suites	R	4/4/2024

39270	Cedar	Boulevard	Homewood Suites	R	4/4/2024
39375	Cedar	Boulevard	Newark Memorial High School	E	5/6/2024
39766	Cedar	Boulevard	Young Champions (A &B)	E	4/18/2024
8200	Gateway	Boulevard	Aloft Silicon Valley	R	3/27/2024
35457	Newark	Boulevard	Apt 10 Units	R	2/3/2024
35481	Newark	Boulevard	4-Plex	R	7/22/2023
35493	Newark	Boulevard	4-Plex	R	8/8/2023
35511	Newark	Boulevard	4-Plex	R	11/1/2023
35533	Newark	Boulevard	4-Plex	R	11/18/2023
35559	Newark	Boulevard	4-Plex	R	8/30/2023
35571	Newark	Boulevard	35571 Newark Blvd Newark	R	3/15/2024
35607	Newark	Boulevard	Apt 14 Units	R	2/29/2024
35635	Newark	Boulevard	Apt 7 Units	R	4/22/2024
35657	Newark	Boulevard	4-Plex	R	11/9/2023
35679	Newark	Boulevard	4-Plex	R	2/3/2024
36880	Newark	Boulevard	Apt 6 Units	R	5/16/2024
34905	Newark	Boulevard	Courtyard Newark Silicon Valley	R	3/27/2024
5555	Cedar	Court	E-Z 8 in Newark	R	5/2/2024
35466	Dumbarton	Court	Newark Residence Inn	R	4/1/2024
39900	Balentine	Drive	Doubletree by Hilton (Newark/Fremont)	R	3/27/2024
35430	Blackburn	Drive	Kennedy	E	1/8/2024
35430	Blackburn	Drive	Kennedy Childcare	E	1/8/2024
6200	Buena Vista	Drive	Waterford Condos	R	8/18/2023
5307-5317	Port Sailwood	Drive	Cedar Glen Condos	R	6/5/2024
5700	Newpark Mall	Road	Safari Kids	E	3/25/2024
6000	Newpark Mall	Road	Staybridge Suites	R	4/4/2024
6098	Newpark Mall	Road	Springhill Suites	R	3/27/2024
36845	Ash	Street	Apt 4 Units	R	8/18/2023
36863	Ash	Street	Apt 3 Units	R	7/29/2023
36883	Ash	Street	Apt 3 Units	R	8/18/2023
37186	Ash	Street	Apt 4 Units	R	8/18/2023
37212	Ash	Street	Apt 4 Units	R	8/18/2023
37230	Ash	Street	Apt 3 Units	R	8/18/2023
37240	Ash	Street	Apt 3 Units	R	8/18/2023
37257	Ash	Street	Apt 5 Units	R	8/7/2023
37278	Ash	Street	Apt 3 Units	R	8/18/2023
37279-83	Ash	Street	Apt 4 Units	R	8/18/2023
35731	Bettencourt	Street	Apt 12 Units	R	5/19/2024
35750	Bettencourt	Street	The Meadows- 85 Units	R	5/28/2024
36111	Bettencourt	Street	Lincoln	E	1/25/2024
36111	Bettencourt	Street	Lincoln Childcare	E	1/25/2024
37490	Birch	Street	Birch Grove Intermediate (3rd-5th)	E	2/14/2024
37490	Birch	Street	Birch Grove Childcare	E	2/14/2024
37490	Birch	Street	Birch Grove EBAC	E	2/14/2024
37815	Birch	Street	Little Flowers Montessorri	E	4/1/2024
36270	Cherry	Street	Coyote Hills Elementary	E	1/8/2024
36270	Cherry	Street	Coyote Hills Kidango	E	1/8/2024
36270	Cherry	Street	Coyote Hills EBAC	E	1/8/2024
36705	Cherry	Street	Apt 3 Units	R	11/2/2023
36873	Cherry	Street	3-Plex & 4-Plex	R	11/22/2023
37075	Cherry	Street	Apt 6 Units	R	10/13/2023
37248	Cherry	Street	4-Plex	R	11/22/2023

37266	Cherry	Street	4-Plex	R	11/22/2023
37288	Cherry	Street	Apartment	R	8/18/2023
37387	Cherry	Street	Apt 11 Units	R	9/28/2023
37393	Cherry	Street	Apt 8 Units	R	11/9/2023
37401	Cherry	Street	Apt 8 Units	R	3/19/2024
37409	Cherry	Street	Apt 8 Units	R	11/17/2023
37451	Cherry	Street	4-Plex	R	3/8/2024
37453	Cherry	Street	Apt 10 Units	R	2/10/2024
37461	Cherry	Street	Apt 8 Units	R	6/5/2024
37475	Cherry	Street	Apt 5 Units	R	1/29/2024
39399	Cherry	Street	Stellar Academy For Dyslexics	E	3/4/2024
36802-36976	Cherry	Street	Bridgeport Homes 188	R	10/13/2023
36864	Elm	Street	Apt 5 Units	R	5/16/2024
36871	Elm	Street	3-Plex	R	3/6/2024
36967	Elm	Street	Apt 6 Units	R	1/29/2024
37024	Elm	Street	3-Plex	R	3/6/2024
37087	Elm	Street	4-Plex	R	3/8/2024
37093	Elm	Street	4-Plex	R	3/6/2024
37122	Elm	Street	Apt 10 Units	R	3/8/2024
37127	Elm	Street	Apt 10 Units	R	3/8/2024
37144	Elm	Street	3-Plex	R	3/6/2024
37149	Elm	Street	3-Plex	R	5/30/2024
37166	Elm	Street	3-Plex	R	5/19/2024
37183	Elm	Street	3-Plex	R	5/30/2024
37188	Elm	Street	3-Plex	R	5/30/2024
37202	Elm	Street	3-Plex	R	5/30/2024
37217	Elm	Street	3-Plex	R	5/30/2024
37331	Elm	Street	3-Plex	R	5/19/2024
37332	Elm	Street	3-Plex	R	5/30/2024
37344	Elm	Street	3-Plex	R	5/30/2024
37362	Elm	Street	3-Plex	R	5/30/2024
37367	Elm	Street	3-Plex	R	5/30/2024
37371	Filbert	Street	Diversity Childrens Center	E	3/26/2024
35621	Haley	Street	Bridgebay Apts	R	8/19/2023
36959	Locust	Street	3-Plex	R	7/29/2023
37022	Locust	Street	3-Plex	R	7/29/2023
37029	Locust	Street	3-Plex	R	7/29/2023
37030	Locust	Street	3-Plex	R	7/29/2023
37038	Locust	Street	3-Plex	R	7/29/2023
37054	Locust	Street	3-Plex	R	7/29/2023
37073	Locust	Street	3-Plex	R	7/29/2023
37111	Locust	Street	4-Plex	R	7/29/2023
37125	Locust	Street	3-Plex	R	7/29/2023
37157	Locust	Street	3-Plex	R	11/19/2023
37245	Locust	Street	Apt 5 Units	R	11/22/2023
37339	Locust	Street	37339 Locust St	R	11/19/2023
37352	Locust	Street	4-Plex	R	11/22/2023
37376	Locust	Street	3-Plex	R	11/19/2023
37007	Magnolia	Street	Apt 12 Units	R	11/22/2023
37054	Magnolia	Street	3-Plex	R	11/19/2023
37088	Magnolia	Street	Apt 5 Units	R	11/22/2023
37220	Magnolia	Street	Apt 5 Units	R	10/13/2023

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37232	Magnolia	Street	4-Plex	R	11/22/2023
37015-91	Magnolia	Street	Alderwood Park Apts 96 Units	R	7/29/2023
36834	Mulberry	Street	Apt 6 Units	R	1/29/2024
36920	Mulberry	Street	4-Plex	R	3/6/2024
36976	Mulberry	Street	Apt 10 Units	R	3/8/2024
37039	Mulberry	Street	3-Plex	R	3/6/2024
37040	Mulberry	Street	4-Plex	R	3/6/2024
37055	Mulberry	Street	3-Plex	R	7/29/2023
37086	Mulberry	Street	4-Plex	R	5/19/2024
36874-78	Mulberry	Street	Apt 5 Units	R	1/29/2024
37124	Oak	Street	Triplex	R	8/7/2023
37150	Oak	Street	Triplex	R	8/7/2023
37168	Oak	Street	Triplex	R	8/7/2023
37184	Oak	Street	Triplex	R	8/7/2023
37208	Oak	Street	Triplex	R	8/7/2023
37236	Oak	Street	Triplex	R	8/7/2023
37242	Oak	Street	Triplez	R	8/7/2023
37250	Oak	Street	3-Plex	R	11/19/2023
37273	Oak	Street	3-Plex	R	11/19/2023
37342	Oak	Street	3-Plex	R	11/19/2023
37359	Oak	Street	37359 Oak Stapt 8 Units	R	11/19/2023
37366	Oak	Street	3-Plex	R	11/19/2023
36839	Olive	Street	3-Plex	R	3/6/2024
36927	Olive	Street	3-Plex	R	3/6/2024
36954	Olive	Street	3-Plex	R	3/6/2024
37173	Olive	Street	3-Plex	R	11/19/2023
37191	Olive	Street	3-Plex	R	5/30/2024
37221	Olive	Street	3-Plex	R	3/6/2024
37069-73	Olive	Street	3-Plex	R	3/6/2024
36901	Spruce	Street	Schilling Elementary	E	2/14/2014
36901	Spruce	Street	Schilling Kidango	E	2/14/2024
37034	Spruce	Street	3-Plex	R	11/19/2023
37082	Spruce	Street	3-Plex	R	11/19/2023
37088	Spruce	Street	4-Plex	R	5/19/2024
37120	Spruce	Street	Apt 12 Units	R	5/19/2024
37148	Spruce	Street	3-Plex	R	5/30/2024
37188	Spruce	Street	3-Plex	R	5/19/2024
36777	Sycamore	Street	Sycamore Square Apts 27 Units	R	10/13/2023
36835	Sycamore	Street	Apt 3 Units	R	3/8/2024
36843	Sycamore	Street	Apt 7 Units	R	1/29/2024
36851	Sycamore	Street	Apt 8 Units	R	1/29/2024
36857	Sycamore	Street	Apt8 Units	R	1/29/2024
36867	Sycamore	Street	Apt 8 Units	R	1/29/2024
36875	Sycamore	Street	Apt 12 Units	R	3/8/2024
37171	Sycamore	Street	Sycamore Bay Apartments	R	3/27/2024
36968	Walnut	Street	Apt 4 Units	R	1/29/2024
37012	Walnut	Street	Apt 3 Units	R	3/8/2024
37024	Walnut	Street	Apt 3 Units	R	3/8/2024
37027	Walnut	Street	Apt 4 Units	R	1/29/2024
37036	Walnut	Street	Apt 3 Units	R	3/8/2024
37043	Walnut	Street	Apt 3 Units	R	3/8/2024
37046	Walnut	Street	Apt 3 Units	R	3/8/2024

37051	Walnut	Street	Apt 3 Units	R	5/16/2024
37054	Walnut	Street	Apt 3 Units	R	1/29/2024
37059	Walnut	Street	Apt 3 Units	R	5/16/2024
37080	Walnut	Street	Apt 3 Units	R	5/16/2024
37085	Walnut	Street	Apt 5 Units	R	5/16/2024
37151	Walnut	Street	Apt 3 Units	R	5/16/2024
37152	Walnut	Street	Apt 8 Units	R	1/29/2024
37157	Walnut	Street	Apt 3 Units	R	5/16/2024
37160	Walnut	Street	Apt 3 Units	R	5/19/2024
37187	Walnut	Street	Apt 6 Units	R	8/7/2023
37196	Walnut	Street	Apt 3 Units	R	5/19/2024
37228	Walnut	Street	Apt 6 Units	R	5/2/2024
37243	Walnut	Street	Apt 3 Units	R	5/19/2024
37244	Walnut	Street	Apt 3 Units	R	5/16/2024
37355	Walnut	Street	Apt 3 Units	R	5/19/2024

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK, CALIFORNIA ACKNOWLEDGING RECEIPT OF A REPORT MADE BY THE FIRE CHIEF OF THE ALAMEDA COUNTY FIRE DEPARTMENT REGARDING THE INSPECTION OF CERTAIN OCCUPANCIES REQUIRED TO PERFORM ANNUAL INSPECTIONS IN SUCH OCCUPANIES PURSUANT TO SECTIONS 13146.2 AND 13146.3 OF THE CALIFORNIA HEALTH AND SAFETY CODE.

WHEREAS, California Health & Safety Code Section 13146.4 was added in 2018 and became effective on September 27, 2018; and

WHEREAS, California Health & Safety Code Section 13146.2 and 13146.3 requires all fire departments, including the Alameda County Fire Department, that provide fire protection services to perform annual inspections in every building used as a public or private school, hotel, motel, lodging house, apartment house, and certain residential care facilities for compliance with building standards, as provided; and

WHEREAS, California Health & Safety Code Section 13146.2 requires all fire departments, including the Alameda County Fire Department, that provide fire protection services to report annually to its administering authority on its compliance with Sections 13146.2 and 13146.3; and

WHEREAS, the City Council Council of the City of Newark intends this Resolution to fulfill the requirements of the California Health & Safety Code Regarding acknowledgement of the Alameda County Fire Department's compliance with California Health and Safety Code Sections 13146.2 and 13146.3.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby expressly acknowledges the measure of compliance of the Alameda County Fire Department with California Health and Safety Code Sections 13146.2 and 13146.3 in the area encompassed by the City of Newark, as follows:

A. EDUCATIONAL GROUP E OCCUPANCIES

Educational Groupe E occupancies are generally those public and private schools used by more than six persons at any one time for education purposes through the 12th grade. Within the City of Newark, at the time the inspections were assigned there lied 34 known E occupancies, buildings structures, and/or facilities.

During fiscal year 2023/2024, the Alameda County Fire Department completed the annual inspections of 31 Group E occupancies, buildings, structures and/or facilities. This is a compliance rate of 100% for this reporting period.

B. RESIDENTIAL GROUP R OCCUPANCIES:

Residential Group R occupancies, for the purposes of this resolution, are generally those occupancies containing sleeping units, and include hotels, motels, and apartments (three units or more). Within the City of Newark, at the time the inspections were assigned there lied 191 known R-1 and R-2 (and their sub-categories) occupancies of this nature.

During fiscal year 2023/2024, the Alameda County Fire Department completed the annual inspection of 191 Group R occupancies, buildings, structures and/or facilities. This is a compliance rate of 100% for this reporting period.

STAFF REPORT

Item E. 1.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Howard Young, Public Works Director
SUBJECT	Consideration of an Appeal from the decision of the Public Works Director to issue a tree removal permit to the Waterford Association authorizing removal of a Eucalyptus Tree on private property located at 6200 Buena Vista Drive

SUMMARY AND RECOMMENDATION

City staff issued a permit to the Waterford Homeowners Association (the "Association") on January 15, 2025, to remove a tree on private property owned by the Association (hereinafter referred to as "Tree #199") in accordance with the Newark Municipal Code Chapter 8.16, the City's Preservation of Trees on Private Property Ordinance (the "Ordinance"), which is attached for ease of referance (Attachment #1). As further explained below, a member of the public is appealing the Public Works Director's decision to grant the tree removal permit to the City Council. Staff recommends that the City Council receive a report from the Public Works Director at the City Council meeting, consider the appeal from the member of the public, and then either affirm, modify, or reverse the decision of the Public Works Director.

BACKGROUND

Background Information Relating to Tree #199 – Eucalyptus Tree on private property (owned by Waterford Association) located at 6200 Buena Vista Drive:

The Waterford Homeowners Association, consisting of approximately 214 condominium units on five acres, submitted an application for a tree removal permit for six (6) trees on their property in November 2024. The trees were posted with tree removal notices, providing notice to the public that any objections to tree removal must be submitted in writing within ten (10) days of posting. City staff received an objection from Waterford resident, Ms. Molly Connolly, regarding Tree #199. That objection primarily consists of suggestions for the Association Board of Directors to communicate with residents related to the tree removals and does not relate to the Ordinance. It is attached to this staff report for reference (Attachment #2). As noted above, Ms. Connolly subsequently submitted an appeal to the issuance of the tree removal permit.

Tree #199 is located on land that is approximately one hundred and thirty feet (130') from the sidewalk on Parada Street. The land is private property owned by the Association near 39933 A/B Parada Street. Tree #199 is a eucalyptus tree, approximately seventy-five to eighty feet (75' - 80') tall with a trunk diameter of thirty-six inches (36"). The base of the trunk is twenty-five inches (25") away from a residential structure, and approximately eighteen inches (18") away from the roof soffit. A photograph showing the proximity to the home is attached (Attachment #3). The remaining five trees, of which two were dead, have been removed by the Waterford Association in December 2024 as no protests were received for them at the time.

Ms. Connolly submitted a formal appeal to the issuance of the tree removal permit on January 22, 2025 (Attachment #4) within the timeframe required for appeals. Ms. Connolly provides no basis for her appeal.

Overview of Chapter 8.16 of the Newark Municipal Code – Newark's Tree Preservation on Private Property Ordinance:

Newark Municipal Code 8.16.040 provides that upon receiving an application for a tree removal permit, the Public Works Director must investigate whether the permit should be issued. Following that investigation, the permit **must** be issued, *unless* the Public Works Director finds either:

1. Any such tree is in a reasonably healthy condition *and* is necessary in order to preserve the health, safety and welfare of a substantial number of persons in the community by serving a windbreak function; *or*

2. That the public interest will be otherwise unduly prejudiced by the destruction or removal of any such tree.

To deny a tree removal permit request, the Public Works Director **must** also find that:

The public interest in preservation of any such tree is not outweighed by the individual hardship on the applicant in the event the application is denied.

As explained in the Discussion/Analysis section below, the Public Works Director and the City Arborist, determined that these criteria are not met and therefore staff issued a permit to the property owner to remove Tree #199.

Appeals Process Under the Tree Preservation on Private Property Ordinance:

Newark Municipal Code Section 8.16.060 provides that any person "aggrieved by any action of the Public Works Director in denying or issuing such permit", may within ten (10) days of the determination, appeal in writing to the City Council. The City received an appeal from Ms. Connolly, related to the removal of Tree #199, and staff subsequently scheduled this appeal before the City Council.

DISCUSSION/ANALYSIS

The City's Public Works Director and City Arborist met with the Association President, Mr. Ryan Serene, and inspected Tree #199. The Association President provided staff with a copy of the Arborist report prepared by Arboreal Company dated October 23, 2024, and revised December 6, 2024. The Arborist report, attached to this staff report (Attachment #5), recommends "immediate" removal of the tree for risk associated with targets and proximity to structures (Pages 11 and 12 of Attachment #5). Additionally, staff notes that Tree #199 appears to be growing under the foundation of a home within the community, see pictures in Attachment #3.

Based on this information and the standards established by Newark Municipal Code 8.16.040 for denying a permit, the Public Works Director and the City Arborist did not find that the tree is in a reasonably healthy condition, is not necessary in order to preserve the health, safety and welfare of a substantial number of persons in the community by serving a windbreak function; or that the public interest will be otherwise unduly prejudiced by the destruction or removal of any such tree; and that the public interest in preservation of any such tree is not outweighed by the individual hardship on the applicant in the event the application is denied.

Staff's decision is based on the following factors:

- The arborist report (page 11) indicated that Tree #199 has a decay pocket at the tree base, over-extended limbs, and large roots growing into a structure. Staff also performed a site visit. As a result, staff cannot state that the tree is in a reasonably healthy condition.
- The arborist report (page 2) indicates that Tree #199 does not provide significant wind screening. Staff also notes that the canopy is above the roof; therefore staff does not find it necessary in order to preserve the health, safety and welfare of a substantial number of persons in the community by serving a windbreak function.
- Tree #199 is located on private property, approximately one hundred and thirty feet (130') from a public sidewalk and street; therefore the public interest will not be otherwise unduly prejudiced by the destruction or removal of any such tree.
- The arborist report indicated that Tree #199 has high root risk to the structure, decay pocket, and over-extended limbs; therefore, the public interest in preservation of the tree is not outweighed by the individual hardship on the applicant in the event the application is denied.
- The City Arborist has reviewed the arborist report submitted by the Association and in his independent judgment concurs with the recommendation to remove the tree.

Therefore, staff issued a tree removal permit for Tree #199.

Staff recommends that the City Council review materials submitted from the appellant as well as comments made from the public at the hearing. Attached to the staff report are documents submitted by Ms. Connolly related to the removal. If further materials are submitted, then staff will provide that information to the City Council and on the City's website prior to the City Council meeting.

Following the appeal and pursuant to the Newark Municipal Code, the Council should either affirm, reverse, or modify the Public Works Directors decision.

FISCAL IMPACT

There is no direct fiscal impact to the City as a result of considering this appeal.

REVIEW AND APPROVAL

Prepared by - Howard Young, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Attachment 1- Municipal Code 8.16

Attachment 2- Molly Connolly letter November 27, 20024

Attachment 3 - Pictures of tree 199

Attachment 4-Appeal from Molly Connolly dated January 22, 2025

Attachment 5 - Arborist Report by Arboreal Company for Waterford Association

Chapter 8.16 PRESERVATION OF TREES ON PRIVATE PROPERTY

8.16.010 Purpose.

In enacting the ordinance codified in this chapter, the city council finds that throughout the history of the development for human habitation of the area now comprising the city there has existed, and still exists, a serious problem of high winds of such magnitude that the public health, safety and general welfare have required the taking of steps to combat the injurious effects of such winds. Among such steps has been the establishment and growth of stands of trees and of individual trees by private individuals resident in the area. However, since the incorporation of the city and the accompanying rapid rate of conversion of agricultural lands to urban development, certain property owners have cut down great numbers of trees within the city limits, and such extensive cutting of trees has reached a point where further wanton destruction of trees would, because of the wind problem as aforesaid, give rise to substantial danger to the public health, safety and welfare from dust, erosion, and other hazardous elements attendant to unrestricted high winds. Therefore, the provisions of this chapter are intended to limit the unnecessary destruction of existing trees on private property so as to preserve existing windbreaks, and for conservation purposes, as well as to preserve the natural beauty which said trees lend to the city, all for the protection of the public health, safety, prosperity and general welfare, while at the same time recognizing individual rights to develop private property in a manner which will not be prejudicial to the public interest.

(Ord. 163 § 1, 1979)

8.16.020 Permit—Required.

No person shall cut down, destroy, remove or move any tree which shall include any live woody plant having one or more well defined perennial stems with a trunk diameter of six inches or greater, measured at four feet above ground level growing within the city limits on any parcels of land except developed residential parcels of land ten thousand square feet or less in area, unless a permit to do so has been obtained from the public works director.

(Ord. 63 § 2 (part), 1979)

8.16.030 Permit—Inspection of premises upon application.

Upon receiving any such application for permit, the public works director shall inspect the premises involved and the surrounding area, and shall ascertain whether or not the tree or trees serve a windbreak function upon which a substantial number of persons depend.

(Ord. 163 § 2 (part), 1979)

8.16.040 Permit—Issuance.

Following investigation, the permit shall be issued unless the public works director finds that any such tree is in a reasonably healthy condition and is necessary in order to preserve the health, safety and welfare of a substantial number of persons in the community by serving a windbreak function; or that the public interest will be otherwise unduly prejudiced by the destruction or removal of any such tree; and that the public interest in preservation of any such tree is not outweighed by the individual hardship on the applicant in the event the application is denied. In applying the standards set forth in this chapter, nothing shall be deemed to prevent the

public works director from issuing a permit to destroy or remove part of the trees involved in an application, while denying a permit as to the remainder.

(Ord. 163 § 2 (part), 1979)

8.16.050 Permit—Fees.

Permit fees shall be established by city council resolution.

(Ord. 163 § 2 (part), 1979)

8.16.060 Permit—Appeals—Withholding of action on application.

A. Any person aggrieved by any action of the public works director in denying or issuing any such permit, as prescribed in Section 8.16.040, may, within ten days of the action taken, appeal in writing to the city council, in which case such matter shall be scheduled for hearing by the council within twenty days after the filing thereof. Action under any permit, the issuance of which has been appealed, shall be suspended pending final decision of the city council on the appeal. The city council may set any such appeal for public hearing, giving such notice to the public or to the persons concerned as the council deems advisable. Following the hearing of any such appeal, the city council may affirm, reverse, or modify the action of the public works director and may take any action thereon which would have been authorized in the first instance. The action of the city council on any such appeal shall be final and conclusive.

B. In any case where the public works director is unable to make the necessary findings but does find that it would be otherwise desirable in the public interest that any tree or trees involved in an application be preserved, then in such event action on the permit application may be withheld for a period not to exceed thirty days, during which time the matter may be referred to the city council for action.

(Ord. 163 § 3, 1979)

To: Mr. Young
Public Works Director, City Hall Office
37101 Newark Blvd, Newark CA 94560

Date: 11/27/2024

From: Molly Connolly
[redacted]

Regarding: Protest notification for Waterford Eucalyptus Tree Tag # 199 slated for removal 12/2/24.

Dear Mr. Young,

Residents of the Waterford Association located at 6200 Buena Vista Blvd were notified via sign on 11/22 of the Eucalyptus tree, tag # 199, to be removed after Monday Dec. 2. I wish to protest this action for the reasons identified below.

The association residents have been seeking information regarding all property trees and have protested the Eucalyptus removal. It has been brought to the attention of the Waterford Association Board of Directors (BOD) that other, more hazardous trees need immediate removal and trimming. In a meeting on 11/20, the BOD refused to provide **any reports to any members of the association as completed by The Arboreal Company. The BOD will also not disseminate their 7-phase tree removal/trimming schedule or slide presentations.** They refused to post the reports on the management company website and only allowed those attending the meeting (less than 30 residents out of 214 units) to view a slide presentation.

Nature of Protest regarding the Waterford Association BOD actions and lack thereof:

1.) **Lack of evidence to justify tree removal.**
2.) **Lack of evidence to support removing the tree (versus trimming it) as the sole course of corrective action.**
3.) **Lack of prioritization to address other trees on the property deemed hazardous by the City of Newark.**

Suggested Course of Action:

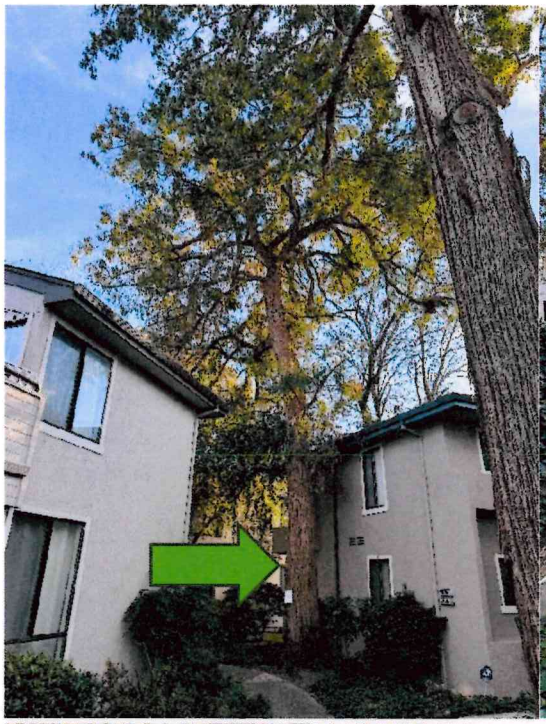
1.) The Waterford BOD to provide immediately to all Waterford residents and the City, all evaluations produced by the Arboreal Company for all trees including the 4 Eucalyptus trees. These must be original documents (not modified or interpreted by the BOD).
2.) The Waterford BOD to identify and immediately make available to all Waterford residents and the City, the detailed metrics, methods, and process used to create all Arboreal evaluations.
3.) The Waterford BOD to identify and make available to all Waterford residents and the City direct **evidentiary documentation** of any alleged causes that necessitate tree removal as a sole course of action.
4.) Every tree on the Waterford property with requested permits for removal to be inspected by Urban Forest Supervisor Mr. Cianciarulo. The results of that inspection should be available to the Waterford residents upon request to the City.
5.) The Waterford BOD to provide its reason to the Waterford residents and the City, as to why the other association trees (such as pines on the corner of Stevenson and Cherry) have not been noticed for removal. These trees **have been identified by the City of Newark as being potentially hazardous to the public for many years**.
6.) The Waterford BOD to post on the management website and to make available to all Waterford residents both current and future updated phase tree removal and trimming schedules.

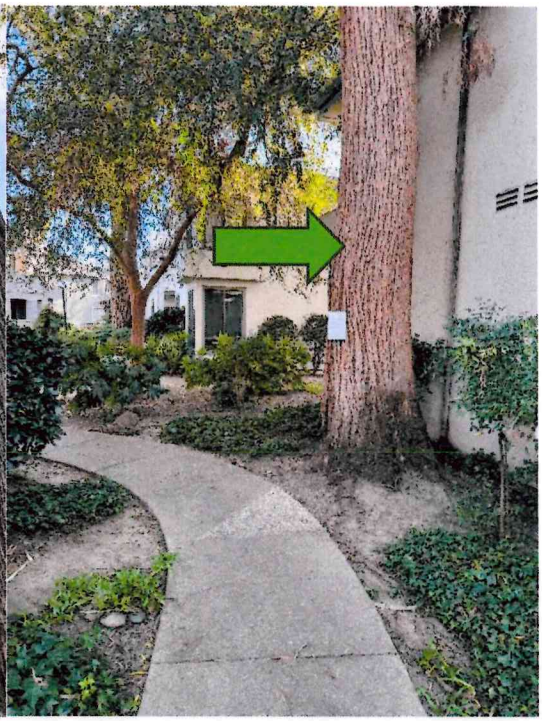
Note that the Friday 11/22 date chosen by the BOD to post the signs included 2 weekend dates AND the City office closure for Thanksgiving. Thus, the time frame for documenting a protest with the City **lost** 6 days out of the 10 required. Perhaps in the future the City will consider qualifying the 10 'notice days' as those when the City offices are open and allow email protests as well.

Thank you in advance for considering this protest,

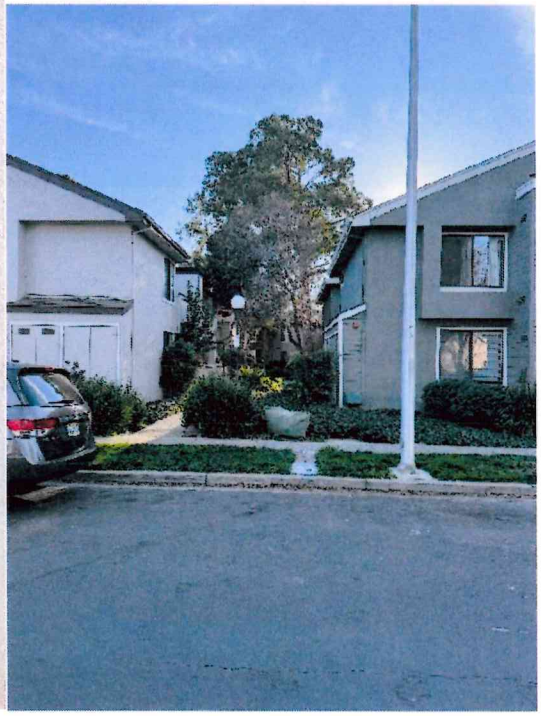
M. Connolly

Attachment 1- Pictures of Eucalyptus Tree #199 on Waterford Association Property adjacent to 39933A/B Parada Street









To: City of Newark City Council
Office of the City Clerk
37101 Newark Boulevard, 2nd Floor, Newark, CA 94560

Date: 1/22/2025

RECEIVED
JAN 22
CITY MANAGER
1:45 pm

From: Molly Connolly
[redacted]

Regarding: Formal Appeal of tree removal permit # 15120 issued 1/15/2025.

Dear City Council Members,

Pursuant to Municipal Code section 8.16.060, I am appealing the Public Works Director approval of The Waterford Association, 6200 Buena Vista Drive, tree removal permit # 15120 dated 1/15/2025.

I look forward to receiving notification within the next 20 days of the scheduled hearing date.

Regards,

Molly Connolly

8.16.060 - Permit—Appeals—Withholding of action on application.

Any person aggrieved by any action of the public works director in denying or issuing any such permit, as prescribed in **Section 8.16.040, may, within ten days of the action taken, appeal in writing to the city council, in which case such matter shall be scheduled for hearing by the council within twenty days after the filing thereof.** Action under any permit, the issuance of which has been appealed, shall be suspended pending final decision of the city council on the appeal. The city council may set any such appeal for public hearing, giving such notice to the public or to the persons concerned as the council deems advisable. Following the hearing of any such appeal, the city council may affirm, reverse, or modify the action of the public works director and may take any action thereon which would have been authorized in the first instance. The action of the city council on any such appeal shall be final and conclusive.

(Ord. 163 § 3, 1979)

TREE REMOVAL APPLICATION

Permit No. 15120
Date 1/15/2025

CITY OF NEWARK, 37440 Filbert Street, Newark, California 94560-3796 • maintenance@newark.org • (510) 578-4811

TREE REMOVALS

(Newark Municipal Code, Chapter 12.28.050)
(Newark Municipal Code, Chapter 8.16)

Note: There is a maximum of three trees permitted per removal permit.

Please print:

Date 11-21-2024

Name The Waterford Association (Ryan Serene - President)

Address of Property 6600 BUENA VISTA Dr.

Address of Owner (if different) _____

Phone No. (including area code) [redacted]

Address/Location of Tree 6214, 6392, 6394, 6434 BUENA VISTA Dr.
39933, 39931 PARADA St.

Reason for Removal Request These six trees were evaluated by an arborist and determined to be a hazard of dead

I hereby certify that I am the owner of the subject property.

SIGNATURE: [redacted] President

Office Use Only

☒ Application approved subject to conditions listed in the letter dated: JANUARY 15, 2025

☐ Application denied.

~~Soren Fajeau~~, Public Works Director
Howard Young

October 23 & **December 6**, 2024

Ryan Serene
[redacted]

Level 2 Tree Risk Assessment, Eucalyptus *nicholli*

To Waterford HOA and those concerned,

The Arboreal Company was contracted to provide arborist consultation services, including a full tree inventory and Level 2 Tree Risk Assessment on four mature Narrow-leafed peppermint trees, or Eucalyptus "*nicholii*". I visited the site to collect information between October 1st and 21st, 2024. **A subsequent request was made to review any wind break the trees may or may not present.** The following report details my findings.

The Arboreal Company followed the national tree care industry consensus standard for tree risk assessment and performed an ANSI A300 Advanced (Level 2) risk assessment of the trees. This included a 360-degree, ground-based visual observation of the tree and above-ground tree parts. During the inspection, the use of Diameter measurement tape, soil probe, and sounding mallet were utilized to gather data.

The tree risk assessment is based on field observations of the tree and the target zones for the tree. I have applied the industry's best practices, and qualitative risk assessment matrix (shown below as Table 1) to my observations. This is based on the formula: Probability x Consequences = Risk. We look at potential targets or areas the tree would affect if tree parts failed, to determine consequences. The consequences to life and health are the most serious, followed by severe to minimal property damage.

	Consequences			
Probability	*Negligible*	*Minor*	*Significant*	*Severe*
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low

Table 1: Tree Risk Assessment Matrix

The purpose of this report is to provide data and risk information in preparation for the decision to retain or remove the trees. The Homeowner's Association has deferred maintenance on the trees and is developing a plan for maintaining all trees on the site regularly. It was reported that approximately 24 Peppermint trees were originally planted, and many were removed for various reasons. Currently, only four remain on site.

The subject trees are commonly referred to as Nichol's Willowleafed Peppermint, Narrow-leafed Peppermint, and Peppermint Eucalyptus. Native to Eastern Australia, the species of eucalyptus are known for rapid growth, and cream-colored flowers, providing ample shade and visual interest. The mature trees are located throughout a multifamily condominium association in Newark, CA that was developed in 1985. The trees are likely plantings of that time frame, approximately 40 years or more. The trees are situated within the interior landscapes along walkways leading to the residences. **The trees do not provide significant wind screening. As storm surges increase, these trees will experience increased wind loads and forces sontributing to risk factors**. See the Map below for reference.



Photo 1 Eucalyptus Tree Locations



Photo 2Tree #197 Diameter 44.5” Height 75’-85’

21063 Cabot Boulevard Suite 1
Hayward, CA 94566

855-272-6732
www.arborealcompany.com

Tree #197 is positioned in front of a stairway leading to a second-story unit. It has a large spreading canopy that separates into two (main), codominant, leaders. The branch connection occurs at approximately 20 feet from the grade. The branch attachment had a seam below consistent with bark inclusion and was an area of concern. Large, overextended branches reach over the structures and walkways were an area of concern. The root collar and dripline were covered by walkways and structures and considered an area of concern. See the appendix for assessment forms including all notes taken.

Tree #197 Risk Profile

Targets – Structures and Pedestrians

Pedestrian targets can seek limited protection from potential failure underneath the structure, but cannot be moved or relocated

The tree has a history of branch failures, the species profile also suggests branch failures are a potential

When using the risk categorization matrix, the weakly attached limbs potentially impacting structures yielded a moderate risk rating

Roots impacting the structures and hardscapes also yielded a moderate risk score.

Overhanging limbs impacting structures and pedestrians yielded a low risk score.

Risk Categorization

			Likelihood of Failure															
			Impact						Failure & Impact		Consequences				Risk Rating			
Target	Tree Part	Condition of Concern	Impossible	Possible	Probable	Imminent	Very Low	Low	Medium	High	Unlikely	Somewhat Likely	Very Likely	Negligible	Minor	Significant	Severe	
Structures	Crown	Overextended/Heavy Limbs		X					X		X				X			LOW
Structures	Crown	Weakly attached branches		X					X		X					X		MODERATE
Structures	Roots	Roots impacting foundation		X					X		X					X		MODERATE
Pedestrians	Roots	Roots lifting sidewalks/trip hazard			X				X		X					X		MODERATE
Pedestrians	Crown	Overextended/Heavy Limbs		X				X		X					X			LOW
Pedestrians	Crown	Weakly attached branches		X					X		X					X		MODERATE

The overall risk rating of the tree is **MODERATE**



Photo 3 Tree #197 Large extending branches and codominant leaders

21063 Cabot Boulevard Suite 1
Hayward, CA 94566

855-272-6732
www.arborealcompany.com

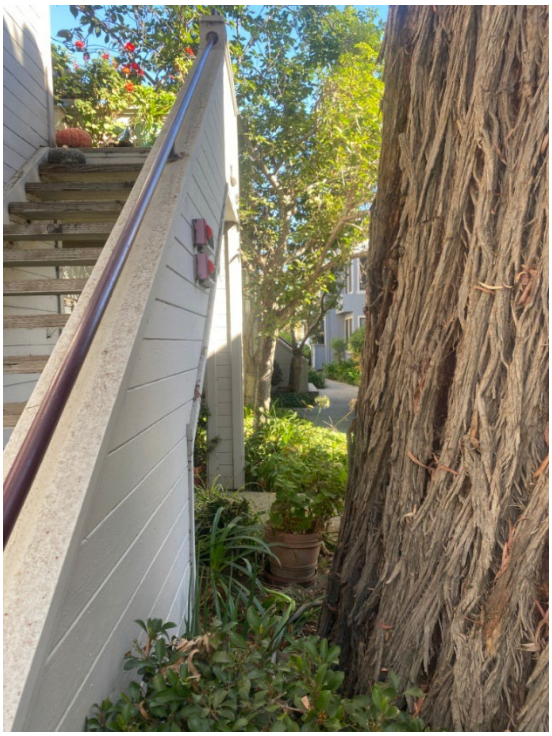


Photo 4 Tree #197 adjacent to the stairwell



Photo 5 Tree #197 limited root space due to the walkway

21063 Cabot Boulevard Suite 1
Hayward, CA 94566

855-272-6732
www.arborealcompany.com

In any situation where a tree poses a risk to potential targets, there are six options for further action.

- Monitor the condition of the tree over time
- Perform an Advanced (Level 3) tree risk assessment to obtain additional information
- Mitigate risk by treating the targets
- Remove risk by removing the targets
- Mitigate risk by treating the tree
- Remove risk by removing the tree

Tree #197 is recommended as a future removal candidate due to its proximity to structures and Moderate risk rating. The tree has outgrown the limited soil volume it was provided, and roots will continue to adversely impact the walkways and structural integrity of the building. The tree is not at risk of imminent failure; however, no mitigation methods can reduce the risk rating below moderate. The Americans with Disabilities Act of 1990 was updated in 2010 to include a sidewalk width of no less than 36 inches. A sidewalk is considered an accessible path of travel and must have at least one accessible route from a passenger loading zone, public street, or accessible parking area. Walking surfaces should have a clear width of at least 36 inches. This tree will continue to violate this requirement. Target Removal year is 2025-2026

Tree #200 is located in front of a patio area and along a walkway. Areas of concern include overextended limbs, weakly attached limbs, and roots. The root collar was partially covered by a sidewalk and surrounded by landscape material. Heavy limbs were found hanging over the structure and walkways. The adjacent pond was drained and potentially a feeding source for the tree.



Photo 6 Tree #200 Diameter 37” Height 65’-70’

21063 Cabot Boulevard Suite 1
Hayward, CA 94566

855-272-6732
www.arborealcompany.com

Tree #200 Risk Profile

Targets – Structures and Pedestrians

No Target protection was found

The tree has a history of branch failures, the species profile also suggests branch failures are a potential

When using the risk categorization matrix, the weakly attached limbs potentially impacting structures yielded a low-risk rating

Roots impacting the structures and hardscapes also yielded a moderate risk score.

Overhanging limbs impacting structures and pedestrians yielded a Moderate risk score.

Risk Categorization

			Likelihood of Failure																
			Impact						Failure & Impact			Consequences						Risk Rating	
Target	Tree Part	Condition of Concern	Impossible	Possible	Probable	Imminent	Very Low	Low	Medium	High	Unlikely	Somewhat Likely	Very Likely	Negligible	Minor	Significant	Severe		
Pedestrians	Crown	Weakly attached branches		X					X		X					X		MODERATE	
Structures	Crown	Overextended/Heavy Limbs		X					X		X				X			LOW	
Structures	Crown	Weakly attached branches		X					X		X					X		MODERATE	
Pedestrians	Crown	Overextended/Heavy Limbs		X					X		X					X		MODERATE	
Structures	Roots	Lifting Foundation			X			X			X					X		MODERATE	
Pedestrians	Roots	Lifting Sidewalks/Trip hazard				X			X			X		X				MODERATE	

Tree #200 Overall Risk Rating is **Moderate**

In any situation where a tree poses a risk to potential targets, there are six options for further action.

- Monitor the condition of the tree over time
- Perform an Advanced (Level 3) tree risk assessment to obtain additional information
- Mitigate risk by treating the targets
- Remove risk by removing the targets
- Mitigate risk by treating the tree
- Remove risk by removing the tree

Tree #200 is recommended for end-weight pruning as a mitigation treatment measure. The tree can be retained, and the relative risk rating would be low.



Photo 7 Tree #199 Diameter 36" Height 75'-80'

21063 Cabot Boulevard Suite 1
Hayward, CA 94566

855-272-6732
www.arborealcompany.com

Tree #199 is located between two structures and a walkway. Areas of concern include over-extended limbs and large roots growing into structures. A decay pocket was noted at the tree's base near the sidewalk. The tree has outgrown its given planter area.



Photo 8 Tree #199 Large root growing under the structure.



Photo 9 Tree #199 Root decay evidence

Tree #199 Risk Profile
Targets include Sidewalks and Structures with no offered protection
When using the risk Categorization matrix Limbs overextending and impacting structures yielded a moderate rating while the same limb's likelihood of impacting the walkway is low.
The root risk rating when impacting the structures is high.
The decay causes elevated risk ratings.

Risk Categorization																						
			Likelihood of Failure																			
			Impact							Failure & Impact			Consequences							Risk Rating		
Target	Tree Part	Condition of Concern	Impossible		Possible	Probable	Imminent	Very Low	Low	Medium	High	Unlikely	Somewhat Likely	Very Likely	Negligible	Minor	Significant	Severe				
Structures	Crown	Overextended/Heavy Limbs		X						X		X				X			MODERATE			
Pedestrians	Crown	Overextended/Heavy Limbs		X						X		X			X				LOW			
Structures	Roots	Lifting Foundation			X					X			X			X			HIGH			
Pedestrians	Roots	Lifting Sidewalks/Trip hazard				X				X				X		X			MODERATE			
Structures	Roots	Decay along rootcrown		X						X		X					X		MODERATE			
Pedestrians	Roots	Decay along rootcrown		X						X		X					X		MODERATE			

The overall Risk Rating for Tree #199 is **HIGH**

In any situation where a tree poses a risk to potential targets, there are six options for further action.

- Monitor the condition of the tree over time
- Perform an Advanced (Level 3) tree risk assessment to obtain additional information
- Mitigate risk by treating the targets
- Remove risk by removing the targets
- Mitigate risk by treating the tree
- Remove risk by removing the tree

No mitigation measures can lower the risk rating below a high rating.
We recommend the immediate removal of Tree #199 due to the risk associated with targets and proximity to structures.



Photo 10 Tree #198 Diameter 42” Height 60’-65’

21063 Cabot Boulevard Suite 1
Hayward, CA 94566

855-272-6732
www.arborealcompany.com

Tree #198 is located in between two structures along a walkway. It is the only species that had evidence of pruning wounds to raise the canopy and reduce end weight. The tree has lifted the sidewalk and evidence of sidewalk repair was noted. No target protection is available to the walkway nor structure.



Photo 11 Tree #198 root collar lifting sidewalk

Tree 198 Risk Profile

Targets include walkways and structures with no protection available.

When using the risk categorization matrix and conducting risk assessment the relative risk

associated with the crown and overextended limbs is low, while roots risk impact is moderate.

Risk Categorization

			Likelihood of Failure																	
			Impact						Failure & Impact			Consequences						Risk Rating		
Target	Tree Part	Condition of Concern	Impossible	Possible	Probable	Imminent	Very Low	Low	Medium	High	Unlikely	Somewhat Likely	Very Likely	Negligible	Minor	Significant	Severe	
Structures	Crown	Overextended/Heavy Limbs		X				X				X					X			LOW
Pedestrians	Crown	Overextended/Heavy Limbs		X					X			X					X			LOW
Pedestrians	Roots	Lifting Sidewalk				X				X				X			X			MODERATE

The overall Risk Rating for Tree #198 is **MODERATE**
In any situation where a tree poses a risk to potential targets, there are six options for further action.

- Monitor the condition of the tree over time
- Perform an Advanced (Level 3) tree risk assessment to obtain additional information
- Mitigate risk by treating the targets
- Remove risk by removing the targets
- Mitigate risk by treating the tree
- Remove risk by removing the tree

The recommendation for Tree #198 is to provide risk mitigation pruning options for end weight within the tree canopy and continued repair and maintenance to the sidewalk.

A tree risk assessment is not a guarantee that a tree will or will not fail under certain circumstances. Living in and around living entities carries an inherent risk. Tree failures may be capricious occurring with or without prior symptoms. This assessment attempts to categorize the risk given known site conditions, vulnerable targets, and an interpretation of tree features and defects.

This assessment should be considered valid for one year under normal weather conditions.

Please feel free to contact me directly with any questions regarding the contents of this report.
Thank you,



Jonathan Maystrik

CEO & Founder
ISA Certified Arborist WE-7363A
Tree Risk Assessor Qualified
ASCA Member

ISA Basic Tree Risk Assessment Form

Client Waterford HOA Date 10/18/24 Time 10:01AM
Address/Tree location 39947A Parada St, Newark CA 94560 Tree no. 197 Sheet 1 of 4
Tree species Eucalyptus nicholii dbh 44.5" Height ~75' Crown spread dia. 60'
Assessor(s) Jonathan Maystnik Tools used probe, rubber mallet Time frame One year
camera, DBH tape, camera.

Target Assessment

Target number	Target description	Target protection	Target zone: Target within drip line	Target zone: Target within 1x Ht.	Target zone: Target within 1.5x Ht.	Occupancy rate (1 – rare, 2 – occasional, 3 – frequent, 4 – constant)	Practical to move target?	Restriction practical?
1	Condominium dwellings (structure)	no	Y	Y	Y	4	N	N
2	pedestrians	yes	V	Y	Y	2	N	N
3								
4								

Site Factors

History of failures yes, branch failures. Topography Flat ☒ Slope ☐ ____% Aspect ____
Site changes None ☐ Grade change ☐ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☐ Describe Concrete repairs
Soil conditions Limited volume ☐ Saturated ☐ Shallow ☐ Compacted ☐ Pavement over roots ☒ 30 % Describe ____
Prevailing wind direction W Common weather Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☐ Describe recent history of recent storm surge.

Tree Health and Species Profile

Vigor Low ☐ Normal ☒ High ☐ Foliage None (seasonal) ☐ None (dead) ☐ Normal 90 % Chlorotic ____% Necrotic 10 %
Pests/Biotic N/A Abiotic N/A
Species failure profile Branches ☒ Trunk ☐ Roots ☒ Describe limb failures, adventitious roots

Load Factors

Wind exposure Protected ☐ Partial ☒ Full ☐ Wind funneling ☐ ____ Relative crown size Small ☐ Medium ☐ Large ☒
Crown density Sparse ☐ Normal ☒ Dense ☐ Interior branches Few ☐ Normal ☒ Dense ☐ Vines/Mistletoe/Moss ☐ none
Recent or expected change in load factors N/A

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☐ LCR 90 %
Dead twigs/branches ☒ 10 % overall Max. dia. 6in.
Broken/Hangers Number N/A Max. dia. /
Over-extended branches ☒
Pruning history
Crown cleaned ☐ Thinned ☐ Raised ☐
Reduced ☒ Topped ☐ Lion-tailed ☐
Flush cuts ☐ Other ____

Cracks ☐ N/A Lightning damage ☐
Codominant ☒ codominant leader attachment at 15' Included bark ☒
Weak attachments ☒ throughout Cavity/Nest hole ____% circ.
Previous branch failures ☒ ____ Similar branches present ☐
Dead/Missing bark ☐ Cankers/Galls/Burls ☒ Sapwood damage/decay ☐
Conks ☐ Heartwood decay ☐ ____
Response growth ____

Condition(s) of concern weakly attached branches | codominant leader

Part Size 36" Fall Distance 15' - 40'
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

Condition(s) of concern heavy end weight

Part Size 3120 Fall Distance 15' - 40'
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

— Trunk —

Dead/Missing bark ☐ Abnormal bark texture/color ☐
Codominant stems ☐ Included bark ☐ Cracks ☐
Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐
Lightning damage ☐ Heartwood decay ☐ Conks/Mushrooms ☐
Cavity/Nest hole ____% circ. Depth ____ Poor taper ☐
Lean ____° Corrected? ____
Response growth reaction wood
Condition(s) of concern ____
Part Size ____ Fall Distance ____
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☒ Possible ☐ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☐ Depth ____ Stem girdling ☐
Dead ☐ Decay ☐ Conks/Mushrooms ☐
Ooze ☐ Cavity ☐ ____% circ.
Cracks ☐ Cut/Damaged roots ☐ Distance from trunk ____
Root plate lifting ☐ Soil weakness ☐
Response growth girdled on sidewalk
Condition(s) of concern roots potentially impacting structure/hardscape
Part Size ____ Fall Distance ____
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☒ Possible ☐ Probable ☐ Imminent ☐

Risk Categorization

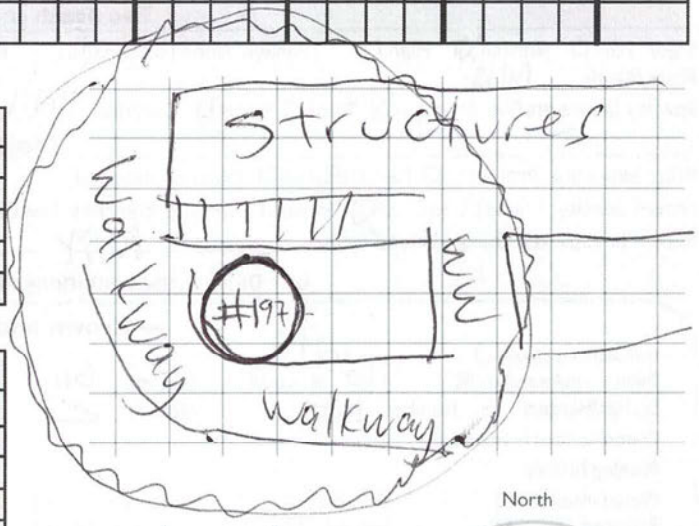
Target (Target number or description)	Tree part	Condition(s) of concern	Likelihood: Failure: Improbable	Failure: Possible	Failure: Probable	Failure: Imminent	Impact: Very low	Impact: Low	Impact: Medium	Impact: High	Failure & Impact (from Matrix 1): Unlikely	Somewhat	Likely	Very likely	Consequences: Negligible	Minor	Significant	Severe	Risk rating (from Matrix 2)
structures (1)	crown	overhanging limbs		X						X		X				X			low
structure (1)	crown	weakly attach. limbs		X						X		X					X		mod
pedestrians	crown	heavy end weight		X				X			X					X			low
structure	roots	impacting sidewalk		X						X		X					X		mod
pedestrians	roots	trip hazard		X	X					X			X			X			mod

Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impact			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low



Notes, explanations, descriptions

Due to size of tree part, likelihood of failure and consequences of failure Tree poses Moderate Risk to Targets & cannot be mitigated to low risk.

Mitigation options

1. end weight pruning - overhanging limbs — **Residual risk** Low
2. Root Prune - roots — **Residual risk** mod
3. Tree removal — **Residual risk** None
4. _____ — **Residual risk** _____

Overall tree risk rating Low ☐ Moderate ☑ High ☐ Extreme ☐

Overall residual risk None ☐ Low ☐ Moderate ☑ High ☐ Extreme ☐ **Recommended inspection interval** 1yr

Data ☑ Final ☐ Preliminary **Advanced assessment needed** ☑ No ☐ Yes-Type/Reason _____

Inspection limitations ☑ None ☐ Visibility ☐ Access ☐ Vines ☐ Root collar buried Describe _____

This datasheet was produced by the International Society of Arboriculture (ISA) — 2017

ISA Basic Tree Risk Assessment Form

Client Waterford HOA Date 10/21/2024 Time 9:30am
Address/Tree location Behind 6372 Buena Vista Dr. Tree no. 200 Sheet 2 of 4
Tree species Eucalyptus nicholii dbh 37" Height 65' Crown spread dia. 40'
Assessor(s) Jonathan Maysonik Tools used rubber mallet, dbh tape Time frame One year

Target Assessment camera, probe

Target number	Target description	Target protection	Target zone: Target within drip line	Target zone: Target within 1 x Ht.	Target zone: Target within 1.5 x Ht.	Occupancy rate (1 – rare, 2 – occasional, 3 – frequent, 4 – constant)	Practical to move target?	Restriction practical?
1	structure	no	Y	Y	Y	4	N	N
2	pedestrian traffic	no	Y	Y	Y	2	N	N
3								
4								

Site Factors

History of failures N/A **Topography** Flat ☑ Slope ☐ ____% **Aspect** ____
Site changes None ☐ Grade change ☐ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☐ Describe Concrete repairs/pond drained
Soil conditions Limited volume ☒ Saturated ☐ Shallow ☐ Compacted ☒ Pavement over roots ☒ 10 % Describe ____
Prevailing wind direction W **Common weather** Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☐ Describe recent history of recent storm surge

Tree Health and Species Profile

Vigor Low ☒ Normal ☐ High ☐ **Foliage** None (seasonal) ☐ None (dead) ☐ Normal 80 % Chlorotic ____ % Necrotic 20 %
Pests/Biotic N/A **Abiotic** N/A
Species failure profile Branches ☒ Trunk ☐ Roots ☒ Describe limb failures, achrematus roots.

Load Factors

Wind exposure Protected ☐ Partial ☒ Full ☐ Wind funneling ☐ ____ **Relative crown size** Small ☐ Medium ☐ Large ☒
Crown density Sparse ☒ Normal ☐ Dense ☐ **Interior branches** Few ☐ Normal ☒ Dense ☐ **Vines/Mistletoe/Moss** ☐ none
Recent or expected change in load factors N/A

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☒ LCR 45 %
Dead twigs/branches ☒ 20 % overall Max. dia. 4
Broken/Hangers Number N/A Max. dia. 2
Over-extended branches ☒
Pruning history
Crown cleaned ☐ Thinned ☒ Raised ☐
Reduced ☒ Topped ☐ Lion-tailed ☐
Flush cuts ☐ Other ____

Cracks ☐ N/A Lightning damage ☐
Codominant ☒ codom. leader attachment 20ft Included bark ☒
Weak attachments ☒ ____ Cavity/Nest hole ____ % circ.
Previous branch failures ☐ ____ Similar branches present ☐
Dead/Missing bark ☐ Cankers/Galls/Burls ☐ Sapwood damage/decay ☐
Conks ☐ Heartwood decay ☐ ____
Response growth ____

Condition(s) of concern weakly branch attachments.
Part Size 12"-15" Fall Distance 20'
Load on defect N/A ☐ Minor ☐ Moderate ☒ Significant ☐
Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

Condition(s) of concern overextended limbs.
Part Size 6-10" Fall Distance 40'
Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☒
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Trunk —

Dead/Missing bark ☐ Abnormal bark texture/color ☐
Codominant stems ☐ Included bark ☐ Cracks ☐
Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐
Lightning damage ☐ Heartwood decay ☐ Conks/Mushrooms ☐
Cavity/Nest hole ____ % circ. Depth ____ Poor taper ☒
Lean ____° Corrected? ____
Response growth some bulging at trunk base
Condition(s) of concern ____
Part Size ____ Fall Distance ____
Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☒ Depth ____ Stem girdling ☒
Dead ☐ Decay ☐ Conks/Mushrooms ☐
Ooze ☐ Cavity ☐ ____ % circ.
Cracks ☐ Cut/Damaged roots ☐ Distance from trunk ____
Root plate lifting ☐ Soil weakness ☐
Response growth ____
Condition(s) of concern potential structure & sidewalk damage.
Part Size TBD. Fall Distance N/A
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☒ Imminent ☐
(structure) (sidewalk)

Risk Categorization

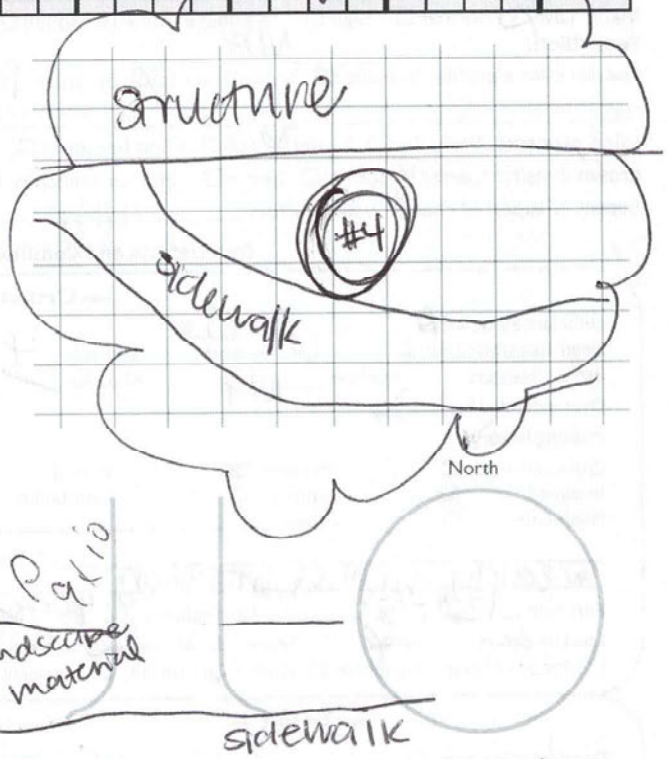
Target (Target number or description)	Tree part	Condition(s) of concern	Likelihood: Failure: Improbable	Failure: Possible	Failure: Probable	Failure: Imminent	Impact: Very low	Impact: Low	Impact: Medium	Impact: High	Failure & Impact (from Matrix 1): Unlikely	Somewhat	Likely	Very likely	Consequences: Negligible	Minor	Significant	Severe	Risk rating (from Matrix 2)
sidewalk (1)	crown/branches	weakly attached		X						X		X					X		MOD
structure (2)	crown/branches	overextended limbs		X						X		X				X			LOW
structure (2)	crown	weakly attach. limb		X						X		X					X		MOD
sidewalk (1)	crown	overextended limbs		X						X		X					X		MOD
structure (2)	roots	lifting			X				X			X					X		MOD
sidewalk (1)	roots	lifting				X				X				X		X			MOD

Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impact			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low



Notes, explanations, descriptions

Mitigation options

1. end weight pruning - overhanging limbs — **Residual risk** low
2. tree removal — **Residual risk** none
3. _____ — **Residual risk** _____
4. _____ — **Residual risk** _____

Overall tree risk rating Low ☐ Moderate ☑ High ☐ Extreme ☐

Overall residual risk None ☐ Low ☐ Moderate ☐ High ☐ Extreme ☐ **Recommended inspection interval** 1 yr

Data ☒ Final ☐ Preliminary **Advanced assessment needed** ☒ No ☐ Yes-Type/Reason _____

Inspection limitations ☐ None ☐ Visibility ☐ Access ☐ Vines ☒ Root collar buried Describe root collar surrounded by landscape material

ISA Basic Tree Risk Assessment Form

Client Waterford HOA Date 10/21/2024 Time 10:30 AM
Address/Tree location 39933 B Paraaa St, Newark CA 94560 Tree no. 199 Sheet 3 of 4
Tree species Eucalyptus nicholii dbh 36" Height 80' Crown spread dia. 45-50'
Assessor(s) Jonathan Maystrik Tools used Rubber mallet, Time frame 1yr.

Target Assessment probe, dbh tape

Target number	Target description	Target protection	Target zone: Target within drip line	Target zone: Target within 1 x Ht.	Target zone: Target within 1.5 x Ht.	Occupancy rate (1 – rare, 2 – occasional, 3 – frequent, 4 – constant)	Practical to move target?	Restriction practical?
1	Structure	no	Y	Y	Y	4	N	N
2	Sidewalk	yes	Y	Y	Y	2	N	N
3								
4								

Site Factors

History of failures N/A Topography Flat ☒ Slope ☐ % Aspect
Site changes None ☐ Grade change ☒ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☐ Describe Concrete repairs
Soil conditions Limited volume ☒ Saturated ☐ Shallow ☐ Compacted ☒ Pavement over roots ☒ 30 % Describe Partial growth into structure
Prevailing wind direction W Common weather Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☐ Describe recent history of recent storm surge

Tree Health and Species Profile

Vigor Low ☐ Normal ☒ High ☐ Foliage None (seasonal) ☐ None (dead) ☐ Normal 80 % Chlorotic ____ % Necrotic 20 %
Pests/Biotic Abiotic
Species failure profile Branches ☒ Trunk ☐ Roots ☒ Describe limb failures, adventitious roots.

Load Factors

Wind exposure Protected ☐ Partial ☒ Full ☐ Wind funneling ☐ Relative crown size Small ☐ Medium ☐ Large ☒
Crown density Sparse ☐ Normal ☒ Dense ☐ Interior branches Few ☐ Normal ☒ Dense ☐ Vines/Mistletoe/Moss ☐ N/A
Recent or expected change in load factors N/A

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☐ LCR 60 %
Dead twigs/branches ☒ 20 % overall Max. dia. 3 in
Broken/Hangers Number ____ Max. dia. ____
Over-extended branches ☒
Pruning history
Crown cleaned ☒ Thinned ☐ Raised ☐
Reduced ☒ Topped ☐ Lion-tailed ☐
Flush cuts ☐ Other ____
Overextended limbs
Part Size 10" Fall Distance 20'
Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☒
Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

Cracks ☒ at 35' Lightning damage ☐
Codominant ☐ ____ Included bark ☐
Weak attachments ☒ ____ Cavity/Nest hole ____ % circ.
Previous branch failures ☐ ____ Similar branches present ☐
Dead/Missing bark ☐ Cankers/Galls/Burls ☐ Sapwood damage/decay ☐
Conks ☐ Heartwood decay ☐ ____
Response growth ____
Condition(s) of concern ____
Part Size ____ Fall Distance ____
Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Trunk —

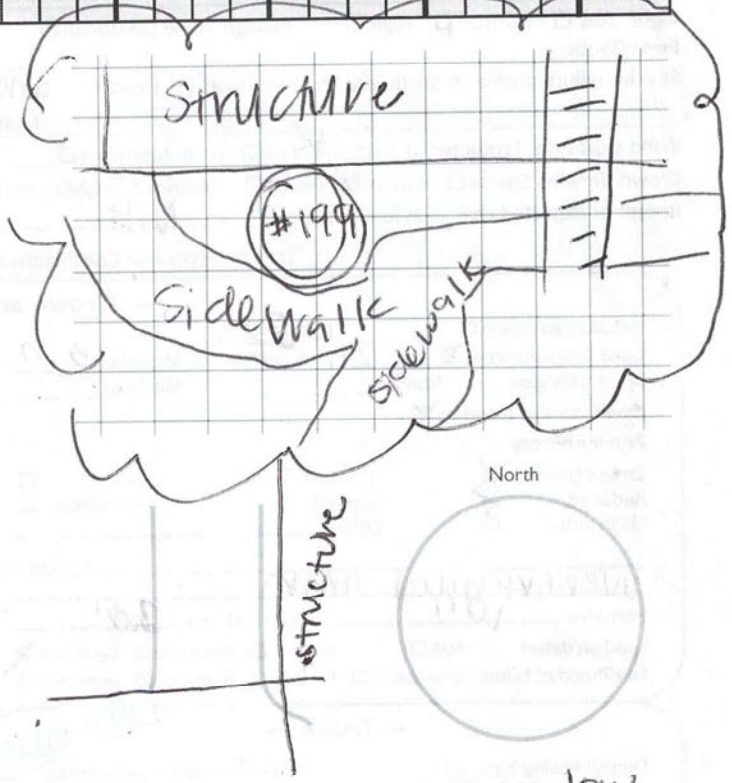
Dead/Missing bark ☐ Abnormal bark texture/color ☐
Codominant stems ☐ Included bark ☐ Cracks ☐
Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐
Lightning damage ☐ Heartwood decay ☐ Conks/Mushrooms ☐
Cavity/Nest hole ____ % circ. Depth ____ Poor taper ☐
Lean ____° Corrected? ____
Response growth ____
Condition(s) of concern ____
Part Size ____ Fall Distance ____
Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☐ Depth ____ Stem girdling ☒
Dead ☐ Decay ☒ Conks/Mushrooms ☐
Ooze ☐ Cavity ☐ ____ % circ.
Cracks ☐ Cut/Damaged roots ☐ Distance from trunk ____
Root plate lifting ☐ Soil weakness ☐
Response growth 8"
Condition(s) of concern growing into structure, lifting, evidence of decay at base
Part Size ____ Fall Distance N/A
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☒
Likelihood of failure Improbable ☐ Possible ☐ Probable ☒ Imminent ☒
(Sidewalk) (structure)

Risk Categorization

Target (Target number or description)	Tree part	Condition(s) of concern	Likelihood: Failure: Improbable	Failure: Possible	Failure: Probable	Failure: Imminent	Impact: Very low	Impact: Low	Impact: Medium	Impact: High	Failure & Impact (from Matrix 1): Unlikely	Somewhat	Likely	Very likely	Consequences: Negligible	Minor	Significant	Severe	Risk rating (from Matrix 2)
Structure (1)	Crown	overextended limbs		X						X		X					X		Mod
Sidewalk (2)	Crown	" "		X						X		X				X			Low
Structure (1)	roots	lifting			X					X			X				X		High
Sidewalk (2)	roots	lifting			X					X				X		X			mod
Structure (1)	roots	decay		X						X		X						X	mod
Sidewalk (2)	roots	decay		X						X		X						X	mod



Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impact			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low

Notes, explanations, descriptions

Mitigation options

1. end weight reduction — **Residual risk** low
2. tree removal — **Residual risk** none
3. _____ — **Residual risk** _____
4. _____ — **Residual risk** _____

Overall tree risk rating Low ☐ Moderate ☐ High ☒ Extreme ☐

Overall residual risk None ☐ Low ☐ Moderate ☐ High ☐ Extreme ☐ **Recommended inspection interval** 1yr

Data ☒ Final ☐ Preliminary **Advanced assessment needed** ☒ No ☐ Yes-Type/Reason _____

Inspection limitations ☒ None ☐ Visibility ☐ Access ☐ Vines ☐ Root collar buried Describe _____

This datasheet was produced by the International Society of Arboriculture (ISA) — 2017

ISA Basic Tree Risk Assessment Form

Client Waterford HOA Date 10/21/24 Time 1pm
Address/Tree location 39931 Paraiso St, Newark CA 94560 Tree no. 198 Sheet 4 of 4
Tree species Eucalyptus nicholii dbh 42" Height 65' Crown spread dia. 50'
Assessor(s) Jonathan Maystrik Tools used probe, rubber mallet, Time frame
Target Assessment camera, dbh tape measure

Target number	Target description	Target protection	Target zone: Target within drip line	Target zone: Target within 1x Ht.	Target zone: Target within 1.5 x Ht.	Occupancy rate (1–rare 2–occasional 3–frequent 4–constant)	Practical to move target?	Restriction practical?
1	Structure	no	Y	y	y	4	N	N
2	Sidewalk	yes	Y	y	y	2	N	N
3								
4								

Site Factors

History of failures N/A Topography Flat ☑ Slope ☐ ____% Aspect ____
Site changes None ☒ Grade change ☐ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☐ Describe ____
Soil conditions Limited volume ☒ Saturated ☐ Shallow ☐ Compacted ☒ Pavement over roots ☒ 20 % Describe ____
Prevailing wind direction W Common weather Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☐ Describe recent history of

Tree Health and Species Profile

recent storm damage.

Vigor Low ☐ Normal ☒ High ☐ Foliage None (seasonal) ☐ None (dead) ☐ Normal 95 % Chlorotic ____% Necrotic 5 %
Pests/Biotic ____ Abiotic ____
Species failure profile Branches ☒ Trunk ☐ Roots ☒ Describe limb failures/adventitious roots.

Load Factors

Wind exposure Protected ☐ Partial ☐ Full ☐ Wind funneling ☐ ____ Relative crown size Small ☐ Medium ☐ Large ☒
Crown density Sparse ☐ Normal ☒ Dense ☐ Interior branches Few ☐ Normal ☐ Dense ☐ Vines/Mistletoe/Moss ☐ N/A
Recent or expected change in load factors ____

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☐ LCR 50 %
Dead twigs/branches ☑ 5 % overall Max. dia. 1 in
Broken/Hangers Number 1 Max. dia. 1
Over-extended branches ☒
Pruning history
Crown cleaned ☒ Thinned ☐ Raised ☐
Reduced ☒ Topped ☐ Lion-tailed ☐
Flush cuts ☐ Other ____

Cracks ☐ ____ Lightning damage ☐
Codominant ☐ ____ Included bark ☐
Weak attachments ☐ ____ Cavity/Nest hole ____% circ.
Previous branch failures ☐ ____ Similar branches present ☐
Dead/Missing bark ☐ Cankers/Galls/Burls ☐ Sapwood damage/decay ☐
Conks ☐ Heartwood decay ☐ ____
Response growth ____

Condition(s) of concern: Overextended limbs
Part Size 10-12" Fall Distance 40-60'
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

Condition(s) of concern ____
Part Size ____ Fall Distance ____
Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Trunk —

Dead/Missing bark ☐ Abnormal bark texture/color ☐
Codominant stems ☐ Included bark ☐ Cracks ☐
Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐
Lightning damage ☐ Heartwood decay ☐ Conks/Mushrooms ☐
Cavity/Nest hole ____ % circ. Depth ____ Poor taper ☐
Lean ____° Corrected? ____
Response growth yes, response wood
Condition(s) of concern ____
Part Size ____ Fall Distance ____
Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible Depth ____ Stem girdling ☐
Dead ☐ Decay ☐ Conks/Mushrooms ☐
Ooze ☐ Cavity ☐ ____% circ.
Cracks ☐ Cut/Damaged roots ☐ Distance from trunk ____
Root plate lifting ☐ Soil weakness ☐
Response growth ____
Condition(s) of concern roots causing trip hazard
Part Size ____ Fall Distance ____
Load on defect N/A ☒ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

Risk Categorization

Target (Target number or description)	Tree part	Condition(s) of concern	Likelihood: Failure: Improbable	Likelihood: Failure: Possible	Likelihood: Failure: Probable	Likelihood: Failure: Imminent	Likelihood: Impact: Very low	Likelihood: Impact: Low	Likelihood: Impact: Medium	Likelihood: Impact: High	Likelihood: Failure & Impact (from Matrix 1): Unlikely	Likelihood: Failure & Impact (from Matrix 1): Somewhat	Likelihood: Failure & Impact (from Matrix 1): Likely	Likelihood: Failure & Impact (from Matrix 1): Very likely	Consequences: Negligible	Consequences: Minor	Consequences: Significant	Consequences: Severe	Risk rating (from Matrix 2)
Structure (1)	Crown	overextended		X				X			X					X			low
Sidewalk (2)	Crown	limbs		X					X		X					X			low
Sidewalk (2)	roots	lifting/tripHazard				X				X				X		X			mod

Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impact: Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure: Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low



Notes, explanations, descriptions

Mitigation options

1. end weight reduction — **Residual risk** low
2. root pruning — **Residual risk** mod
3. tree removal — **Residual risk** none
4. _____ — **Residual risk** _____

Overall tree risk rating Low ☐ Moderate ☑ High ☐ Extreme ☐

Overall residual risk None ☐ Low ☐ Moderate ☐ High ☐ Extreme ☐ **Recommended inspection interval** 1 yr

Data ☐Final ☐Preliminary **Advanced assessment needed** ☒No ☐Yes-Type/Reason _____

Inspection limitations ☒None ☐Visibility ☐Access ☐Vines ☐Root collar buried Describe _____

STAFF REPORT

Item F. 1.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Steven Turner, Community Development Director
SUBJECT	Adopt a resolution authorizing the City Manager to execute the amendment to the Affordable Housing Loan Agreement for the Thornton Avenue Apartments project, including the Purchase and Sale Agreement, deed of trust and all related documents necessary to complete the purchase and conveyance of property located at 6347-6375 Thornton Avenue, a Short-Term Lease Agreement with Thornton, L.P. and a Lease Option Agreement with Thornton, L.P. for said property, and adopt a resolution to declare the property exempt surplus land. Exempt from the CEQA per CEQA Guidelines Sections 15061(b)(3) and 15312.

SUMMARY AND RECOMMENDATION

In March 2023, the City Council authorized a $12 million loan from the Affordable Housing Impact Fee Fund to Satellite Affordable Housing Associates (SAHA) for an affordable multifamily rental housing project (Project) at 6347-6375 Thornton Avenue (Project Site). The City and Thornton L.P., a subsidiary of SAHA, entered into an Affordable Housing Loan Agreement (Agreement) for the loan to acquire the Project Site and develop the Project in April 2023. Pursuant to the Agreement, SAHA is to commence construction by 2026 and complete the project by 2028.

Since entering into the Agreement, Thornton L.P. has completed predevelopment activities including preparing architectural plans and submitting a formal application for entitlements, which is expected to be presented to the Planning Commission in Spring 2025. Once planning entitlements are approved, the Project will be positioned to apply for additional funding sources, including the State of California Department of Housing and Community Development's (HCD) Multifamily Housing Program (MHP). Thornton, L.P. has also acquired title to the Project Site with funds provided by the City pursuant to the Agreement.

The financial environment for developing new affordable housing has grown increasingly challenging since the Agreement was executed. At the same time, state and federal subsidy programs have been further constrained and continuously oversubscribed, construction costs continue to rise, and interest rates remain high. Additionally, the Project Site will lose its Difficult to Develop Area (DDA) status, which is

further explained in this report, in December 2026, after which point financing the Project will be even more difficult.

To support the Project's competitiveness for MHP and other state funding programs, staff recommends that the City acquire the Project Site and enter into a Lease Option Agreement (LOA) with SAHA before the MHP application deadline in April 2025. These actions align with City and State policies and will increase the Project's likelihood of success in obtaining financing and beginning construction by the end of 2026.

The chief consequence of not acquiring the Project Site is that the Project will not be competitive with other projects statewide that are competing for the available MHP funding. This will result in a minimum one-year delay to construction commencement, assuming alternative funds are available, and Thornton L.P. would miss key performance milestones required by the Agreement.

Staff recommends that the City Council approve an amendment to the Agreement to authorize the City Manager to acquire the Project Site and lease it back to Thornton L.P. to improve the Project's likelihood of securing financing and staying on schedule.

As part of this recommendation, staff requests that the City Council:

1. Adopt a Resolution (Attachment A) to Amend the Affordable Housing Loan Agreement, inclusive of:
    - Authorizing the City Manager to enter into a Purchase and Sale Agreement with Thornton L.P. for the Project Site
    - Authorizing the City Manager to enter into a Lease Option Agreement with Thornton L.P. for the Project Site
    - Authorizing the City Manager to execute an Amended and Restated Promissory Note for the City Loan
    - Authorizing the City Manager to enter into a Short-Term Lease Agreement with Thornton L.P. for the Project Site for the period between the City's acquisition of the Site and the construction loan closing
    - Authorizing the City Manager to execute a Reconveyance of Deed of Trust for the City Loan, with the City Loan Deed of Trust to be recorded again at the construction loan closing
    - Authorizing the City Manager to terminate the Regulatory Agreement for the Project Site, with the Regulatory Agreement to be recorded again at the construction loan closing

2. Adopt a Resolution (Attachment B) Declaring the Project Site Exempt Surplus Land and declaring the City's intention to lease the Project Site to Thornton L.P. in compliance with the California Surplus Land Act

BACKGROUND

Newark's Sixth-Cycle Housing Element
Since 1969, California law requires all cities and counties to plan to meet the housing needs of community members of all income levels. These plans, also known as housing elements, are updated and incorporated into local governments' general plans on eight-year cycles.

The City Council adopted the City's sixth cycle Housing Element on October 26, 2023 for the 2023-2031 planning period. The California Department of Housing and Community Development (HCD) found the adopted Housing Element in compliance with state law on December 21, 2023.

Newark's Housing Element commits to continuing and implementing 32 policies and 45 programs, among them:

- Program H2.7: Providing financing for the development of 343 new homes for low-income households,
- Program H4.1: Developing anti-displacement and local preference policies for individuals who live or work in Newark, and
- Program H5.3: Utilizing public land for the development of affordable housing.

Affordable Housing Workplan
The City Council adopted Resolution No. 11,201 in May 2021, adopting the City's Affordable Housing Workplan (Workplan) and establishing parameters for the use of the City's Affordable Housing Impact Fee Fund (Fund). Among other uses, the Workplan estimated providing up to 40 percent of funds for the development of new affordable housing through a competitive Notice of Funding Availability (NOFA) and 40 percent of funds to acquisition of land for affordable housing.

Since 2022, the City has committed over $19 million in NOFA funding to assist in the development of 263 low- and very-low income housing units, including the Project. The City has not yet allocated funds for acquisition or other uses. The Fund has approximately $27 million in funds remaining.

Project Site and Proposed Project
The Project is located on three (3) existing parcels located at 6347, 6361, and 6375 Thornton Avenue, totaling 23,650 square feet in area. The parcels currently consist of single-family homes built in 1951 and 1952. The individual properties have been vacant since 2023, before which time they were occupied by commercial uses.

The three (3) parcels are zoned for Residential High Density (RH) and have a General Plan land use designation of High-Density Residential. The RH zoning district is intended for residential densities from 25 to 60 units per net acre and provides for apartment and condominium complexes that are generally three stories or more. This RH zoning district implements the high density residential general plan land use designation.

The Project will include 59 affordable units (including one manager's unit) within a five-story apartment building. The unit mix will include 28 one-bedroom, 15 two-bedroom, and 16 three-bedroom units (see Attachment C). Thornton L.P. will be

the developer and owner of the Project and will also provide property management and resident services coordination.

The Project requires the following entitlements: Design Review, Tentative Parcel Map Review, and a Minor Use Permit to allow a building height over 35 feet. SAHA also requested a density bonus (consistent with state law) to allow the proposed density as well as various concessions and waivers to certain zoning requirements. Additionally, because Thornton L.P. is proposing affordable units instead of paying the Housing Impact Fee, an Alternative Means of Compliance approval is required. Chapter 17.18 of the Newark Municipal Code (NMC) requires developers to pay a housing impact fee for development projects. However, if a developer requests to provide on-site affordable housing units instead, the alternative means of compliance requires review and a recommendation to the City Council by the Planning Commission and a decision by the City Council.

Thornton L.P. has been responsive to input from City staff and the community, and City staff anticipates presenting the Project to the Planning Commission in Spring 2025 for consideration of final entitlement approval, and subsequently to the City Council for the alternative means of compliance approval.

Project Financing

Thornton L.P. intends to finance the Project with multiple competitive public funding programs, including the City's loan. Thornton L.P. has successfully secured additional financial commitments since entering the Agreement, but the largest sources from the Project's Preliminary Financing Plan remain outstanding (see Attachment D).

The financial environment for developing new affordable housing has grown increasingly challenging since the Agreement was executed. At the same time, state and federal subsidy programs have been further constrained and continuously oversubscribed.

Additionally, the Project Site will lose its Difficult to Develop Area (DDA) status in December 2026. DDA is a federal designation that entitles projects to additional tax credit equity to account for high construction, land, and utility costs relative to area median gross income. If the Project does not obtain financing before losing its DDA status, it will have a significantly larger funding gap. If the Project does not receive an MHP award in 2025, there is no identified path to obtaining financing before the DDA expiration deadline.

These challenging financial conditions may result in delays to construction commencement and completion. The Agreement requires Thornton L.P. to commence construction no later than March 31, 2026 and complete construction no later than May 31, 2028.

The City can support the Project and improve its competitiveness for MHP by acquiring the Project Site and leasing it back to Thornton L.P. for a long term and nominal cost in compliance with the Surplus Land Act (see Attachment E, Exhibit A). Attachment E includes a table containing the scoring criteria which reveal the point factors that make

a project competitive for funding. Under Governor Newsom, state funding programs have prioritized affordable housing projects on public land in order to preserve public land for public benefit with longer periods of affordability than required of private property owners, and to encourage local agencies to think creatively about contributing to development costs.

Acquiring and leasing the Project Site back to Thornton L.P. will not guarantee the Project's success in obtaining MHP and subsequent funding. It would, however, make the project more competitive for MHP and other programs than it is currently, and secure the investment the City has already made in the Project Site.

The Project is also seeking seven project-based vouchers (PBV) from the Housing Authority of the County of Alameda, which has paused PBV applications. Uncertainty regarding PBV availability could threaten the Project schedule.

DISCUSSION/ANALYSIS

Affordable Housing Loan Agreement

The City and SAHA entered into the Agreement on April 3, 2023 with the following terms:

Fundamental Terms

- $12,000,000 loan for predevelopment and construction costs, including site acquisition
- 3% interest rate
- 57-year term
- Repayment on a prorated share of residual receipts
- 100% of the 57 units (excluding one (1) manager's unit) to be affordable to low- and very low-income households for the duration of the loan term
- A leasing preference to individuals currently living or working in Newark, to the extent permitted by law and funding regulations

Supplemental Terms

- Regulatory Agreement and Restrictive Covenants: Recorded against the property to document the owner's affordability covenants and other commitments. This agreement governs affordability restrictions, how rent is calculated, rent increases, over-income tenants, income certification and the operation and management of the project.
- Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing: The Deed of Trust protects the City's loan. It is recorded against the property and memorializes the borrower's pledge of property as security for the loan.
- Promissory Note: The Promissory Note documents the borrower's promise to repay the loan from the net income or "residual receipts" generated by the Project

Proposed Amendment to Affordable Housing Loan Agreement

The proposed resolution (see Attachment A) amends the Agreement (Amendment) and authorizes the City Manager to acquire the Project Site and lease it back to Thornton L.P. for development and operation of the Project.

The Amendment (see Attachment G) revises the following terms of the Agreement:

- Unit Count: During the entitlement process, Thornton L.P. has been able to incorporate an additional two (2) low-income housing units into the Project. This change to the Project aligns with the second goal of the City's Housing Element to Facilitate the Development of More Homes for More People and further contributes to satisfying the City's Regional Housing Needs Allocation for low- and very low-income housing units. The unit count would change from 57 to 59 total units.
- Loan Value: Should City Council authorize the City Manager to enter into a Purchase and Sale Agreement for the Project Site, the principal balance of the loan will be reduced by the price that Thornton L.P. originally paid to acquire the properties. This would change the principal balance from $12 million to $8,523,743.16.
- Revised Financing Plan: This exhibit to the Amendment will reflect the revised loan value and an updated plan and schedule for Thornton L.P. to secure outstanding financing for the Project.

The Amendment also includes the following supplemental agreements to implement the revised loan terms, acquisition, and lease of the Project Site.

- Form of Purchase and Sale Agreement: Appended to the Amendment, a substantially similar version of which will be executed by the City and Thornton L.P. The PSA identifies the terms and conditions under which Thornton L.P. will sell and City will purchase the Project Site. A diligence period will occur after signing the PSA. Thornton L.P. has already provided City with environmental assessments and preliminary title reports relevant to the property acquisition. The City has completed its own Phase 1 environmental site assessment for the Project Site which did not identify any recognized environmental conditions, hazards, or impediments to safe development and occupancy of the site. In addition, the Purchase and Sale Agreement will include a due diligence period providing sufficient time to complete its own due diligence and allow the City to obtain a new title report and title insurance as well as complete a final walkthrough prior to closing on the purchase.

  Fundamental Terms and Conditions:
  - Purchase price: $3,431,170.41
  - All closing costs associated with the purchase will be paid out of the City's loan
  - City and Thornton L.P. will enter into a Lease Option Agreement for the development and a long-term Ground Lease for the Property

- Form of Lease Option Agreement: Appended to the Amendment, a substantially similar version of which will be executed and deposited into escrow by both parties following execution of the PSA. Through the Lease Option Agreement, the City provides Thornton L.P. with the right to lease the Project Site once all Project financing and environmental approvals are obtained, and subject to other terms and conditions.

  Fundamental Terms and Conditions:

- Lease Option Agreement to end June 30, 2027, with two one- (1) year extensions at City's discretion
- Ground Lease rent of one (1) dollar per year
- Ground Lease term of 99 years

- Form of Memorandum of Option Agreement: Appended to the Amendment, a substantially similar version of which will be executed and deposited into escrow by both parties following execution of the Lease Option Agreement. Once executed, the Memorandum will be recorded in the Official Records of the County of Alameda to memorialize the terms of the Lease Option Agreement.

- Form of Amended and Restated Promissory Note: Appended to the Amendment, a substantially similar version of which will be executed and deposited into escrow by both parties following execution of the PSA. The Amended and Restated Promissory Note reduces the principal balance of the Predevelopment Loan Component of the City's loan to account for the City's acquisition of the Project Site, and secures the City's loan against an assignment of architect and engineering agreements for the Project.

- Form of Short-Term Lease Agreement: Appended to the Amendment, a substantially similar version of which will be executed by the City and Thornton L.P. following execution of the PSA. The Short-Term Lease Agreement shall have a term for the time between the acquisition of the Site and the commencement of the long-term Ground Lease. Because the term of this lease is less than 15 years, it is not subject to the Surplus Land Act. The Short-Term Lease Agreement protects the City from responsibility for operating, maintaining, and securing the Project Site until such time as a long-term Ground Lease is executed with Thornton L.P. for development and operation of the Project. See Attachment H.

- Reconveyance of Deed of Trust: Appended to the Amendment, a substantially similar version of which will be executed by the City and SAHA following execution of the PSA. This Reconveyance of Deed of Trust removes the City’s Deed of Trust from title once the City acquires the Project Site. A new Deed of Trust securing the City’s loan against Thornton L.P. leasehold interest in the Project Site will be recorded when the long-term ground lease is executed.

- Termination of Regulatory Agreement: Appended to the Amendment, a substantially similar version of which will be executed by the City and Thornton L.P. following execution of the PSA. The City will release the Regulatory Agreement recorded against the Project Site once the City acquires the Project Site now that it is coming under City ownership. A new regulatory agreement will be recorded against the Project Site once the long-term Ground Lease is executed and will serve to ensure the property is operated in accordance with the Agreement.

Surplus Land Act

A second resolution has been drafted (see Attachment B) declaring the City’s intention to lease the Project Site to Thornton L.P. as exempt from the California Surplus Land

Act (SLA, Government Code Section 54220 et seq.). The draft resolution has been reviewed by HCD and found compliant with the Surplus Land Act.

A ground lease longer than 15 years is considered a “disposition” of property under the SLA. The SLA requires local agencies to prioritize the use of surplus land for affordable housing. Because Thornton L.P. is leasing the land for the purpose of an affordable housing development, the transaction is exempt from most requirements of the SLA. As such, the Council must make a determination that its surplus lands are exempt from the SLA and the determination must be supported by written findings. The written findings, which are ordinarily done by adopting a resolution, must be provided to the California Department of Housing and Community Development (HCD).

HCD offers a free service to review draft SLA resolutions prior to being presented to local governing bodies. City staff sent the draft resolution to HCD on February 4, 2025. On February 7, 2025, HCD provided minor amendments to the draft resolution which have been accepted by the City and incorporated herein.

Next Steps

The City Council is now reviewing the proposed Amendment and SLA declaration. If approved by the City Council, the two adopted resolutions would authorize the City Manager to execute the Amendment, including entering into a Purchase and Sale Agreement, Lease Option Agreement, Short-Term Lease Agreement and related documents to complete the purchase and conveyance of the Project Site, and declare the Project Site exempt surplus land in accordance with the SLA. City staff would then coordinate with Thornton L.P. to complete the acquisition, enter into the Lease Option Agreement, and submit the approved SLA resolution to HCD.

After the Project Site is acquired and the Lease Option Agreement is executed, Thornton L.P. will apply for HCD’s MHP in April. Program awards are expected to be announced in August 2025.

The Project is expected to appear before Planning Commission in Spring 2025 for entitlement approval and subsequently before the City Council for the alternative means of compliance approval.

FISCAL IMPACT

The Amendment and acquisition of the Project Site would not result in additional expenses to the Affordable Housing Fee Fund (623). All recommended actions are proposed to be funded by the City’s existing loan to Thornton L.P. for the Project. There is no impact on the City’s General Fund or other program funds.

Through the Amendment and authorization for the City Manager to negotiate and enter into a Purchase and Sale Agreement, the City would acquire the Project Site for $3,431,170.41. This is the same price that SAHA paid to acquire the Project Site in 2023 using funds from the City’s loan, less $1,793.43 in property tax payments. City staff has reviewed appraisals for each property constituting the Project Site and has determined that the acquisition price to be fair and reasonable.

The amended principal balance of the loan will be $8,568,829 after the City's acquisition of the Project Site.

In acquiring the Project Site, the recommended action reduces the City's earlier risk of lending funds to Thornton, L.P. for Project Site acquisition and other predevelopment costs prior to the approval of project entitlements. The City's investment will be secured by the value of the land. Remaining risk to City funds will be mitigated by restricting disbursement of the majority of the remaining loan value to construction costs after the long-term Ground Lease is executed. At that point, a new deed of trust will be recorded against Thornton, L.P. leasehold interest in the Project Site.

While the recommended actions do not guarantee the Project's success in all forthcoming funding applications, not implementing this recommendation would almost certainly result in significant Project delay.

Risks to accepting the recommended action include:

- Accepting legal and financial liability for the Project Site. Staff have partially addressed this risk by performing due diligence on the site including, but not limited to, contracting with ACC Environmental Consultants, Inc. to procure a Phase 1 Environmental Site Assessment for the Project Site, reviewing preliminary title reports for the Project Site, and transferring responsibility for managing the Project Site to Thornton L.P. through the Short-Term Lease Agreement, and

- Continued financial competitiveness for affordable housing funds. There is a chance that the City's acquisition of the Project Site will not result in an MHP award this funding round due to the extremely high demand for these funds. Additionally, certain factors remain outside of the City's control, including state and federal administration of affordable housing finance programs and the overall demand for these programs. This risk is not uncommon to affordable housing development.

The City will be able to mitigate risks by leasing the Project Site back to Thornton, L.P. with lease terms requiring a contractual obligation to defend and indemnify the City and also name City as an additional insured.

See Attachment I for an expanded summary of risks.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The actions being considered are exempt from environmental review under CEQA pursuant to CEQA Guidelines 15061(b)(3), as it can be seen with certainty that the approval of financial assistance will have no significant effect on the environment, and Section 15312, which applies to sale of surplus government property (a long-term ground lease is equivalent to a sale for purposes of the exemption). The City will complete appropriate environmental review prior to approval of the Project, which was submitted in December 2023 and is currently being processed. It is anticipated that the

project will be eligible for a Class 32 Infill Housing exemption, but that determination cannot be made until an environmental checklist is completed.

REVIEW AND APPROVAL

Prepared by - Michael Coulom, Housing Policy and Programs Manager
Prepared by - Carmelisa Lopez, Senior Planner
Reviewed by - Steven Turner, Community Development Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Attachment A - Draft Loan Amendment Resolution
Attachment B - Draft Surplus Land Resolution
Attachment C - Project Plans
Attachment D - Preliminary Financing Plan
Attachment E - Multifamily Housing Program Detail
Attachment F - Loan Agreement
Attachment G - First Amendment to Loan Agreement
Attachment H - Short Term Lease Agreement
Attachment I - Summary of Risks and Mitigations
Presentation

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING A FIRST AMENDMENT TO AFFORABLE HOUSING LOAN AGREEMENT AND RELATED AGREEMENTS

WHEREAS, the City of Newark ("City") and Thornton, L.P. ("Developer") have entered into an Affordable Housing Loan Agreement with respect to certain property acquired and owned by Developer located at 6347, 6361 and 6375 Thornton Avenue, Newark, California (the "Property"), dated as of April 1, 2023 (the "AHLA"); and

WHEREAS, pursuant to the AHLA, City has made a loan to Developer in the amount of Twelve Million Dollars (the "City Loan") to be used for expenses related to the acquisition of the Property and the construction of an affordable rental housing development thereon (the "Development"); and

WHEREAS, the Developer has acquired fee title to the Property with proceeds of the City Loan; and

WHEREAS, in order to assist the Developer in securing the funds needed for the construction and operation of the Development, the City now desires to acquire the Property from the Developer and to enter into a long-term ground lease of the Property to the Developer (the "Ground Lease") for the construction and operation of the Development thereon; and

WHEREAS, the City Council now desires for the City and Developer to enter into a First Amendment to Affordable Housing Loan Agreement (the "AHLA Amendment ") in order to make certain revisions to the AHLA and other associated documents that have been or will be entered in connection therewith; and

WHEREAS, pursuant to the AHLA Amendment the City will enter into additional agreements including a Purchase and Sale Agreement, Lease Option Agreement, Ground Lease, Amended and Restated Promissory Note, Termination of Regulatory Agreement, Short Term Lease Agreement, and Reconveyance of Deed of Trust; and

WHEREAS, the approval of the AHLA Amendment will not result in any significant changes to the Development to be constructed pursuant to the AHLA, and is exempt from the California Environmental Quality Act ("CEQA") because it consists of the purchase and lease of real property determined by the City to be exempt surplus property.

NOW THEREFORE the City Council of the City of Newark **HEREBY RESOLVES** as follows:

1. The City Council finds that the foregoing Recitals are true and correct and are incorporated into this Resolution.

2. The City Council hereby approves the AHLA Amendment, Purchase and Sale Agreement, Lease Option Agreement, Amended and Restated Promissory Note, Termination of Regulatory Agreement, Short Term Lease Agreement, and Reconveyance of Deed of Trust, substantially in the form presented to the City Council, with such changes as may be approved by the City Manager and the City Attorney.

3. The City Council authorizes the City Manager (or his designee), on behalf of the City, to execute the AHLA Amendment, Purchase and Sale Agreement, Lease Option Agreement, Amended and Restated Promissory Note, Termination of Regulatory Agreement, Ground Lease, Short Term Lease Agreement, and Reconveyance of Deed of Trust, and to take such other actions as are necessary to carry out the City's obligations thereunder, including the preparation and execution of the Ground Lease, escrow instructions and closing documents.

4. Whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under any of the documents approved by this Resolution, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing by the City Manager, without further approval by the City Council. Any such action shall be in writing.

5. The City Council finds that the actions approved hereunder are exempt from CEQA pursuant to Sections 15312 and 15061(b)(3) of the CEQA Guidelines, provided that the City will complete appropriate environmental review of the Development prior to approval of land use entitlements for the Development. City staff is authorized and directed to file a Notice of Exemption from CEQA with the California Office of Planning and Research and the County Clerk of the County of Alameda in the manner specified in Subdivisions (b) and (c) of Section 21152 of the Public Resources Code.

Introduced by Councilmember _____ and passed and adopted this __ day of February, 2025, by the following vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST:

_____
Sheila Harrington, City Clerk

ATTACHMENT H

DRAFT

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK DECLARING PROPERTY LOCATED AT 6347, 6361 AND 6375 THORNTON AVENUE TO BE EXEMPT SURPLUS PROPERTY FOR AFFORDABLE HOUSING DEVELOPMENT PURSUANT TO THE SURPLUS LAND ACT

WHEREAS, the City of Newark ("City") and Thornton, L.P. ("Developer") have entered into an Affordable Housing Loan Agreement with respect to certain property acquired and owned by Developer located at 6347, 6361 and 6375 Thornton Avenue, Newark, California (the "Property"), dated as of April 1, 2023, as amended by the First Amendment to Affordable Housing Loan Agreement dated February __, 2025 (as amended, the "AHLA"); and

WHEREAS, the AHLA provides for the Developer's sale of the Property to the City, and City's long-term ground lease of the Property to the Developer for the development and operation of an affordable rental housing development thereon pursuant to a "Ground Lease" between the City and the Developer, which Ground Lease will be executed and take effect when the construction of the affordable rental housing project is ready to commence; and

WHEREAS, the Surplus Land Act, Government Code Section 54220, *et seq*., provides that local public agencies must determine whether land owned by the public agency is "surplus land" or "exempt surplus land" prior to the sale or lease of such land; and

WHEREAS, Section 54221(f)(1)(A) of the Surplus Land Act provides that surplus land that is transferred by a city pursuant to Government Code Section 37364 is "exempt surplus land"; and

WHEREAS, Government Code Section 37364 authorizes cities to convey real property when not less than 80% of the property will be developed for housing, and not less than 40% of the housing units will be developed for low and very low income tenants at an affordable rent, and restricted for a period of at least 30 years; and

WHEREAS, the AHLA requires that pursuant to the Ground Lease of the Property to the Developer, all of the Property will be developed for housing, and all of the housing units thereon (except for one manager's unit) will be developed for low and very low income tenants at an affordable rent, and restricted for a period of more than 30 years, pursuant to a Regulatory Agreement to be recorded in the official records of Alameda County; and

WHEREAS, Section 54221(f)(1)(F) of the Surplus Land Act provides that "exempt surplus land" includes surplus land that is to be developed for a housing development that restricts 100 percent of the residential units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower income households, with an

affordable rent for 55 years for rental housing, and the maximum affordable rent level is at least 20 percent below the median market rents for the neighborhood in which the site is located, with such requirements contained in a covenant or restriction recorded against the surplus land that runs with the land; and

WHEREAS, the AHLA requires that upon the Ground Lease of the Property to the Developer, a Regulatory Agreement will be recorded against the Property which requires that for a period of more than 55 years the rental of 100 percent of the residential units (except for one manager's unit) will be restricted to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower income households, with an affordable rent, and the maximum affordable rent level will be at least 20 percent below the median market rents for the neighborhood in which the Property is located; and

WHEREAS, Section 54221(f)(2) of the Surplus Land Act provides that notwithstanding the foregoing exemptions, a written notice of the availability of surplus land for open-space purposes shall be sent to specified entities if the land is within a coastal zone, adjacent to a historical unit of the State Parks System, listed on or determined by the State Office of Historic Preservation to be eligible for the National Register of Historic Places, or within the Lake Tahoe region; and

WHEREAS, the Property does not meet any of the criteria of Section 54221(f)(2) of the Surplus Land Act, and therefore no written notice of the availability of surplus land for open-space purposes is required to be sent with respect to the Property; and

WHEREAS, the Surplus Land Act Guidelines provide that a local agency that determines that property is exempt from the Surplus Land Act shall support such a determination with written findings and shall provide a copy of the written determination to the California Department of Housing and Community Development at least 30 days prior to disposition; and

WHEREAS, the City Council desires to declare the Property to be exempt surplus land and to make certain findings with respect to the City's Ground Lease of the Property to the Developer pursuant to the AHLA;

NOW THEREFORE the City Council of the City of Newark **HEREBY RESOLVES** as follows:

1. The Property is designated as exempt surplus land on the basis that the City intends to ground lease the Property in accordance with Government Code Sections 54221(f)(1)(A) and 54221(f)(1)(F).

2. The City Council hereby directs the City Manager or his designee to transmit a copy of this resolution to the California Department of Housing and Community Development, and to transmit such further documents as are necessary for the Department's review of the compliance of this transaction with the requirements of the Surplus Land Act.

3. The commencement of the Ground Lease of the Property to the Developer pursuant to the AHLA shall occur no earlier than the first to occur of (a) the approval of the

findings hereof by the California Department of Housing and Community Development, or (b) thirty days after the submission of this resolution and all accompanying documents to the California Department of Housing and Community Development.

Introduced by Councilmember _____ and passed and adopted this __ day of February, 2025, by the following vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST:

_____
Sheila Harrington, City Clerk



STREET VIEW LOOKING FROM SOUTH SIDE



2ND FLOOR COURTYARD



STREET VIEW LOOKING FROM NORTH SIDE



COURTYARD AERIAL VIEW

VAN METER WILLIAMS POLLACK LLP

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333 Bryant Street, Suite 300, San Francisco, CA 94107 T 415.974.5352

CIVIL ENGINEER
SANDIS ENGINEER
636 9th St., Oakland, CA 94607

LANDSCAPE ARCHITECT
JETT LANDSCAPE ARCHITECTURE + DESIGN
2 Theatre Square Suite 218,
Orinda, CA 94563

CONSULTANT DISCIPLINE 3
CONSULTANT NAME 3
CONSULTANT 3 FULL ADDRESS

CONSULTANT DISCIPLINE 4
CONSULTANT NAME 4
CONSULTANT 4 FULL ADDRESS

CONSULTANT DISCIPLINE 5
CONSULTANT NAME 5
CONSULTANT 5 FULL ADDRESS

CONSULTANT DISCIPLINE 6
CONSULTANT NAME 6
CONSULTANT 6 FULL ADDRESS

ID	DATE	NAME

Project:

THORNTON AVE

6375 THORNTON AVE

Client:

.

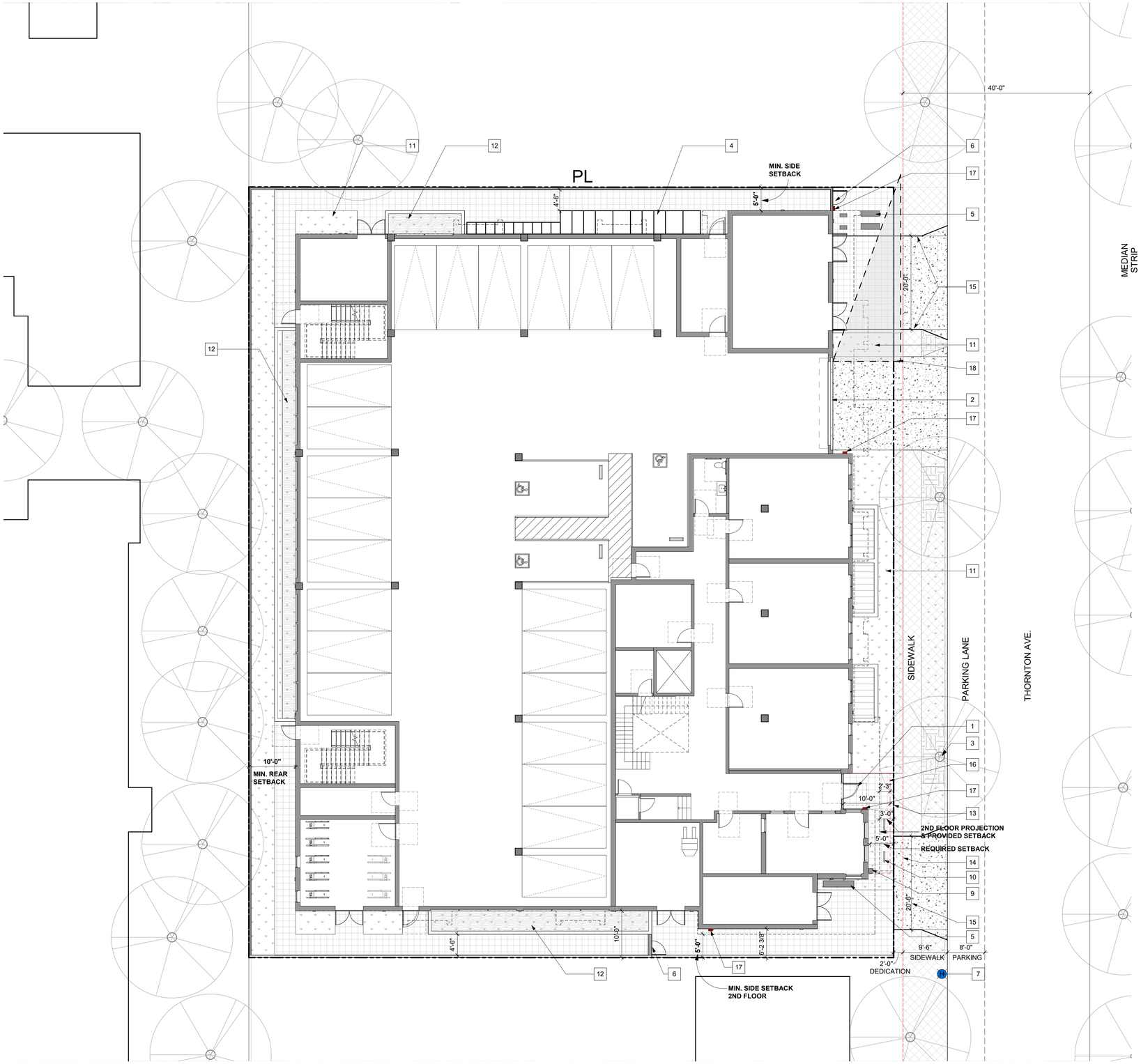
1835 ALCATRAZ AVE.
BERKELEY, CA 94703

3D VIEWS

JOB #: 2314
SCALE:

A0.1

DATE: 12/31/24



1 A1.0 **SITE PLAN**
SCALE: 3/32" = 1'-0"

BIKE PARKING			
SHORT TERM		LONG TERM	
REQUIRED	PROVIDED	REQUIRED	PROVIDED
5% OF OF REQUIRED CAR PARKING: 59x1.5=88.5 OR 4 SPACES		1 SPACE FOR EVERY 5 UNITS: 59/5 OR 12 SPACES	
4	4	12	32

SITE PLAN SHEET NOTES

1. RESIDENTIAL BUILDING MAIN ENTRY
2. GARAGE VEHICULAR ENTRY & GATE. AUDIBLE & VISUAL LED STROBE WARNING SIGNAL LED MOOUNTED OVER GATE
3. EXISTING STREET TREES
4. EXTERIOR SWITCHGEARS AND ELEC, PANELS
5. BACKFLOW PREVENTER PER ACWD & NEWARK FIRE DEPARTMENT REQUIREMENTS
6. PROPERTY LINE FENCE, SEE 4/A4.4
7. EXISTING FIRE HYDRANT, SCD
8. NEW FIRE STANDPIPE
9. FIRE DEPARTMENT CONNECTION
10. BIKE RACKS, SLD
11. LANDSCAPE AREA, SLD
12. STORMWATER PLANTERS, SCD
13. NEW PROPERTY LINE, SCD
14. EXISTING PROPERTY LINE, SCD
15. FIRE DEPARTMENT ROADWAY CAPABLE OF SUPPORTING 75,000 LBS, SEE SHEET A0.9
16. ENTRY CANOPY PROJECTION & DIMENSION INTO FRONT SETBACK, SEE PLANS AND ELEVATIONS
17. KNOX BOX FOR POLICE/FIRE DEPT ACCESS
18. VISIBILITY TRIANGLE CONTROLLED AREA

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CONSULTANT DISCIPLINE 5
CONSULTANT NAME 5
CONSULTANT 5 FULL ADDRESS

CONSULTANT DISCIPLINE 6
CONSULTANT NAME 6
CONSULTANT 6 FULL ADDRESS

ID	DATE	NAME

Project:

THORNTON AVE

6375 THORNTON AVE

Client:

SAHA SATELLITE AFFORDABLE HOUSING ASSOCIATES

1835 ALCATRAZ AVE.
BERKELEY, CA 94703

SITE PLAN

JOB #: 2314
SCALE: As indicated

A1.0

DATE: 12/31/24

ELEVATION SHEET NOTES

REFER TO IMAGES & NUMBERS ON MATERIAL BOARD SHEET A3.4 FOR PRODUCT INFO & ADDITIONAL IMAGES

1	CEMENT PLASTER
2	FIBER CEMENT BOARD AND BATTEN
3	FIBER CEMENT ACCENT PANEL
4	WOOD-LIKE PANEL
5	STANDING SEAM METAL
6	JULIETTE BALCONY, SEE 2/A4.4
7	METAL RAILING
8.1	FLUSH VINYL WINDOW, TYPICAL AT SIDE AND REAR ELEVATIONS, DARK GRAY
8.2	RECESSED VINYL WINDOW, TYPICAL AT STREET ELEVATION, DARK GRAY. PER DETAILS BELOW
9	ALUMINUM STOREFRONT SYSTEM, ANODIZED
10	METAL AWNING
11	OVERHEAD GARAGE DOOR
12	PAINTED PARAPET CAP
13	CONCRETE PLANTER
14	6' TALL WOOD CEDAR FENCE, SEE 4/A4.4
15	GARAGE VENTING LOUVER
16	EXPOSED CONCRETE, SMOOTH
17	WALL SCONCES
18	BOARD FORMED CONCRETE
19	POLICE/FIRE DEPT KNOX BOX
20	BACK FLOW PREVENTER PAINTED TO MATCH ADJACENT BUILDING FINISH COLOR
21	AUDIBLE VISUAL STROBE WARNING SIGNAL. ADJUSTIBLE SOUND LEVELS BETWEEN 69 AND 100DBA OR CAN BE SILENCED. SEE PRODUCT INFORMATION ON SHEET 3/A3.2

COLORS

A	CREAM WHITE
B	LIGHT GRAY
C	GRAY
D	DARK GRAY



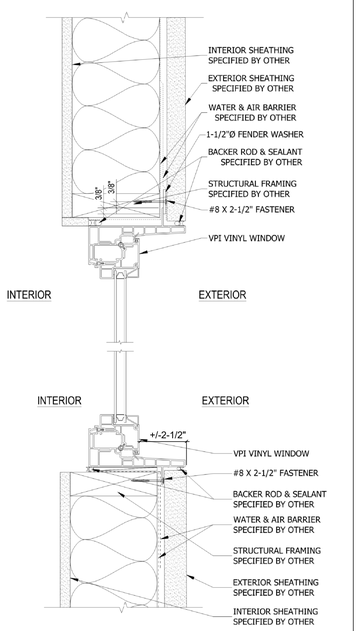
2 / A3.1 **SOUTH ELEVATION**

SCALE: 1/8" = 1'-0"



1 / A3.1 **EAST ELEVATION**

SCALE: 1/8" = 1'-0"



TYPICAL VINYL RECESSED WINDOW

VAN METER WILLIAMS POLLACK LLP

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CONSULTANT DISCIPLINE 3

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CONSULTANT DISCIPLINE 4

CONSULTANT NAME 4

CONSULTANT 4 FULL ADDRESS

CONSULTANT DISCIPLINE 5

CONSULTANT NAME 5

CONSULTANT 5 FULL ADDRESS

CONSULTANT DISCIPLINE 6

CONSULTANT NAME 6

CONSULTANT 6 FULL ADDRESS

ID	DATE	NAME

Project:

THORNTON AVE

6375 THORNTON AVE

Client:

SAHA SATELLITE AFFORDABLE HOUSING ASSOCIATES

1835 ALCATRAZ AVE. BERKELEY, CA 94703

BUILDING ELEVATIONS

JOB #: 2314

SCALE: 1/8" = 1'-0"

A3.1

DATE: 12/31/24

ELEVATION SHEET NOTES

REFER TO IMAGES & NUMBERS ON MATERIAL BOARD SHEET A3.4 FOR PRODUCT INFO & ADDITIONAL IMAGES

1. CEMENT PLASTER
2. FIBER CEMENT BOARD AND BATTEN
3. FIBER CEMENT ACCENT PANEL
4. WOOD-LIKE PANEL
5. STANDING SEAM METAL
6. JULIETTE BALCONY, SEE 2/A4.4
7. METAL RAILING
8.1 FLUSH VINYL WINDOW, TYPICAL AT SIDE AND REAR ELEVATIONS, DARK GRAY
8.2 RECESSED VINYL WINDOW, TYPICAL AT STREET ELEVATION, DARK GRAY. PER DETAILS BELOW
9. ALUMINUM STOREFRONT SYSTEM, ANODIZED
10. METAL AWNING
11. OVERHEAD GARAGE DOOR
12. PAINTED PARAPET CAP
13. CONCRETE PLANTER
14. 6' TALL WOOD CEDAR FENCE, SEE 4/A4.4
15. GARAGE VENTING LOUVER
16. EXPOSED CONCRETE, SMOOTH
17. WALL SCONCES
18. BOARD FORMED CONCRETE
19. POLICE/FIRE DEPT KNOX BOX
20. BACK FLOW PREVENTER PAINTED TO MATCH ADJACENT BUILDING FINISH COLOR
21. AUDIBLE VISUAL STROBE WARNING SIGNAL. ADJUSTIBLE SOUND LEVELS BETWEEN 69 AND 100DBA OR CAN BE SILENCED. SEE PRODUCT INFORMATION ON SHEET 3/A3.2

COLORS

- A CREAM WHITE
- B LIGHT GRAY
- C GRAY
- D DARK GRAY



1 A3.2 **WEST ELEVATION**

SCALE: 1/8" = 1'-0"

The decibel ratings can range from 66 dBA to 82 dBA.

WGES / WGEC Series

Outdoor Evacuation Signals

24 VDC Outdoor Commander Strobe and Horn/Strobe

1 unit per carton, 3 pounds per carton

Applications

The Outdoor Commander Series is a outdoor listed strobe and horn/strobe comination that offers dependable visible and/or audible alarms for all outdoor needs.

The WGE Series offers a fixed 75 candela strobe. The WGEC horn/strobe offers a continuous or synchable temporal 3 in 2400Hz, mechanical and chime as well as a whoop tone. All tones are easy for the professional to change in the field by the use of switches.

Included with the WGE Series is the GOE or GOELP outdoor enclosure. The enclosure is made of high quality Lexan® material, providing protection from weather related conditions and allowing the necessary full candela output. This highly constructed enclosure meets various installation requirements including deterring moisture from entering the enclosures.

The Outdoor Commander Series is equipped with a standard 4" mounting plate which incorporates the Super-Slide® feature that allows the installer to easily test for supervision. The product also features a locking mechanism which secures the product to the bracket without any screws showing. The WGE Series also features the Checkmate® instant voltage verification feature which allows the installer to check the voltage drop draw and match it to the blueprint.

The WGE Series appliances are ANSI/UL 464, ANSI/UL 1638, CAN/ULC S525 and/or CAN/ULC S526 listed for use with fire protective systems and are warranted for three years from date of purchase.



Standard Features

- Nominal voltage 24 VDC
- Fixed 75 candela
- GOE Unit Dimensions: 5.84" (14.83 cm) high x 4.81" (12.22 cm) wide x 4.22" (10.72 cm) deep
- GOELP Unit Dimensions: 5.84" (14.83 cm) high x 4.81" (12.22 cm) wide x 3.25" (8.255 cm) deep
- Super-Slide® - Ease of Supervision Testing
- Checkmate® Instant Voltage Verification
- Prewire entire system, install mounting bracket, then install signals
- Input terminals accept 12 to 18 AWG
- Horn/strobe switch selection for high or low dBA
- Horn/strobe switch for 2400 Hz. mechanical, chime and whoop tones
- Horn/strobe switch for continuous or temporal 3 (not available on whoop tone)
- Synchronize strobe and/or horn by using Gentex AVSM Control Module
- Silence audible while visual appliance will remain flashing
- Tamperproof re-entrant grill and locking screw (optional use)
- GOE/GOELP made of clear Lexan® - provides maximum visibility and reliability for effective visible signaling - allowing full 75cd output
- Faceplate available in red or off-white
- Wall mount

Product Listings

SIGNALING c UL us LISTED

- ANSI/UL 464 and ANSI/UL 1638 Listed
- CAN/ULC S525 and/or CAN/ULC S526 Listed
- CSFM: 7135-0569:122 (WGEC)
  7125- 0569:127 (WGES)
  7300- 0569:124 (ENCLOSURE)
- MEA: 285-91E-XVI

Product Compliance

- NFPA 72
- Americans with Disabilities Act (ADA)
- IBC/IFC/IRC
- Quality Management System is certified to: ISO 9001:2008

GENTEX CORPORATION

MEMA Member | Assembled in the USA

3 A3.2 **VISUAL AUDIBLE WARNING SIGNAL**



2 A3.2 **NORTH ELEVATION**

SCALE: 1/8" = 1'-0"

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333 Bryant Street, Suite 300, San Francisco, CA 94107 T 415.974.5352

CIVIL ENGINEER
SANDIS ENGINEER | SURVEY | PLAN
636 9th St., Oakland, CA 94607

LANDSCAPE ARCHITECT
JETT LANDSCAPE ARCHITECTURE + DESIGN
2 Theatre Square Suite 218, Orinda, CA 94563

CONSULTANT DISCIPLINE 3
CONSULTANT NAME 3
CONSULTANT 3 FULL ADDRESS

CONSULTANT DISCIPLINE 4
CONSULTANT NAME 4
CONSULTANT 4 FULL ADDRESS

CONSULTANT DISCIPLINE 5
CONSULTANT NAME 5
CONSULTANT 5 FULL ADDRESS

CONSULTANT DISCIPLINE 6
CONSULTANT NAME 6
CONSULTANT 6 FULL ADDRESS

ID	DATE	NAME

Project:

THORNTON AVE

6375 THORNTON AVE

Client:

SAHA SATELLITE AFFORDABLE HOUSING ASSOCIATES

1835 ALCATRAZ AVE.
BERKELEY, CA 94703

BUILDING ELEVATIONS

JOB #: 2314

SCALE: 1/8" = 1'-0"

A3.2

DATE: 12/31/24

ELEVATION SHEET NOTES

REFER TO IMAGES & NUMBERS ON MATERIAL BOARD SHEET A3.4 FOR PRODUCT INFO & ADDITIONAL IMAGES

1. CEMENT PLASTER
2. FIBER CEMENT BOARD AND BATTEN
3. FIBER CEMENT ACCENT PANEL
4. WOOD-LIKE PANEL
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12. PAINTED PARAPET CAP
13. CONCRETE PLANTER
14. 6' TALL WOOD CEDAR FENCE, SEE 4/A4.4
15. GARAGE VENTING LOUVER
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17. WALL SCONCES
18. BOARD FORMED CONCRETE
19. POLICE/FIRE DEPT KNOX BOX
20. BACK FLOW PREVENTER PAINTED TO MATCH ADJACENT BUILDING FINISH COLOR
21. AUDIBLE VISUAL STROBE WARNING SIGNAL. ADJUSTIBLE SOUND LEVELS BETWEEN 69 AND 100DBA OR CAN BE SILENCED. SEE PRODUCT INFORMATION ON SHEET 3/A3.2

COLORS

- A CREAM WHITE
- B LIGHT GRAY
- C GRAY
- D DARK GRAY



2 A3.3 **COURTYARD SOUTH ELEVATION**
SCALE: 1/8" = 1'-0"



3 A3.3 **COURTYARD WEST ELEVATION**
SCALE: 1/8" = 1'-0"



1 A3.3 **COURTYARD NORTH ELEVATION**
SCALE: 1/8" = 1'-0"

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CONSULTANT DISCIPLINE 4
CONSULTANT NAME 4
CONSULTANT 4 FULL ADDRESS

CONSULTANT DISCIPLINE 5
CONSULTANT NAME 5
CONSULTANT 5 FULL ADDRESS

CONSULTANT DISCIPLINE 6
CONSULTANT NAME 6
CONSULTANT 6 FULL ADDRESS

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BUILDING ELEVATIONS

JOB #: 2314

SCALE: 1/8" = 1'-0"

A3.3

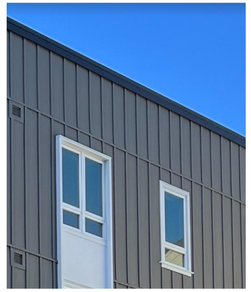
DATE: 12/31/24





1A PAINTED CEMENT PLASTER WITH VERTICAL AND HORIZONTAL JOINTS

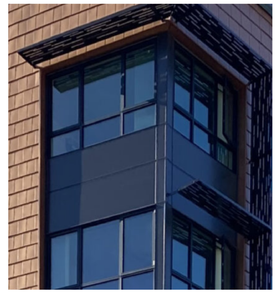
MANUFACTURER: OMEGA OR EQUAL, SMOOTH TEXTURE
3 COAT APPLICATION 7/8" THICK W/ACRYLIC FINISH COAT
OVER DRAIN MAT RAINSCREEN
WEBSITE:https://omega-products.com/commercial-2/

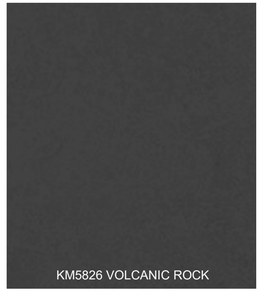




2B FIBER CEMENT BOARD AND BATTEN SIDING

MANUFACTURER: JAMES HARDIE, OR EQUAL
BOARDS: 5/16" THICK SMOOTH, BATTENS 2.5"X2.5"X2.5" SMOOTH
RAINSCREEN INSTALLATION
WEBSITE:https://www.jameshardie.com/product-catalog/





3C FIBER CEMENT ACCENT PANEL

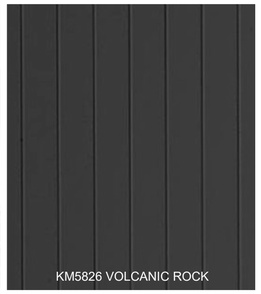
MANUFACTURER: JAMES HARDIE, OR EQUAL
BOARDS: 5/16" THICK SMOOTH
WEBSITE:https://www.jameshardie.com/product-catalog/



4 WOOD LIKE PANEL

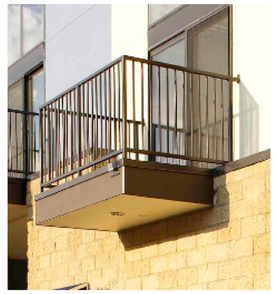
MANUFACTURER: NICHIHA, VINTAGE WOOD, POPLAR, OR EQUAL, RAINSCREEN INSTALLATION
WEBSITE:https://www.nichiha.com/ OR
ACCOYA WOOD SIDING, RAINSCREEN INSTALLATION





5D STANDING SEAM METAL WALL PANELS

MANUFACTURER: MORIN, AEP SPAN OR WESTERN STATES
STANDING SEAM 12"o.c.
RAINSCREEN INSTALLATION
WEBSITE:https://www.westernstatesmetalroofing.com/standing-seam-roofing



7 METAL RAILING

PROVIDED BY STEEL FABRICATOR.
GALVANIZED AND PAINTED
PICKETS SPACING 2"-4" o.c.



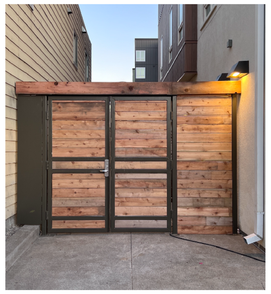
9 ALUMINUM STOREFRONT SYSTEM, ANODIZED, DARK BRONZE

PROVIDED BY STOREFRONT
SUBCONTRACTOR AGA OR EQUAL
WEBSITE: https://www.aga-ca.com/



10 METAL AWNING

MANUFACTURER: MORIN, AEP SPAN OR WESTERN STATES
FLUSH PANELS
RAINSCREEN INSTALLATION
WEBSITE:
https://www.morincorp.com/us/en/products/roof-systems/



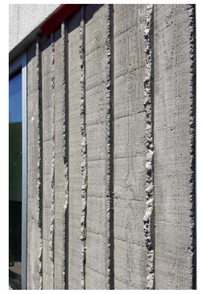
14 WOOD FENCE

1x6 CEDAR BOARDS MOUNTED TO LINE
16GA GALVANIZED STEEL POSTS.
STEEL GATE FRAME WITH LOCKABLE HARDWARE



17 WALL SCONCES DARK-SKY COMPLIANT

MODERN FORMS WS-W14220 DUSK 20" SCONCE



18 BOARD FORMED CONCRETE WALL

VERTICAL OVERPOURED
OR WITH 4" REVEALS

ELEVATION SHEET NOTES

REFER TO IMAGES & NUMBERS ON MATERIAL BOARD SHEET A3.4 FOR PRODUCT INFO & ADDITIONAL IMAGES

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CONSULTANT DISCIPLINE 4
CONSULTANT NAME 4
CONSULTANT 4 FULL ADDRESS

CONSULTANT DISCIPLINE 5
CONSULTANT NAME 5
CONSULTANT 5 FULL ADDRESS

CONSULTANT DISCIPLINE 6
CONSULTANT NAME 6
CONSULTANT 6 FULL ADDRESS

ID	DATE	NAME

Project:

THORNTON AVE

6375 THORNTON AVE

Client:

.

1835 ALCATRAZ AVE.
BERKELEY, CA 94703

ELEVATION MATERIAL BOARD

JOB #: 2314
SCALE: 1/8" = 1'-0"

A3.4

DATE: 12/31/24

Attachment D

Project Preliminary Financing Plan and Schedule

Application Deadline	Program	Source	$ Requested	Notes
COMPLETE	Newark NOFA	City	$12 million	Committed
COMPLETE	DDS/RCEB Loan	DDS	$1.5 million	Committed
April 2025	**MHP (MFSN)**	**HCD**	**$10.2 million**	
September 9, 2025	Federal LIHTCs/Bonds	TCAC/CDLAC	$20.9 million	Contingent on MHP
September 9, 2025	State LIHTCS	TCAC	$3.5 million	Same app as federal
Mid-2025	Affordable Housing Program	FHLB	$1.8 million	
Undetermined	Project-Based Voucher (PBV)	HACA	7 PBVs	

Since receiving the City's $12 million loan commitment, Satellite Affordable Housing Associates (**SAHA**) has secured an additional commitment of $1.5 million from the California Department of Developmental Services (**DDS**) and the Regional Center for the East Bay (**RCEB**). Through these funds, the Project will provide ten homes for households with a member who is intellectually or developmentally disabled (**I/DD**) and receiving services from RCEB. This advances progress towards implementing the City's Housing Element, which commits to addressing the need for additional I/DD housing in Newark.

In addition to the California Department of Housing and Community Development's (**HCD**) Multifamily Housing Program (**MHP**), and Low-Income Housing Tax Credits (**LIHTCs**) and bonds, the Project anticipates applying to the Federal Home Loan Bank of San Francisco's (**FHLB**) Affordable Housing Program (**AHP**). The Project will be more competitive for this program after securing a building permit. For this reason, the Project is waiting to apply for AHP until all entitlements and permits are approved.

The Project anticipates applying to the Housing Authority of Alameda County (**HACA**) for seven project-based vouchers (**PBVs**). HACA administers the PBV program on behalf of the US Department of Housing and Urban Development. PBVs are a valuable resource to affordable housing projects because they pay the difference between what an extremely low-income household can afford and what the actual fair market value rent would be. This means that a housing unit with a PBV can serve those most in need while obtaining full subsidy from the federal government. Unfortunately, because rents in Alameda County are so high, HACA has more PBVs available than they do funds to subsidize the associated rents. HACA anticipates falling into "shortfall" for the next one or two years, during which time they have paused awarding additional

PBVs. Staff is engaging with HACA to understand the extent of this delay and alternatives to avoid disrupting the affordable housing pipeline.

Attachment E

Multifamily Housing Program (MHP) Detail

The California Department of Housing and Community Development's (**HCD**) Multifamily Housing Program (**MHP**) accepts applications annually through its Multifamily Finance Super Notice of Funding Availability (**MFSN** or "SuperNOFA"). The MFSN has a universal scoring system for ranking applications for MHP and other funding programs. The 2025 MFSN is expected to be released in February 2025, with minor changes to the universal scoring system. Applications would be due in April with awards in August.

Recent past MFSN funding rounds have been significantly oversubscribed; in 2024, HCD had sufficient funds to award only 10 percent of program applicants (15 out of 152 applicants). The 2025 MFSN is expected to offer $273 million in MHP funds, which is $37 million more than in 2024 and would fund two to four more awards than in 2024. The demand for public subsidy remains extremely high, however. In May 2024, Enterprise Community Partners and the Bay Area Housing Finance Authority identified 433 affordable housing communities in predevelopment across the nine-county Bay Area, seeking a collective $9.7 billion in public subsidy. Alameda County has the highest number of affordable housing communities in predevelopment at 115 projects consisting of 10,086 homes, or 27 percent of the County's Regional Housing Needs Allocation (RHNA) for new low- and very-low-income homes.[1]

Under current conditions and compared against the 2025 MFSN universal scoring rubric, the Project has a self-score of 91 out of 100 points.[2] While this score is good, it is unlikely to be competitive. The Project loses five (5) points for not being located in a high or highest resource area, one (1) point for not restricting a higher percentage of units to Special Needs populations, and three (3) points for not being located on public land.[3]

---

[1] Atanacio, Amiel Leaño, and Shania Santana. Enterprise Community Partners and Bay Area Housing Finance Authority, 2024, *Ready to Build an Affordable Future: The 2024 Bay Area Pipeline Report*; https://www.enterprisecommunity.org/learning-center/resources/ready-build-affordable-future-2024-bay-area-pipeline-report. Accessed 21 May 2025.

[2] The MFSN Universal Scoring favors projects serving the lowest-income households, projects most "ready" to break ground (have obtained all financial commitments, environmental approvals and entitlements), and projects addressing statewide policy priorities of serving Special Needs populations, being located in high resource areas, or being located on public land.

[3] Resource area is determined by HCD and the California Tax Credit Allocation Committee (TCAC), a division of the State Treasurer's Office, which update and publish Opportunity Maps annually. HCD and TCAC report that Opportunity maps "are intended to advance the state's affirmatively furthering fair housing (AFFH) objectives. AFFH means combating discrimination and taking meaningful actions that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. The Opportunity Map identifies areas in every region of the state whose characteristics have been shown by research to be associated with positive economic, educational, and health outcomes for low-income families—particularly long-term outcomes for children."

Attachment E

Thornton Avenue Apartments, were it to apply for MHP on City-owned land, would distinguish itself from much of this competition. The City's ownership of the site and long-term, low-cost lease to SAHA would raise **the Project's self-score from 91 to 94 points.** Importantly, after the first half of MFSN funds are awarded, remaining funds are awarded irrespective of high or highest resource area status, meaning **the Project's final score would be 94 out of 95 points**. This would be a competitive score because the universe of projects eligible for this score is small and limited to Special Needs projects on public land. See **Exhibit A** for further information.

Attachment E

Exhibit A: MFSN/MHP Self-Scoring

Thornton Ave Family Super NOFA Self Score					
	Scoring Categories	**Maximum MFSN Score**		**Thorton Avenue Apartments**	
		First 50% of funds	Second 50% of funds	City-Owned Land	SAHA-Owned Land
Universal Scoring Criteria	Serving Households at Lowest Income Levels	30	30	30	30
	State Policy Priorities	18	13	12	9
	Projects in "High/Highest Resource" areas	5	NA	0	0
	% of Units Serving Special Needs	10	10	9	9
	Projects on Public Land	3	3	3	0
	Sponsor and Prop. Mgmt. Experience	20	20	20	20
	Project Readiness	17	17	17	17
	Adaptive Reuse / Infill / Proximity to Amenities / Sustainable Building Methods	10	10	10	10
	Cost Containment	5	5	5	5
Total Possible Universal Points		**100**	**95**	**94**	**91**

***Highlighted cells indicate scoring categories that change depending on the recommended action to acquire the Project Site and lease it to SAHA. Were the Project to apply for MHP on City-owned land, it would come within one or two points of the maximum number of points once fifty percent of MFSN funds remain.*

C23021

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

THE CITY OF NEWARK

and

THORNTON, L.P.

(Thornton Avenue Apartments)

AFFORDABLE HOUSING LOAN AGREEMENT
(Thornton Avenue Apartments)

THIS AFFORDABLE HOUSING LOAN AGREEMENT (this "**Agreement**") is entered into effective as of April 1, 2023 ("**Effective Date**") by and between the City of Newark, a California municipal corporation ("**City**"), and **THORNTON, L.P.**, a California limited partnership ("**Borrower**"). City and Borrower are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. In May 2021, the City Council approved Resolution 10,201 approving an Affordable Housing Work Plan that includes activities for the preparation of new affordable housing requirements, policies, and actions intended to significantly incentivize the production of affordable housing within the City, particularly at the very-low and low-income levels.

B. In June 2022, the City released a Notice of Funding Availability for multifamily affordable housing rental projects, inviting developers of deed-restricted affordable new-construction multifamily rental housing projects in the Bay Area to apply for funding assistance. Satellite Affordable Housing Associates ("SAHA"), an affiliate of Borrower, submitted a proposal for the City's provision of financial assistance to Borrower for its acquisition of three parcels of real property located at 6347, 6361 and 6375 Thornton Avenue in the City of Newark (the "Property"), and construction and operation of an affordable multifamily housing development thereon. SAHA has entered into agreements for the purchase of the Property, which agreements have been assigned to Borrower. The Property is described in the Legal Description attached hereto as Exhibit A.

C. The City and the Borrower desire for the Borrower to acquire the Property and to develop a multifamily rental housing development on the Property with not less than fifty-seven (57) apartment units, which would be subject to long-term affordability requirements (the "Development"). To effectuate this purpose, the City desires to provide a loan to Borrower (the "City Loan") pursuant to the terms and conditions set forth in this Agreement.

D. The City and the Borrower desire for the Borrower to also attempt to acquire additional real property located adjacent to the Property, and if Borrower is successful in acquiring such additional real property, to increase the size and number of apartment units to be constructed and operated in the Development.

E. Borrower has represented to the City, and the City has determined that the Borrower has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement. The City has further determined that this Agreement is in the best interests of the City, and will materially contribute to the improvement of the City by improving the supply of affordable housing therein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I
DEFINITIONS

1. Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

(a) "Additional Property" means the real property located adjacent to the Property which Borrower will attempt to acquire pursuant to Section 5.1 hereof.

(b) "Agreement" means this Affordable Housing Loan Agreement, including the attached Exhibits and all subsequent amendments to this Agreement and implementation agreements.

(c) "Borrower" means Thornton, L.P., a California limited partnership, and its permitted successors and assigns as set forth herein.

(d) "Certificate of Completion" means the certificate to be provided by City to Borrower in accordance with Section 3.13, in the form attached hereto as Exhibit H.

(e) "City" means the City of Newark, a California municipal corporation.

(f) "City Deed of Trust" means the deed of trust that will encumber the Borrower's interest in the Property to secure repayment of the City Promissory Note, and will be recorded against the Property at the Property Acquisition Closing, substantially in the form attached hereto as Exhibit D and incorporated herein.

(g) "City Documents" means, collectively, this Agreement, the City Promissory Note, the City Deed of Trust, the City Regulatory Agreement, and all other documents required to be executed by the Borrower in connection with the transaction contemplated by this Agreement.

(h) "City Loan" means the loan from the City to the Borrower in the amount of Twelve Million Dollars ($12,000,000), evidenced by the City Promissory Note.

(i) "City Manager" means the City Manager of the City.

(j) "City Promissory Note" means the promissory note that will evidence the Borrower's obligation to repay the City Loan, substantially in the form attached hereto as Exhibit C and incorporated herein.

(k) "City Prorata Percentage" has the meaning set forth in Section 4.9(b).

(l) "City Regulatory Agreement" means the regulatory agreement and declaration of restrictive covenants to be executed by the Parties, and recorded against the Property at the Property Acquisition Closing, substantially in the form attached hereto as Exhibit G and incorporated herein.

(m) "Conditions of Approval" has the meaning set forth in Section 3.2.

(n) "Construction Loan Closing" means the close of escrow for the Borrower's construction financing for the construction of the Development.

(o) "Construction Loan Component" means the portion of the City Loan Proceeds to be used to pay for the cost of construction of the Development, and development fees and other costs related to the construction of the Development, as provided in Section 4.2.

(p) "Construction Plans" has the meaning set forth in Section 3.9.

(q) "Council Members" means the members of the City Council of the City.

(r) "County" means the County of Alameda, California.

(s) "Development" means the Property and the Improvements.

(t) "Environmental Laws" has the meaning set forth in Section 9.4.

(u) "Escrow" means each of the escrows established with the Title Company for the purpose of Borrower's acquisition of fee title to the Property.

(v) "Event of Borrower Default" has the meaning set forth in Section 10.1.

(w) "Event of City Default" has the meaning set forth in Section 10.2.

(x) "Hazardous Materials" has the meaning set forth in Section 9.3.

(y) "Improvements" means: (i) fifty-seven (57) apartment units, including one (1) manager's unit, to be constructed in accordance with this Agreement, and (ii) related onsite improvements, parking, landscaping and other onsite improvements located or to be located on the Property, and all onsite and offsite improvements required by the City, all as more particularly set forth in the Scope of Development attached as Exhibit F.

(z) "Indemnitees" means the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors.

(aa) "Investor" means a tax credit investor to be identified by written notice from Borrower to City.

(bb) "Parties" means the City and the Borrower. "Party" means either the City or the Borrower.

(cc) "Partnership" means the Borrower's limited partnership which was formed to own, construct, and operate the Development, and in which affiliates of Borrower are the sole general partner and initial limited partner, to be replaced by the Investor upon syndication of the low income housing tax credits for the Development.

(dd) "Partnership Agreement" means the limited partnership agreement of the Partnership, as it may be amended and restated.

(ee) "Predevelopment Loan Component" means the portion of the City Loan Proceeds to be used to fund the costs of Borrower's acquisition of the Property, closing, escrow and other costs approved by the City, and predevelopment costs of the Development as described in Section 4.2.

(ff) "Preliminary Financing Plan" means the Borrower's Financing Plan for financing the acquisition of the Property and the construction of the Development in the form attached hereto as Exhibit B and incorporated herein.

(gg) "Prevailing Wage Law" has the meaning set forth in Section 3.15.

(hh) "Property" means the real property to be acquired by the Borrower and developed by the Borrower pursuant to this Agreement, which real property is more particularly described in the Legal Description attached hereto as Exhibit A which is incorporated herein.

(ii) "Property Acquisition Closing" means the close of escrow for the Borrower's acquisition of fee title to the Property.

(jj) "Residual Receipts" means the excess of annual Operating Revenues over annual Operating Expenses for the Development. "Operating Revenues" means all income derived from the Development, and includes, without limitation: (i) rents; (ii) rent subsidy payments received on behalf of tenants; and (iii) receipts from laundry, parking, vending, or other services in which a fee is charged. "Operating Expenses" means all direct costs and expenses necessary to operate the Development including: (1) debt service on any loans secured by the Property as described in the Revised Financing Plan or otherwise approved by City, provided that such loans have been used to develop or improve the Development (or to refinance loans used for development or improvement of the Development); (2) resident service program and property management fees and costs; (3) property taxes and assessments (if any); (4) insurance premiums; (5) maintenance and repair; (6) reasonable payments to reserves for operating contingencies, replacement of capital items, and other reserve uses in such amounts as are required by the loans described in paragraph (1); (7) deferred developer fee to the Borrower or its affiliate for development services for the Development in such amount as set forth in the Revised Financing Plan, as such amount may be updated by the final cost certification upon completion of construction; (8) credit adjuster payments, limited partner loans, and developer loans, all as set forth in the Partnership Agreement; and (9) payments for partnership management fee, asset management fees, and other fees payable to a partner of the Partnership pursuant to the Partnership Agreement, in such amounts as are set forth in the Revised Financing Plan, including any annual inflationary increases included in the Revised Financing Plan.

(kk) "Revised Financing Plan" means the Borrower's updated and revised Financing Plan for financing the acquisition of the Property and the construction of the Development approved by the City pursuant to Section 4.5 hereof.

(ll) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit E.

(mm) "Scope of Development" means the description of the Development which is attached to this Agreement as Exhibit F.

(nn) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until expiration or termination of the City Regulatory Agreement, except for such provisions hereof which survive the expiration or termination of the City Regulatory Agreement.

(oo) "Title Company" means Old Republic Title Company.

(pp) "Title Reports" means the preliminary title reports for the Property prepared by the Title Company, as they may be updated from time to time.

(qq) "Transfer" has the meaning set forth in Section 7.2.

ARTICLE II
REPRESENTATIONS; EFFECTIVE DATE AND TERM

2.1 Borrower's Representations. Borrower represents and warrants to City as follows, and Borrower covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Borrower shall immediately give written notice of such fact or condition to City. Borrower acknowledges that City shall rely upon Borrower's representations made herein notwithstanding any investigation made by or on behalf of City.

(i) Authority. Borrower is a limited partnership duly formed and in good standing under the laws of the State of California. Borrower has the full right, power and authority to undertake all obligations of Borrower as provided herein, and Borrower's execution, performance and delivery of this Agreement and the City Documents have been duly authorized by all requisite actions.

(ii) No Conflict. Borrower's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Borrower is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Borrower to perform its obligations under this Agreement.

(iv) No Borrower Bankruptcy. Borrower is not the subject of a bankruptcy or insolvency proceeding.

2.2 City Representations. City represents and warrants to Borrower as follows, and City covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, City shall immediately give written notice of such fact or condition to Borrower. City acknowledges that Borrower shall rely upon City's representations made herein notwithstanding any investigation made by or on behalf of Borrower.

(i) Authority. City is a municipal corporation duly organized and in good standing under the laws of the State of California. City has the full right, power and authority to undertake all of the respective obligations as provided herein, and the execution, performance and delivery of this Agreement by City has been duly authorized by all requisite actions on the part of the City.

(ii) No Conflict. City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under anycontract, agreement or order to which City is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement.

(iv) No Bankruptcy. City is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date. The representations and warranties of Borrower and City hereunder shall beeffective as of the Effective Date.

ARTICLE III
DEVELOPMENT OF THE PROJECT

3.1 The Property. Borrower shall acquire fee simple title to the Property upon or prior to the date set forth in the Schedule of Performance.

3.2 Scope of Development. Borrower shall develop the Development on the Property substantially in accordance with the terms and conditions of this Agreement, the Scope of Development attached hereto as Exhibit F (subject to the last sentence of this Section 3.2), and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Development or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Development, including without limitation, all mitigation measures imposed in connection with environmental review of the Property and the Development and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**"). Notwithstanding the foregoing, City acknowledges that the Development is currently in the conceptual design phase and that aspects of the Scope of Development may need to be changed, and therefore agrees to

reasonably discuss such proposed changes to the Scope of Development with Borrower in good faith, and shall not unreasonably withhold consent to such proposed changes to the Scope of Development.

3.3 Development Approvals. Borrower acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the construction of the Development, does not limit in any manner the discretion of City in such approval process, and does not relieve Borrower from the obligation to obtain all necessary entitlements, approvals, and permits for the construction of the Development, including without limitation, the approval of architectural plans, and the completion of any required environmental review of the Development pursuant to CEQA.

Borrower covenants that it shall: (i) obtain all necessary permits and approvals which may be required by City and any other governmental agency having jurisdiction over the construction of the Development or the development of the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures, if any, imposed in connection with any environmental review of the Property or the Development, and (iv) not commence construction of the Development prior to issuance of required permits.

3.4 Fees. Borrower shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Development, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Development or the development of the Property.

3.5 Schedule of Performance. Borrower shall commence and complete construction of the Development and shall satisfy all other obligations of Borrower under this Agreement within the time periods set forth herein and in the Schedule of Performance attached hereto as Exhibit E, as such time periods may be extended upon the mutual written consent of the Parties. Borrower's failure to commence or complete construction of the Development in accordance with the foregoing schedule as such may be amended by the written consent of the Parties shall constitute a default hereunder. The Borrower shall provide quarterly progress reports to the City regarding the status of the construction of the Development. The Borrower shall provide the reports and information required under this Section until the Development is fully leased up.

3.6 Cost of Acquisition and Construction. Except as expressly set forth herein, Borrower shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, the design, development and construction of the Development and compliance with the Conditions of Approval, including without limitation the installation and construction of all off-site or on-site improvements required by City in connection therewith, and none of such costs and expenses shall be the obligation of the City.

3.7 Rights of Access; Books and Records. For the purpose of ensuring that the Development is developed in compliance with this Agreement, Borrower shall permit representatives of the City to enter upon the Property to inspect the Development following 48

hours' written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided). Upon request, Borrower shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Borrower necessary to determine Borrower's compliance with the terms of this Agreement.

3.8 City Disclaimer. Borrower acknowledges that the City is under no obligation, and City neither undertakes or assumes any responsibility or duty to Borrower or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Development. Borrower and all third parties shall rely entirely upon its or their own supervisionand inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating tothe construction and operation of the Development. Any review or inspection undertaken by the City is solely for the purpose of determining whether Borrower is properly discharging its obligations under this Agreement, and shall not be relied upon by Borrower or any third party as a warranty or representation by the City as to the quality of the design or construction of the Development and other improvements constructed on the Property (collectively, the **"Improvements"**) or otherwise.

3.9 Construction Plans. Borrower shall submit to City detailed construction plans for the Development (the **"Construction Plans"**) for City's approval. As used herein **"Construction Plans"** means all construction documents upon which Borrower and Borrower's contractors shall relyin the construction of the Development and development of the Property and shall include, without limitation, final architectural drawings and materials specifications. The Construction Plans shall be based upon the Scope of Development and upon the development approvals issued by the City for the Development, and shall not materially deviate therefrom without the express written consent of City. Such approval of the Construction Plans by the City shall not relieve Borrower's obligation to obtain any and all approvals and permits required by the City or the City Building Division.

If rejected by the City in whole or in part, Borrower shall submit new or corrected Construction Plans within forty-five (45) days after notification of the City's rejection and the reasons therefor. The City shall then have thirty (30) days to review and approve Borrower's new or corrected Construction Plans. The provisions of this Section relating to time periods for approval, rejection, or resubmission of new or corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City.

3.10 Construction Pursuant to Plans. Borrower shall construct and develop the Development in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to development of the Development. Borrower shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Development. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Development shall be performed by licensed contractors, engineers or architects, as applicable.

3.11 Change in Construction Plans. If Borrower desires to make any material change in the approved Construction Plans, Borrower shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. The Parties shall meet in good faith to discuss the changes if the City propose to reject the changes. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the design, function, use, or amenities of the Development as shown on the latest approved Construction Plans. For purposes of this section, a "material change" means a change order that would result in a change of costs of a single item of work of Seventy-Five Thousand Dollars ($75,000) or any set of changes in the work the costs of which cumulatively exceeds One Hundred Fifty Thousand Dollars ($150,000) or more.

3.12 Defects in Plans. City shall not be responsible to Borrower or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Borrower shall indemnify, defend (with counsel approved by City, such approval not to be unreasonably withheld) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Borrower's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City does not, and shall not, waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with City of any of the insurance policies described in this Agreement. Borrower's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

3.13 Certificate of Completion for Development. Promptly after completion of construction of the Development, issuance of a final Certificate of Occupancy (or other applicable final City Building Department approval) by the City, and the written request of Borrower, the City will provide an instrument (**"Certificate of Completion"**) so certifying. The Certificate of Completion shall be conclusive evidence that Borrower has satisfied its obligations regarding the construction and development of the Property.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit H, and at Borrower's option, shall be recorded in the official records of Alameda County. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Borrower to any holder of a deed of trust or mortgage securing money loaned to finance the Development or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Borrower has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Borrower's obligations pursuant to the City Regulatory Agreement.

3.14 Equal Opportunity. During the construction of the Development, there shall be no discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person in the hiring, firing, promoting or demoting of any person engaged in construction of the Development, and Borrower shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.15 Prevailing Wage Requirements. If and to the extent required by state and federal prevailing wage laws, Borrower and its contractors and agents shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Development as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., and its implementing regulations, and perform all other obligations including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, all as may be amended from time to time (the "**Prevailing Wage Law**"). City does not make any representations to Borrower as to the applicability of the Prevailing Wage Law to the construction of the Development, and Borrower agrees and acknowledges that it is not relying on any representations of City in making its determination as to the applicability of the Prevailing Wage Law. It is agreed by the Parties that, in connection with the construction of the Development, as between City and Borrower, Borrower shall be solely responsible for determining whether the Prevailing Wage Law is applicable to the construction of the Development, and Borrower shall bear all risks of payment or non-payment of prevailing wages under the Prevailing Wage Law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. The Borrower shall periodically, upon request of the City, certify to the City that, to its knowledge, it is in compliance with the requirements of this paragraph.

Borrower shall indemnify, defend (with counsel approved by City, such approval not to be unreasonably withheld) and hold the City, and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the **"Indemnitees"**), harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Development, the failure to comply with any

state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Borrower related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 3.15 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Development. Borrower's indemnification obligations under this Section 3.15 shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

3.16 Compliance with Laws. Borrower shall carry out and shall cause its contractors to carry out the construction of the Development in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

3.17 Liens and Stop Notices. Until the expiration of the term of the City Regulatory Agreement and full repayment of the City Loan, Borrower shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Borrower. If a claim of a lien or stop notice is given or recorded affecting the Development, Borrower shall within thirty (30) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

3.18 Right of City to Satisfy Liens on the Property. If Borrower fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 3.17 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Borrower's expense and without further notice to Borrower. In such event Borrower shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Borrower to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Borrower. Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Development. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property and the Development.

ARTICLE IV
CITY FINANCIAL ASSISTANCE

4.1 City Loan. The City shall provide a loan in the amount of Twelve Million Dollars ($12,000,000) (the "**City Loan**") to Borrower upon the terms and conditions and for the purposes set forth in this Agreement. The City Loan shall be evidenced by a promissory note (the "**City Promissory Note**") substantially in the form attached hereto as Exhibit C, and shall be secured by a deed of trust (the "**City Deed of Trust**") executed by Borrower as Trustor substantially in the form attached hereto as Exhibit D and recorded against the Property and subordinate only to such liens as City shall approve in writing. The outstanding principal balance of the Note will accrue simple interest at the rate of three percent (3%) per annum.

Provided that Borrower has complied with all conditions precedent to disbursement of the City Loan set forth in Section 4.6, the proceeds of the City Loan ("**City Loan Proceeds**") shall be disbursed in accordance with Section 4.2 hereof. The Parties agree that City shall disburse City Loan Proceeds only for the purposes set forth in Section 4.2.

4.2 Use and Disbursement of Proceeds. The City Loan Proceeds shall be used as follows: (a) a portion of the City Loan Proceeds shall be used to fund the costs of Borrower's acquisition of the Property, closing, escrow and other costs approved by the City, and predevelopment costs of the Development, which shall be funded at the close of escrow for Borrower's acquisition of the Property, and in accordance with the Predevelopment Loan Component Budget included in the Preliminary Financing Plan (the "**Predevelopment Loan Component**"), and (b) the remainder of the City Loan Proceeds shall be used to pay for the cost of construction of the Development, and development fees and other costs related to the construction of the Development, in accordance with the Construction Loan Component Budget included in the Revised Financing Plan, to be funded through monthly City Loan draws after the Construction Loan Closing (the "**Construction Loan Component**"). The Predevelopment Loan Component shall not exceed Four Million Three Hundred Thousand Dollars ($4,300,000). City Loan Proceeds shall not be used or disbursed for Borrower fee, overhead or profit.

4.3 Security. As security for repayment of the City Promissory Note, Borrower shall execute the City Deed of Trust, pursuant to which City shall be provided a lien against the Property and the Improvements. The City Deed of Trust shall be recorded in the Official Records concurrently with Borrower's acquisition of the Property. Prior to the Construction Loan Closing, the City Deed of Trust shall be in first lien priority and shall not be subordinate to any other financing. Upon the Construction Loan Closing, the City Deed of Trust may be subordinated to such construction and permanent financing which are designated as senior loans in the Revised Financing Plan approved by the City, pursuant to any subordination agreements agreed upon by the City and senior lenders, as applicable.

4.4 Title Policy. The Title Company shall issue a lender's policy of title insurance naming City as the insured, in a policy amount not less than the principal amount of the City Loan, showing Borrower as holding fee title to the Property and insuring the City Deed of Trust to be a valid lien on the Property subject only to exceptions approved by City (the "**City**

Title Policy"), together with such endorsements as are required by the City.

4.5 Financing Plan. As set forth in the attached Exhibit B, Borrower has provided City with a preliminary financing plan for the Development (**"Preliminary Financing Plan"**) which describes (i) the estimated costs of development, including predevelopment costs, acquisition costs, and hard and soft construction costs, (ii) an operating pro forma which describes projected revenue and expenses for the Development, and (iii) identification of sources of acquisition, predevelopment, construction and permanent financing. The Parties acknowledge that certain proposed forms of funding in the Preliminary Financing Plan are available through competitive funding programs, and that the Development may not be successful in actually obtaining one or more of such forms of financing. The Borrower shall submit timely and complete applications for each of the forms of financing which are included in the Preliminary Financing Plan, in a manner that maximizes the competitiveness thereof. In the event any of Borrower's applications therefor are disapproved, Borrower shall continue to submit such applications in each subsequent application round until successful. The Parties anticipate that the types and amounts of financing for the Development will change and be refined during the period between the Effective Date and the Construction Loan Closing. Accordingly, following the disbursement of the Predevelopment Loan Component of the City Loan Proceeds, Borrower shall submit quarterly updated and revised financing plans (each, a "**Revised Financing Plan**") which shall include a revised development budget, updated amounts for each of the foregoing funding sources and any other funding sources obtained, and copies of written commitments received for each funding source. Borrower shall submit the first Revised Financing Plan no more than three (3) months following the date on which the Predevelopment Loan Component of the City Loan Proceeds are disbursed and shall continue to provide the City a Revised Financing Plan on a quarterly basis thereafter until the Construction Loan Closing. The City shall promptly review and shall provide Borrower written approval or disapproval of each Revised Financing Plan in writing within thirty (30) days, provided that the Revised Financing Plan under review conforms to the terms of this Agreement. The City's review of each Revised Financing Plan shall be limited to (i) determining if the financing contemplated therein will be reasonably available and will provide sufficient funds to undertake and complete construction of the Development, and (ii) determining if the updates to the Revised Financing Plan then under review are consistent with the terms of this Agreement. If the City disapproves an update to the Revised Financing Plan, the City shall specify in writing the reasons for the disapproval within thirty (30) days of receipt. Within thirty (30) days of receiving the City's written notification of disapproval, the Borrower shall thereafter resubmit a further amended Revised Financing Plan to the City for review. The City shall either approve or disapprove the resubmitted Revised Financing Plan from Borrower within thirty (30) days of receiving the resubmission. If the City approves of the resubmitted Revised Financing Plan, Borrower will resume quarterly submission of Revised Financing Plans with the subsequent Revised Financing Plan to be submitted not less than three (3) months after receiving the City's approval of the prior Revised Financing Plan. In the event the City disapproves the resubmitted Revised Financing Plan, the City and the Borrower agree to negotiate in good faith to develop a submission that is reasonably acceptable to both the City and the Borrower within a reasonable period of time.

4.6 Conditions to Disbursement of Predevelopment Loan Component. City's obligation to fund the Predevelopment Loan Component for the purposes of Section 4.2(a) above is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower's delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Borrower is properly organized, in good standing, and authorized to do business in the State of California, and (ii) a certified resolution indicating that Borrower has authorized to consummate this transaction and that the persons executing this Agreement and the City Documents on Borrower's behalf have been duly authorized to do so.

(b) The close of escrow for Borrower's acquisition of the Property has occurred or will occur concurrently with the disbursement of the Predevelopment Loan Component.

(c) Borrower's delivery to the City of evidence of insurance coverage pertaining to property insurance and commercial general liability (but not builder's risk or other insurance associated with the construction of the Development) in accordance with the requirements set forth in Section 11.2.

(d) Borrower's delivery of the City Promissory Note, City Deed of Trust and City Regulatory Agreement, each fully executed and acknowledged as applicable.

(e) Recordation of the City Regulatory Agreement and the City Deed of Trust in the Official Records simultaneously with the disbursement of the first City Loan Proceeds.

(f) The Title Company's issuance of the City Title Policy, together with such endorsements as are required by the City, in accordance with Section 4.4 hereof.

(g) There exists no Event of Borrower Default nor any act, failure, omission or condition that would constitute an Event of Borrower Default under this Agreement.

(h) The City's receipt of a written requisition for disbursement of funds from Borrower specifying the amount and use of the requested funds for the initial disbursement, accompanied by the title company's estimated settlement statement showing the acquisition price, closing costs and all other amounts due in escrow for Borrower's acquisition of the Property.

(i) The proposed use of the funds is in accordance with the Predevelopment Loan Component Budget in the Preliminary Financing Plan.

4.7 Conditions to Disbursement of Construction Loan Component. City's obligation to disburse the Construction Loan Component of the City Loan Proceeds for the purposes of Section 4.2(b) above is conditioned upon the satisfaction of all of the following conditions:

(a) The City's receipt of a written draw request for disbursement of funds

from Borrower specifying the amount and use of the requested funds, setting forth the proposed uses of funds consistent with the Revised Financing Plan, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred, and City's inspection of the work and determination that the work for which payment is requested has been performed in compliance with the requirements of this Agreement.

(b) The Borrower has submitted to the City all applications and materials for the permits and approvals necessary for the construction of any Improvements which are proposed to be funded through the City Loan, the application fees therefor have been paid to the City, and such applications shall have been approved by the City.

(c) The proposed use of the funds is in accordance with the Construction Loan Component Budget in the Revised Financing Plan.

(d) The Title Company's issuance of such endorsements to the City Title Policy as are required by the City.

4.8 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the City Loan Proceeds following:

(i) the failure of any of Borrower's representations and warranties made in this Agreement or in connection with the City Loan to be true and correct as of the date made in all material respects;

(ii) the termination of this Agreement by mutual agreement of the Parties;

(iii) the conditions to disbursement of the City Loan set forth in Sections 4.6 or 4.7 have not been satisfied within the time frame set forth in the Schedule of Performance, unless an extension of such date is approved by City in writing; or

(iv) the occurrence of a Borrower Event of Default under this Agreement, the City Regulatory Agreement, or any of the City Documents which remains uncured beyond any applicable cure period.

4.9 Repayment of the City Loan.

(a) Annual Payments. The Borrower shall make annual payments of principal and interest to the City in the amount of the City Prorata Percentage of fifty percent (50%) of the Residual Receipts. Such annual payments shall be due and payable in arrears no later than May 1 of each year with respect to the previous calendar year, commencing on May 1st of the first year after the City's issuance of a certificate of occupancy for the Development. The Borrower shall provide the City with any documentation reasonably requested by the City to substantiate the Borrower's determination of Residual Receipts. Repayments shall be credited first to interest, then to principal.

(b) Sharing of Residual Receipts with Other Lenders. The City acknowledges that the California Department of Housing and Community Development ("**HCD**") and other lenders to be set forth in the Financing Plan may provide additional financing for the Development. The City agrees to share pro rata in the Residual Receipts, in proportion to the amount of City Loan and the financing provided by HCD and such other lenders (the "**City Prorata Percentage**").

(c) Payment of Remaining Balance. Borrower shall pay all outstanding principal and accrued interest on the City Loan, in full, on the earliest to occur of (i) a Borrower Event of Default for which the City exercises its right to cause the City Loan indebtedness to become immediately due and payable, and (ii) the expiration of the Term.

4.10 Prepayment; Acceleration

(a) Prepayment. Borrower shall have the right to prepay the City Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Borrower's obligations under the City Regulatory Agreement which shall survive for the full term of the City Regulatory Agreement.

(b) Due On Sale or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the City Promissory Note shall be due and payable upon a Transfer (as defined in Section 7.2) absent the prior written consent of City of all or any part of or interest in the Property, except for a Transfer permitted under Section 7.3 of this Agreement or as otherwise permitted pursuant to this Agreement.

4.11 Nonrecourse. Except as expressly provided in this Section 4.11, Borrower and the general and limited partners of the Borrower shall have no personal liability for payment of the principal of, or interest on the City Promissory Note, and the sole recourse of City with respect to the payment of the principal of, and interest on the City Promissory Note shall be to the Property and the Improvements and any other collateral held by City as security for the City Promissory Note; provided however, nothing contained in the foregoing limitation of liability shall: (i) limit or impair the enforcement against all such security for the City Promissory Note of all the rights and remedies of the City thereunder; (ii) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the City Promissory Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; or (iii) be deemed in any way to limit the rights of the City to obtain specific performance by the Borrower of its covenants under the City Documents, other than the covenants to pay the City principal and interest due under the City Promissory Note.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the City Promissory Note; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under this Agreement, or liability to the extent of any loss for: (i) fraud or intentional

misrepresentation, or bad faith, waste, willful misrepresentation by the Borrower; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the City Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the City Deed of Trust; and/or the misappropriation of any proceeds by the Borrower under any insurance policies orawards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development.

ARTICLE V
ADDITIONAL PROPERTY

5.1 Acquisition of Additional Property; Changes to Agreement. The Parties desire, if feasible, to increase the size and number of apartment units to be constructed and operated within the Development. Borrower agrees to use good faith efforts to enter into agreements to acquire additional real property located adjacent to the Property which could be incorporated into the Development (the "**Additional Property**"). If the Borrower is successful in obtaining rights to acquire any Additional Property, the City and the Borrower shall discuss and negotiate in good faith with respect to such changes to this Agreement and the City Documents which may be necessary to accommodate the Additional Property as part of the Development. Such changes may include, without limitation, changes to the Financing Plan and the amount of the Predevelopment Component of the City Loan. Any such changes shall be subject to the approval of the City, which approval shall not unreasonably be withheld.

ARTICLE VI
USE OF THE PROPERTY

6.1 Use; Affordable Housing. Borrower covenants and agrees for itself and its successors and assigns that the Property shall be used for the development and operation of the Development in accordance with the terms and conditions of this Agreement and the City Regulatory Agreement.

6.2 Affordable Housing. Borrower covenants and agrees for itself, its successors and assigns that twenty-eight (28) of the fifty-seven (57) residential units developed within the Development shall be occupied by and rented at an affordable rent to households of Extremely Low Income, Very Low Income and Lower Income (as defined in the Regulatory Agreement) in accordance with the terms hereof and the City Regulatory Agreement. The Parties shall execute the City Regulatory Agreement, substantially in the form attached hereto as Exhibit G, concurrently with the execution of this Agreement. The City Regulatory Agreement shall be recorded in the Official Records of Alameda County ("**Official Records**") on the date that Borrower acquires the Property. Upon request of Borrower, City shall reasonably consider changes to or subordination of the Regulatory Agreement as proposed by the lender and/or Investor.

6.3 Maintenance. Borrower shall at its own expense, maintain the Property, the

Improvements and related landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations, consistent with the standards of maintenance of similar multifamily apartment complexes in Alameda County. Without limiting the foregoing, Borrower agrees to maintain the Improvements and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Development. Borrower shall prevent and/or rectify any physical deterioration of the Property and the Improvements and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair. Borrower shall provide adequate security services for occupants of the Development.

6.4 Taxes and Assessments. Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and payable by Borrower, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Borrower exercises its right to contest any tax, assessment, or charge, the Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. Borrower shall have the right to apply for all applicable tax exemptions, including, without limitation, the welfare exemption from property tax for low-income housing.

6.5 Obligation to Refrain from Discrimination. Borrower shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, or any portion thereof, on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of any person. Borrower covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development or part thereof, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Development or part thereof. Borrower shall include such provision in all deeds, leases, contracts and other instruments executed by Borrower, and shall enforce the same diligently and in good faith.

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Change Pursuant to this Agreement. Borrower has represented that it possesses the necessary expertise, skill and ability to carry out the development and operation of the Development on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Borrower is of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Borrower. No voluntary or involuntary successor, assignee or transferee of Borrower shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the later of expiration of the term of the City Regulatory Agreement and the payment in full of the City Promissory Note, Borrower shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Development, the Improvements, or this Agreement or any of the City Documents, without the prior written approval of City, which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the later of expiration of the term of the City Regulatory Agreement and the payment in full of the City Promissory Note, except as expressly permitted by this Agreement, Borrower shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and/or control of Borrower, taking all transfers into account on a cumulative basis.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article VII shall not be deemed to prevent: (i) the granting of utility easements or permits to facilitate development of the Property; (ii) the dedication of any propertyrequired pursuant to this Agreement; (iii) the lease of individual units to tenants for occupancy as their principal residence in accordance with the City Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Development or the Property in accordance with the approved Financing Plan and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; and (v) a Transfer to an entity which is under the direct control or under common control with Satellite Affordable Housing Associates ("SAHA") or Satellite AHA Development, Inc. ("SADI"), or in which SAHA, SADI, or one of their affiliates, is the general partner or sole member of the general partner ("**Controlled Affiliate**").

The City hereby approves the initial Transfer, if any, of the limited partnership interest in Borrower to an investor limited partner (the "**Investor Limited Partner**") and approves future Transfers of the limited partner interest in Borrower provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Partnership Agreement of Borrower approved by the City; and (ii) in subsequent Transfers, the initial limited partner or an affiliate of the initial limited partner retains a membership or partnership interest and the general partner of the Investor Limited Partner or a wholly-owned affiliate thereof serves as a managing member or managing general partner of the successor limited partner.

In the event the general partner of Borrower is removed by the Investor Limited Partner of Borrower for cause following default under the Partnership Agreement, the City hereby approves the Transfer of the general partner interest to a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the "**Code**"), or a limited liability company whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor Limited Partner and approved by the County in writing, which approval shall not be withheld unreasonably.

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in Section 7.3):

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete construction and operation of the Development and to otherwise fulfill the obligations undertaken by the Borrower under this Agreement.

(ii) The Borrower and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transferof this Agreement, the Property or interest therein together with such documentation ofthe proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Borrower under this Agreement, the City Regulatory Agreement, the City Documents and all obligations of Borrower arising prior to the effective date of the Transfer (unless Borrower expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Borrower's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the City Regulatory Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If the City rejects a proposed Transfer, the City, as applicable, shall provide the reasons for such rejection in writing within thirty (30) days following receipt of written request by Borrower, and representatives of the City shall meet with Borrower and the proposed transferee to discuss in good faith the reasons for the rejection and Borrower's and transferee's responses thereto.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Borrower shall be deemed to relieve the Borrower or any other party from any obligation under this Agreement or the City Regulatory Agreement.

7.5.2 Without limiting any other remedy City may have under this Agreement, or under law or equity, this Agreement may be terminated by City if without the prior written approval of the City, Borrower assigns or Transfers this Agreement or the Property. This Section 7.5.2 shall not apply to Transfers permitted under Section 7.3.

7.6 Recovery of City Costs. Borrower shall reimburse City for all costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following City's delivery to Borrower of an invoice detailing such costs. This Section 7.6 shall not apply to Transfers permitted under Section 7.3.

ARTICLE VIII
SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property only for the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, other expenditures reasonably necessary for development of the Property pursuant to this Agreement, and the construction and/or refinancing of the Development. Borrower shall not enter into any conveyance for such financing without the prior written approval of the City Manager or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.2 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

8.3 Notice of Default and Right to Cure. Whenever City delivers any notice of

default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property, and the Investor Limited Partner, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach, and City will accept tender of such cure as if delivered by the Borrower.

8.4 City Right to Cure Defaults. In the event of a breach or default by Borrower under a mortgage or deed of trust secured by the Property, City may (but has no obligation to) cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Borrower. In such event, Borrower shall be liable for, and City shall be entitled to reimbursement from Borrower, for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the City Deed of Trust.

8.5 Holder to be Notified. Borrower, for itself, its successors and assigns, hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

8.6 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Development lenders or investors, provided such modifications do not alter City's substantive rights and obligations under this Agreement.

8.7 Estoppel Certificates. Any Party shall, at any time, and from time to time, within thirty (30) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE IX
ENVIRONMENTAL MATTERS

9.1 No City Liability; Borrower's Covenants. City shall not be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials, if any, existing or occurring on the Property or any portion thereof, and Borrower shall be solely responsible for all actions and costs associated with any such activities required by any regulatory agency with jurisdiction over the Property and/or required for the construction of the Development and the development of the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Borrower agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by

applicable Environmental Laws. Borrower hereby covenants and agrees that:

(1) Borrower shall not knowingly permit the Development or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Development or the Property with the exception of any previously disclosed existing conditions on the Property and cleaning supplies and other materials customarily used in construction, construction, use or maintenance of residential property and used, stored and disposed ofin compliance with Environmental Laws, and

(2) Borrower shall keep and maintain the Development and the Property and each portion thereof in compliance with, and shall not cause or permit the Development or the Property or any portion of either to be in violation of, any Environmental Laws.

9.2 Environmental Indemnification. Borrower shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims, including without limitation any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Borrower, Borrower's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Environmental Laws or the covenants set forth in Section 9.1. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws. The provisions of this Section 9.2 shall survive the issuance of a Certificate of Completion for the Development and the expiration or earlier termination of this Agreement. Borrower's indemnification obligation under this Section 9.2 shall not apply to acts described in clause (i) above caused by the gross negligence orwillful misconduct of an Indemnitee.

9.2.1 No Limitation. Borrower hereby acknowledges and agrees that Borrower's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 9.2 above, are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the City obtained such information from the Borrower or from its own investigations. It is further agreed that City does not and shall not waive any rights against Borrower that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

9.3 Hazardous Materials. As used herein, the term **"Hazardous Materials"** means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

9.4 Environmental Laws. As used herein, the term "**Environmental Laws**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwater or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California

Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as each of the foregoing now exist or are hereafter amended, together with any regulations promulgated thereunder.

ARTICLE X
DEFAULTS, REMEDIES AND TERMINATION

10.1 Event of Borrower Default. The following events shall constitute an event of default on the part of Borrower ("**Event of Borrower Default**"):

(a) Subject to force majeure, Borrower fails to commence or complete construction of the Development within the times set forth in Section 3.5, or abandons or suspends construction of the Development prior to completion for a period of sixty (60) days or more;

(b) Borrower fails to pay when due the principal and interest (if any) payable under the City Promissory Note and such failure continues for thirty (30) days after City notifies Borrower thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Borrower fails to maintain insurance on the Property and the Development as required pursuant to this Agreement, and Borrower fails to cure such default within ten (10) days following notice thereof from the City;

(e) Subject to Borrower's right to contest the following charges pursuant to Section 6.4, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Development or fails to pay when due any other charge that may result in a lien on the Property or the Development, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(f) A default is declared in writing under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to acceleratere payment of such loan;

(g) Any representation or warranty contained in this Agreement or in any financial statement, certificate or report submitted to the City in connection with this Agreement or Borrower's request for the City Loan proves to have been false in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"),

Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order:

(1) adjudging the Borrower to be bankrupt or insolvent,

(2) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for Borrower under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction,

(3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of its properties, or

(4) directing the winding up or liquidation of the Borrower;

(j) Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executedupon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Borrower shall have voluntarily suspended its business or Borrower shall have been dissolved or terminated;

(l) An event of default arises under this Agreement or any City Document and remains uncured beyond any applicable cure period; or

(m) Borrower defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Borrower; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Borrower Event of Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than ninety (90) days after receipt of notice of the default or such longer period as the City may allow.

10.2 City Default. An event of default on the part of City ("**Event of City Default**") shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after

written notice thereof from Borrower to City, or in the case of a default which cannot with due diligence be cured within thirty (30) days, City fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

10.3 City's Right to Terminate Agreement. If an Event of Borrower Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Borrower and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Borrower under this Agreement, shall expire and terminate.

10.4 City's Remedies and Rights Upon an Event of Borrower Default. Upon the occurrence of an Event of Borrower Default and the expiration of any applicable cure period, City shall have all remedies available to it under law or equity, including, but not limited to the following. City may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to this Agreement or the City Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the City Promissory Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of this Agreement or City Documents;

(c) Foreclose on the Property pursuant to the City Deed of Trust;

(d) Pursue any and all other remedies available under law to enforce the terms of thethis Agreement and the City Documents and City's rights thereunder.

10.5 Borrower's Remedies Upon an Event of City Default. Upon the occurrence of an City Event of Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Borrower may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement.

10.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

10.7 Inaction Not a Waiver of Default. No failure or delay by any Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive any Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

ARTICLE XI
INDEMNITY AND INSURANCE.

11.1 Indemnity. Borrower shall indemnify, defend (with counsel approved by City, such approval not to be unreasonably withheld) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connectionwith Borrower's or Borrower's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Development or the Property, or any part thereof or otherwise arising out of or in connection with Borrower's performance under this Agreement. Borrower's indemnification obligations under this Section 11.1 shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 11.1 shall survive the issuance of a Certificate of Completion for the Development and the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Borrower that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

11.2 Insurance.

(a) Borrower and all contractors working on behalf of Borrower on the Development shall maintain the insurance coverage as described in the City Insurance Requirements attached hereto Exhibit I and incorporated herein.

(b) Prior to closing of the City Loan, Borrower shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. Each certificate shall contain all provisions required in the City Insurance Requirements.

(c) If any insurance policy or coverage required hereunder is canceled or reduced, Borrower shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Borrower's expense,and Borrower shall promptly reimburse City for such expense upon receipt of billing from City.

ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 Brokers. Borrower agrees to pay any real estate commission, brokerage fee, finder's fee, or other compensation due with respect to the acquisition of the Property, and agrees to defend, indemnify and hold harmless the City from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

12.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by any Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Parties, acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Parties within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Parties within ten (10) days of receipt of the notice. None of theParties shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Borrower and City (acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to the City Council). City and Borrower acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

City:	City of Newark 37101 Newark Blvd. Newark, CA 94560 Attention: Community Development Director (with copy to City Attorney)
Borrower:	Thornton, L.P. c/o Satellite Affordable Housing Associates 1835 Alcatraz Avenue Berkeley, California 94703 Attention: Chief Executive Officer
With a copy to:	Satellite AHA Development, Inc. 1835 Alcatraz Avenue Berkeley, California 94703 Attention: Chief Executive Officer

The City agrees that it shall provide Borrower's Investor Limited Partner a duplicate copy of all notices of default that the City may give to or serve in writing upon Borrower pursuant to the terms of the Loan Documents, at an address provided to the City; provided, the City shall have no liability to the Investor Limited Partner for its failure to do so. The Investor Limited Partner shall have the right, but not the obligation, to cure any Default of Borrower set forth in such notice, during any applicable cure period described in the Loan Documents, and the City will accept tender of such cure as if delivered by Borrower.

12.4 Attorneys' Fees. If any Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

12.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any permitted successor and assign of such party who has acquired an interest in compliance with this Agreement or under law.

12.7 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since all of the Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

12.8 Action or Approval. Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing by the City, without further approval by the City Council. Any such action shall be in writing. The Borrower acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's Community Development Department, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property, (ii) the City's issuance of a building permit, or (iii) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

12.9 Entire Agreement. This Agreement, including the exhibits listed below, which are attached hereto and incorporated herein by this reference, together with the other City Documents, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

Exhibit A	Legal Description of the Property
Exhibit B	Preliminary Financing Plan
Exhibit C	City Promissory Note
Exhibit D	City Deed of Trust
Exhibit E	Schedule of Performance
Exhibit F	Scope of Development
Exhibit G	City Regulatory Agreement
Exhibit H	Certificate of Completion
Exhibit I	City Insurance Requirements

12.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Parties. Any executed counterpart of this Amendment may be delivered to the other Parties by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.11 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.12 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

12.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

12.14 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Borrower or its successors in interest in the event of any default or breach by City or for any amount which may become due to Borrower or its successors in interest pursuant to this Agreement.

12.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

12.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

DEVELOPER:

THORNTON, L.P.,
a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit corporation,
its general partner

By: _____
Name: Susan Friedland
Its: Chief Executive Officer

CITY:

CITY OF NEWARK,
a California municipal corporation

By: _____
David Benoun, City Manager

ATTEST:

By: Kathleen L. Clapton for
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

By: _____
Kristopher Kokotaylo, City Attorney

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a California municipal corporation

By: _____
David Benoun, City Manager

ATTEST:

By: _____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

By: _____
Kristopher Kokotaylo, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

6361 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the N/W line of Thornton Avenue distance thereon North 33° 00' East 440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue distance thereon North 33° 00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM the Southeastern 10 feet, as granted to the City of Newark recorded September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.
6375 Thornton Avenue

APN: 092A-0919-016-02

6375 Thornton Avenue:

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00' East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00' East 55.00 feet; thence North 56° 58' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 58' East 150.00 feet to the point of beginning.

APN: 092A-0919-018

EXHIBIT B

PRELIMINARY FINANCING PLAN

[To Be Attached]

Exhibit B/Preliminary Financing Plan

To finance the build-out of the Thornton Avenue community, SAHA proposes to use Low-Income Housing Tax Credits and a soft loan from the City of Newark, along with several other gap sources.

LOW-INCOME HOUSING TAX CREDITS

SAHA anticipates generating approximately $24,812,767 of tax credit equity. This breaks down into $20,953,003 from Federal tax credits and $3,859,764 from State tax credits. We are able to layer both State and Federal tax credits on the project because HUD designated the City of Newark as a 2022 Difficult Development Area. SAHA is assuming an all-in investor pay-in rate of $0.95 per federal tax credit and $0.70 per state tax credit. These are conservative assumptions based on our two most recent investor negotiations.

CITY OF NEWARK SOFT LOAN

SAHA requests a 55-year soft loan of $12M from the City of Newark for site acquisition, construction and permanent financing. This funding will cover approximately 25% of the total development cost. We recognize that this is a substantial ask. SAHA keeps abreast of local, regional, state and federal affordable housing funding opportunities and commits to leverage this precious funding opportunistically as much as possible.

MULTIFAMILY HOUSING PROGRAM

SAHA anticipates receiving a $8,420,033 Multifamily Housing Program loan from California Department of Housing and Community Development. To help ensure competitiveness, SAHA intends to request the loan on the 30% AMI units and a portion of the 50% AMI units only.

CONVENTIONAL PERMANENT LOAN

SAHA anticipates originating a $2,591,781, tax-exempt, 20-year, fully amortizing permanent loan from a to-be-determined private lender. We assume an interest rate of 5.75%.

AFFORDABLE HOUSING PROGRAM

SAHA anticipates that the proposed project will be competitive for $855,000 of funding from the Federal Home Loan Bank of San Francisco's Affordable Housing Program.

DEFERRED DEVELOPER FEE

To round out the funding mix, SAHA proposes to voluntarily defer a $150,000 portion of its developer fee to be paid from a priority distribution of surplus cash flow during operations.

CONSTRUCTION LOAN

SAHA will fund construction with a tax-exempt construction loan. The term is projected to be 24 months, and the interest rate 5.5%. The loan will be paid off at permanent financing conversion with tax credit syndication proceeds and additional soft debt and conventional debt.

Financing Plan

Construction

Uses	
$ 3,470,000	Land / Acquisition
$ 35,527,443	Construction
$ 862,450	Architecture
$ 718,490	Survey & Engineering
$ 2,095,000	Construction Interest & Fees
$ -	Permanent Financing
$ 32,500	Legal
$ -	Reserves
$ 2,085,732	Other Costs
$ 661,030	Bond Financing Costs
$ 1,336,870	Developer Costs
$ 146,890	Syndication Costs
$ 46,936,405	**Total Uses**

Sources	
$ -	Perm Loan - 20 yr term & amort.
$ 2,095,300	Federal Tax Credit Equity
$ 385,976	State Tax Credit Equity
$ -	HCD MHP
$ 855,000	FHLB AHP
$ 7,877,586	Local Funds: City of Newark
$ -	Deferred Developer Fee
$ 31,550,128	Construction Loan
$ 42,763,991	**Total Sources**

Permanent

Uses	
$ 3,470,000	Land / Acquisition
$ 35,527,443	Construction
$ 862,450	Architecture
$ 718,490	Survey & Engineering
$ 2,095,000	Construction Interest & Fees
$ 40,000	Permanent Financing
$ 32,500	Legal
$ 463,054	Reserves
$ 2,085,732	Other Costs
$ 661,030	Bond Financing Costs
$ 2,650,870	Developer Costs
$ 221,890	Syndication Costs
$ 48,828,459	**Total Uses**

Sources	
$ 2,590,659	Perm Loan - 20 yr term & amort.
$ 20,953,003	Federal Tax Credit Equity
$ 3,859,764	State Tax Credit Equity
$ 8,420,033	HCD MHP
$ 855,000	FHLB AHP
$ 12,000,000	Local Funds: City of Newark
$ 150,000	Deferred Developer Fee
$ 48,828,459	**Total Sources**

Unit Mix (Rent and Income Levels)

Bedrooms	AMI	Subsidy Name	Section 8	MHP	Special Needs per TCAC	Total Units	Gross Rent	Utility Allowance	Net Rent	Proposed Rent	Annual Rental Income	FMR/ Contract Rents	Section 8 Payment	Annual Section 8 Income
1	30%	HACA	Yes	Yes		3	$ 803	$ 76	$ 727	$ 727	$ 26,186	$ 1,899	$ 1,096	$ 39,442
1	30%			Yes		5	$ 803	$ 76	$ 727	$ 727	$ 43,644			
1	50%			Yes		5	$ 1,339	$ 76	$ 1,263	$ 1,263	$ 75,780			
1	50%					6	$ 1,339	$ 76	$ 1,263	$ 1,263	$ 90,936			
1	60%					7	$ 1,607	$ 76	$ 1,531	$ 1,531	$ 128,587			
2	30%	HACA	Yes	Yes		2	$ 964	$ 106	$ 858	$ 858	$ 20,597	$ 2,385	$ 1,421	$ 34,099
2	30%			Yes		3	$ 964	$ 106	$ 858	$ 858	$ 30,895			
2	50%			Yes		4	$ 1,607	$ 106	$ 1,501	$ 1,501	$ 72,048			
2	50%					3	$ 1,607	$ 106	$ 1,501	$ 1,501	$ 54,036			
2	60%					3	$ 1,928	$ 106	$ 1,822	$ 1,822	$ 65,606			
3	30%	HACA	Yes	Yes		2	$ 1,114	$ 126	$ 988	$ 988	$ 23,702	$ 3,282	$ 2,168	$ 52,042
3	30%			Yes		4	$ 1,114	$ 126	$ 988	$ 988	$ 47,405			
3	50%			Yes		3	$ 1,856	$ 126	$ 1,730	$ 1,730	$ 62,280			
3	50%					3	$ 1,856	$ 126	$ 1,730	$ 1,730	$ 62,280			
3	60%					3	$ 2,227	$ 126	$ 2,101	$ 2,101	$ 75,643			
3	MGR					1	$ -	$ 126	$ -	$ -	$ -			
Avg AMI:	44.74%	Total:	7		0	57					$ 879,626			$ 125,582

@ 30% AMI:	34%
@ 40% AMI:	0%
@ 50% AMI:	43%
@ 60% AMI:	23%

Square Footage of Units

Unit Type (# of bedrooms)	Count	Rough average square feet per unit type	Residential Area	# of bedrooms
1	26	515	13,390	26
2	15	846	12,690	30
3	16	1,020	16,320	48
Total:	57		42,400	104

TCAC 9% Minimum square footages
500
750
1,000

Cash Flow

		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Income											
Rent	2.5%	$ 879,626	$ 901,617	$ 924,157	$ 947,261	$ 970,943	$ 995,217	$ 1,020,097	$ 1,045,599	$ 1,071,739	$ 1,098,533
Section 8 Rental Subsidy	2.5%	$ 125,582	$ 128,722	$ 131,940	$ 135,239	$ 138,619	$ 142,085	$ 145,637	$ 149,278	$ 153,010	$ 156,835
Laundry & Vending Income	2.5%	$ 4,104	$ 4,207	$ 4,312	$ 4,420	$ 4,530	$ 4,643	$ 4,759	$ 4,878	$ 5,000	$ 5,125
POTENTIAL GROSS INCOME:		$ 1,009,313	$ 1,034,546	$ 1,060,409	$ 1,086,919	$ 1,114,092	$ 1,141,945	$ 1,170,493	$ 1,199,756	$ 1,229,750	$ 1,260,493
LIHTC Units Vacancy	5.0%	$ (44,187)	$ (45,291)	$ (46,423)	$ (47,584)	$ (48,774)	$ (49,993)	$ (51,243)	$ (52,524)	$ (53,837)	$ (55,183)
Section 8 Units Vacancy	5.0%	$ (6,279)	$ (6,436)	$ (6,597)	$ (6,762)	$ (6,931)	$ (7,104)	$ (7,282)	$ (7,464)	$ (7,650)	$ (7,842)
EFFECTIVE GROSS INCOME:		$ 958,847	$ 982,818	$ 1,007,389	$ 1,032,574	$ 1,058,388	$ 1,084,848	$ 1,111,969	$ 1,139,768	$ 1,168,262	$ 1,197,469
Expenses											
Operating Expenses	3.5%	$ 639,981	$ 662,380	$ 685,563	$ 709,558	$ 734,392	$ 760,096	$ 786,699	$ 814,234	$ 842,732	$ 872,226
Replacement Reserve Deposits		$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500
TOTAL EXPENSES		$ 668,481	$ 690,880	$ 714,063	$ 738,058	$ 762,892	$ 788,596	$ 815,199	$ 842,734	$ 871,232	$ 900,726
NET OPERATING INCOME		**$ 290,367**	**$ 291,939**	**$ 293,326**	**$ 294,516**	**$ 295,496**	**$ 296,251**	**$ 296,769**	**$ 297,034**	**$ 297,030**	**$ 296,741**
Hard Debt Service											
Perm Loan - 20 yr term & amort. Principal & Interes		$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263
Required Payments											
Bond Fees		$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000
HCD Required Debt Service	$35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364
CASH FLOW:		**$ 32,739**	**$ 34,311**	**$ 35,698**	**$ 36,888**	**$ 37,868**	**$ 38,624**	**$ 39,142**	**$ 39,407**	**$ 39,403**	**$ 39,114**
DSCR:		1.15	1.16	1.16	1.17	1.17	1.18	1.18	1.18	1.18	1.18
Investor Management Fee	0% $5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000
Deferred Developer Fee		$ 27,739	$ 29,311	$ 30,698	$ 31,888	$ 30,362	$ -	$ -	$ -	$ -	$ -
GP Pshp Management Fee	3% $ 25,000	$ -	$ -	$ -	$ -	$ 2,506	$ 28,982	$ 29,851	$ 30,747	$ 31,669	$ 32,619
Incentive Management Fee	50%	$ -	$ -	$ -	$ -	$ -	$ 1	$ 1	$ 1	$ 1,367	$ 747
Residual Receipts (50%)											
City of Newark	59%	$ -	$ -	$ -	$ -	$ -	$ 2,728	$ 2,521	$ 2,151	$ 803	$ 439
California HCD	41%	$ -	$ -	$ -	$ -	$ -	$ 1,914	$ 1,769	$ 1,509	$ 564	$ 308

Cash Flow

	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Income										
Rent	$ 1,125,996	$ 1,154,146	$ 1,183,000	$ 1,212,575	$ 1,242,889	$ 1,273,961	$ 1,305,810	$ 1,338,456	$ 1,371,917	$ 1,406,215
Section 8 Rental Subsidy	$ 160,756	$ 164,775	$ 168,894	$ 173,117	$ 177,445	$ 181,881	$ 186,428	$ 191,088	$ 195,866	$ 200,762
Laundry & Vending Income	$ 5,253	$ 5,385	$ 5,519	$ 5,657	$ 5,799	$ 5,944	$ 6,092	$ 6,245	$ 6,401	$ 6,561
POTENTIAL GROSS INCOME:	$ 1,292,006	$ 1,324,306	$ 1,357,414	$ 1,391,349	$ 1,426,133	$ 1,461,786	$ 1,498,331	$ 1,535,789	$ 1,574,184	$ 1,613,538
LIHTC Units Vacancy	$ (56,562)	$ (57,977)	$ (59,426)	$ (60,912)	$ (62,434)	$ (63,995)	$ (65,595)	$ (67,235)	$ (68,916)	$ (70,639)
Section 8 Units Vacancy	$ (8,038)	$ (8,239)	$ (8,445)	$ (8,656)	$ (8,872)	$ (9,094)	$ (9,321)	$ (9,554)	$ (9,793)	$ (10,038)
EFFECTIVE GROSS INCOME:	$ 1,227,405	$ 1,258,091	$ 1,289,543	$ 1,321,781	$ 1,354,826	$ 1,388,697	$ 1,423,414	$ 1,458,999	$ 1,495,474	$ 1,532,861
Expenses										
Operating Expenses	$ 902,756	$ 934,352	$ 967,054	$ 1,000,901	$ 1,035,933	$ 1,072,191	$ 1,109,717	$ 1,148,557	$ 1,188,757	$ 1,230,363
Replacement Reserve Deposits	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500	$ 28,500
TOTAL EXPENSES	$ 931,256	$ 962,852	$ 995,554	$ 1,029,401	$ 1,064,433	$ 1,100,691	$ 1,138,217	$ 1,177,057	$ 1,217,257	$ 1,258,863
NET OPERATING INCOME	**$ 296,150**	**$ 295,238**	**$ 293,988**	**$ 292,380**	**$ 290,393**	**$ 288,006**	**$ 285,197**	**$ 281,942**	**$ 278,217**	**$ 273,998**
Hard Debt Service										
Perm Loan - 20 yr term & amort. Principal & Inter	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263	$ 218,263
Required Payments										
Bond Fees	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 4,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000
HCD Required Debt Service	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364	$ 35,364
CASH FLOW	**$ 38,523**	**$ 37,611**	**$ 36,361**	**$ 34,753**	**$ 32,766**	**$ 33,379**	**$ 30,570**	**$ 27,315**	**$ 23,590**	**$ 19,371**
DSCR:	1.18	1.17	1.17	1.16	1.15	1.15	1.14	1.13	1.11	1.09
Investor Management Fee	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000
Deferred Developer Fee	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
GP Pshp Management Fee	$ 33,523	$ 32,611	$ 31,361	$ 29,753	$ 27,766	$ 28,379	$ 25,570	$ 22,315	$ 18,590	$ 14,371
Incentive Management Fee	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Residual Receipts (50%)										
City of Newark	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
California HCD	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Input Page

Overview

Version:	City NOFA August 2022
Project Name	Thornton Ave family
Property Size	0.53 acres
Density	108 units per acre
Total # of affordable units:	56 units
Total # of units:	57 units
Total # of parking spaces:	100

Income

Subsidy Name		0 BR	1 BR	2 BR	3 BR	
2022	TCAC 100% AMI Rents		$ 2,678	$ 3,214	$ 3,712	Click here for rent limits
HACA	Contract Rent 1		$ 1,899	$ 2,385	$ 3,282	Source: https://www.haca.net/wp-content/u
	Utility Allowance 1		$ 76	$ 106	$ 126	Source: https://www.haca.net/wp-content
Laundry & Vending Income:		$6 PUPM				

Conventional Debt

Conventional Loan?	Yes	
Cash flow prior to conventional debt service:		$ 251,003
Annual debt service:		$ 218,263
Interest Rate:		5.75%
Amortization Period		20 Years
DSCR:		1.15
Loan Amount:		$ 2,590,659

Tax Credits

9% or 4% Credits?	4%	
Acquisition Credits?	No	
QCT or DDA?	Yes	Click here for QCT & DDA status
Housing Type	Large Family	
Applicable Fraction:	100.00%	
Federal Credit Price:	$ 0.95	
State Credit Price:	$ 0.70	
Limited Partner Ownership %	99.99%	
Rural?	No	
Opportunity Area Designation:	oderate & Below	Click here for designation

Opportunity Area boost is not available for inclusionary deals.

Permanent Sources

Permanent Sources						Perm
Description	Totals	% of TDC	Per Unit	Predev	Constr	Closing
Perm Loan - 20 yr term & amort.	$ 2,590,659	5%	$ 45,450			$ 2,590,659
Federal Tax Credit Equity	$20,953,003	43%	$ 367,597		$ 2,095,300	$ 18,857,703
State Tax Credit Equity	$3,859,764	8%	$ 67,715		$ 385,976	$ 3,473,787
HCD MHP	$ 8,420,033	17%	$ 147,720			$ 8,420,033
FHLB AHP	$ 855,000	2%	$ 15,000		$ 855,000	
Local Funds: City of Newark	$ 12,000,000	25%	$ 210,526	$ 4,122,414	$ 7,877,586	
Deferred Developer Fee	$ 150,000	0%	$ 2,632			$ 150,000
Non-Permanent Sources						
Construction Loan	$ 31,600,128		$ 554,388		$ 31,600,128	$ (31,600,128)
Total Sources	$ 48,828,459			$ 4,122,414	$ 42,813,991	$ 1,892,054
Total Uses	$ 48,828,459			$ 4,122,414	$ 42,813,991	$ 1,828,054
Funding surplus/gap:	$ -					

Description		Budgeted	NC/Rehab Eligible Basis	Per Unit	Per SF	Predev Total	Constr Total	Perm Closing
LAND/ACQUISITION								
Land Cost		$ 3,390,000	X	$ 59,474	$ 54	$ 3,390,000	$ -	
Building Costs								
			X	$ -	$ -		$ -	
Acq Loan Fee	0%		X	$ -	$ -		$ -	
Acq Loan Interest			X	$ -	$ -		$ -	
Acq Legal Fees		$ 5,000	X	$ 88	$ 0	$ 5,000	$ -	
Acq Lender Costs			X	$ -	$ -		$ -	
Acquisition Title & Recording		$ 15,000	X	$ 263	$ 0	$ 15,000	$ -	
Acquisition Holding Costs		$ 10,000	X	$ 175	$ 0	$ 10,000	$ -	
Predevelopment Loan Fees	0%		X	$ -	$ -		$ -	
Predevelopment Loan Interest		$ 50,000	X	$ 877	$ 1		$ 50,000	
LAND/ACQUISITION TOTAL		$ 3,470,000	$ -	$ 60,877	$ 55	$ 3,420,000	$ 50,000	$ -
CONSTRUCTION								
Demolition		$ 125,000	X	$ 2,193	$ 2		$ 125,000	
Construction Sign		$ 400	X	$ 7	$ 0		$ 400	
Remediation		$ 10,000	$ 10,000	$ 175	$ 0		$ 10,000	
Offsite Improvements		$ 379,950	X	$ 6,666	$ 6		$ 379,950	
Unit Construction	$400 psf	$ 25,251,204	$ 25,251,200	$ 443,004	$ 400		$ 25,251,204	
Site Work		$ 3,625,408	$ 3,625,407	$ 63,604	$ 57		$ 3,625,408	
Landscape		$ 402,823	$ 402,823	$ 7,067	$ 6		$ 402,823	
Contractor Overhead & Profit		$ 1,262,560	$ 1,262,560	$ 22,150	$ 20		$ 1,262,560	
General Conditions		$ 1,404,980	$ 1,404,980	$ 24,649	$ 22		$ 1,404,980	
Contractor Insurance & Bonds		$ 286,865	$ 286,865	$ 5,033	$ 5		$ 286,865	
Owner Furnishings		$ 75,000	$ 75,000	$ 1,316	$ 1		$ 75,000	
PV System		$ 303,132	$ 303,132	$ 5,318	$ 5		$ 303,132	
Tenant Improvements			$ -	$ -	$ -		$ -	
Hard Cost Contingency	10%	$ 2,525,120	$ 2,525,120	$ 44,300	$ 40		$ 2,525,120	
CONSTRUCTION TOTAL		$ 35,527,443	$ 35,147,087	$ 623,288	$ 563	$ -	$ 35,527,443	$ -
ARCHITECTURAL FEES								
Architecture		$ 862,450	$ 862,450	$ 15,131	$ 14	$ 344,980	$ 517,470	
Landscape Architecture			$ -	$ -	$ -		$ -	
Conceptual Arch			$ -	$ -	$ -		$ -	
Schematic Arch			$ -	$ -	$ -		$ -	
Design Devt			$ -	$ -	$ -		$ -	
Construction Docs			$ -	$ -	$ -		$ -	
Construction Admin			$ -	$ -	$ -		$ -	
Arch Reimbursables			$ -	$ -	$ -		$ -	
ARCHITECTURAL FEES TOTAL		$ 862,450	$ 862,450	$ 15,131	$ 14	$ 344,980	$ 517,470	$ -
SURVEY & ENGINEERING								
Survey			$ -	$ -	$ -		$ -	
Engineering		$ 628,260	$ 628,260	$ 11,022	$ 10	$ 251,304	$ 376,956	
Engineering - Structural			$ -	$ -	$ -		$ -	
Engineering - MEP			$ -	$ -	$ -		$ -	
Engineering - Civil			$ -	$ -	$ -		$ -	
Engineering - Geotechnical			$ -	$ -	$ -		$ -	
Enviro Assessment &Testing		$ 90,230	$ 90,230	$ 1,583	$ 1	$ 90,230	$ -	
Construction Testing & Inspec			$ -	$ -	$ -		$ -	
SURVEY & ENGINEERING TOTAL		$ 718,490	$ 718,490	$ 12,605	$ 11	$ 341,534	$ 376,956	$ -

Description		Budgeted	NC/Rehab Eligible Basis	Per Unit	Per SF	Predev Total	Constr Total	Perm Closing
CONST INTEREST & FEES								
Construction Loan Fees			$ -	$ -	$ -		$ -	
Construction Lender Costs			$ -	$ -	$ -		$ -	
Construction Lender Legal			0	$ -	$ -		$ -	
Legal -Construction Closing		$ 25,000	24999.99604	$ 439	$ 0		$ 25,000	
Contruction Loan Interest		$ 1,980,000	989999.8432	$ 34,737	$ 31		$ 1,980,000	
Accrued Interest - City			0	$ -	$ -			$ -
Accrued Interest - County			0	$ -	$ -			$ -
Prevailing Wage Monitoring		$ 30,000	$ 30,000	$ 526	$ 0		$ 30,000	
Construction Title & Recording		$ 60,000	$ 60,000	$ 1,053	$ 1		$ 60,000	
CONST INTEREST & FEES TOTAL		$ 2,095,000	$ 1,105,000	$ 36,754	$ 33	$ -	$ 2,095,000	$ -
PERM FINANCING COSTS								
Perm Loan Fee	0%		X	$ -	$ -			$ -
Perm Title & Recording		$ 20,000	X	$ 351	$ 0			$ 20,000
Perm Lender Costs			X	$ -	$ -			$ -
Perm Closing Legal Fee		$ 20,000	X	$ 351	$ 0			$ 20,000
Soft Perm Loan Fee	0%		X	$ -	$ -			$ -
Soft Perm Loan Costs	0%		X	$ -	$ -			$ -
PERM FINANCING TOTAL		$ 40,000	$ -	$ 702	$ 1	$ -	$ -	$ 40,000
OWNER LEGAL								
Owner Legal - Construction			$ -	$ -	$ -		$ -	
Owner Legal - Org, RE, Synd & Perm Loan		$ 32,500	X				$ 32,500	
LEGAL TOTAL		$ 32,500	$ -	$ 570	$ 1	$ -	$ 32,500	$ -
RESERVES								
Operating Reserve	6 mos	$ 463,054	X	$ 8,124	$ 7			$ 463,054
ReplacementReserve			X	$ -	$ -			$ -
RESERVES TOTAL		$ 463,054	$ -	$ 8,124	$ 7	$ -	$ -	$ 463,054
OTHER COSTS								
RE Taxes	0.0%	$ -	$ -	$ -	$ -		$ -	
Const Op Deficits			$ -	$ -	$ -		$ -	
Other Taxes			$ -	$ -	$ -		$ -	
Permit Fees - Planning			$ -	$ -	$ -		$ -	
Permit Fees - Building		$ 406,094	$ 406,094	$ 7,124	$ 8		$ 406,094	
Impact Fees		$ 768,400	$ 768,400	$ 13,481	$ 12		$ 768,400	
Utility Connection Fees		$ 150,000	$ 150,000	$ 2,632	$ 2		$ 150,000	
Green Certifications		$ 38,000	$ 38,000	$ 667	$ 1		$ 38,000	$ -
GL Insurance			$ -	$ -	$ -		$ -	
Builders Risk Insurance		$ 189,498	$ 189,498	$ 3,325	$ 3		$ 189,498	
Softcost Contingency_Other			$ -	$ -	$ -		$ -	
First Yr Operating Insurance		$ 26,000	$ 26,000	$ 456	$ 0		$ 26,000	
Community Outreach		$ 5,000	X	$ 88	$ 0	$ 5,000	$ -	
PNA			$ -	$ -	$ -		$ -	
Security		$ 46,200	$ 46,200	$ 811	$ 1		$ 46,200	
Relocation			$ -	$ -	$ -		$ -	
Operating Costs during Constr			$ -	$ -	$ -		$ -	
Appraisal		$ 4,500	$ 4,500	$ 79	$ 0	$ 4,500	$ -	
Market Study		$ 6,400	X	$ 112	$ 0	$ 6,400	$ -	
Marketing & Leasing		$ 75,000	X	$ 1,316	$ 1		$ 75,000	
Soft Cost Contingency	10%	$ 370,640	$ 370,640	$ 6,502	$ 6		$ 370,640	
Other: Condominium setup			$ -	$ -	$ -		$ -	
Other: (specify)			$ -	$ -	$ -		$ -	
OTHER COSTS TOTAL		$ 2,085,732	$ 1,999,332	$ 36,592	$ 33	$ 15,900	$ 2,069,832	$ -
BOND FINANCING COSTS								
Bond Fees		$ 650,820	X	$ 11,418	$ 10		$ 650,820	
CDLAC Fees		$ 10,210	X	$ 179	$ 0		$ 10,210	
TOTAL BOND FINANCING COSTS		$ 661,030	$ -	$ 11,597	$ 10	$ -	$ 661,030	$ -
DEVELOPER COSTS								
Developer Fee		$ 2,500,000	$ 2,500,000	$ 43,860	$ 40		$ 1,250,000	$ 1,250,000
Construction Management		$ 86,870	$ 86,870	$ 1,524	$ 1		$ 86,870	
Other Consultants		$ 64,000	$ 64,000	$ 1,123	$ 1		$ 64,000	
DEVELOPER COSTS TOTAL		$ 2,650,870	$ 2,586,870	$ 46,506	$ 42	$ -	$ 1,336,870	$ 1,250,000
SYNDICATION COSTS								
Syndication Consultant		$ 92,000	X	$ 1,614	$ 1		$ 92,000	
Syndication Legal		$ 50,000	X	$ 877	$ 1			$ 50,000
Accountant Fee		$ 25,000	X	$ 439	$ 0			$ 25,000
Transit Passes			X	$ -	$ -		$ -	$ -
TCAC Fees		$ 54,890	X	$ 963	$ 1		$ 54,890	
TCAC Fees - Deferred			X	$ -	$ -			$ -
Investor Costs			X				$ -	
SYNDICATION COSTS TOTAL		$ 221,890	$ -	$ 3,893	$ 4	$ -	$ 146,890	$ 75,000
		$ 48,828,459	$ 42,419,228	$ 856,640	$ 773	$ 4,122,414	$ 42,813,991	$ 1,828,054

EXHIBIT C

CITY PROMISSORY NOTE

[To Be Attached]

PROMISSORY NOTE
(Thornton Avenue)

$12,000,000

Newark, California
April 1, 2023

FOR VALUE RECEIVED, the undersigned Thornton, L.P., a California limited partnership ("Borrower"), hereby promises to pay to the order of the City of Newark, a California municipal corporation ("Holder"), 37101 Newark Blvd., Newark, California, 94560, Attn: Community Development Director, the principal amount of Twelve Million Dollars ($12,000,000), plus interest thereon pursuant to Section 2 below (the "City Loan").

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to pay Holder the principal amount of up to Twelve Million Dollars ($12,000,000) with interest for the funds loaned to Borrower by Holder pursuant to the Affordable Housing Loan Agreement between Borrower and Holder dated April 1, 2023 (the "AHLA"). The source of funds for the City Loan is the City of Newark Affordable Housing Fund, from affordable housing impact fees received by the City pursuant to the City's inclusionary housing ordinance. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the AHLA.

2. Interest. The City Loan bears interest from the date of this Note at three percent (3%) interest, until full repayment of the outstanding balance of the City Loan.

3. Term and Repayment Requirements. Principal and interest under this Note in the amount of the City Prorata Percentage of Fifty Percent (50%) of the Residual Receipts is due and payable as set forth in Section 4.9 of the AHLA. The unpaid principal balance hereunder, together with accrued interest thereon, is due and payable no later than the date that is the fifty-seventh (57th) anniversary of the date that a final certificate of occupancy is issued by the City of Newark to certify that the construction of the Development is complete and the Development may be legally occupied (the "Completion Date"), provided, however, if a record of the Completion Date cannot be located or established, the City Loan is due and payable on the fifty-seventh (57th) anniversary of the date of this Note.

4. Disbursements. No more than Four Million Three Hundred Thousand Dollars ($4,300,000) of the City Loan shall be disbursed to the Borrower prior to the Construction Loan Closing as defined in the AHLA. All disbursements shall be in accordance with the terms of the AHLA.

5. Prepayment. Borrower may prepay the City Loan at any time without penalty or fee.

6. Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of Holder unless the assignment complies

with Section 7.3 of the AHLA. Holder may assign its interest in the Note to any person or entity in Holder's sole discretion.

7. Security. This Note shall be secured by an assignment of architect and engineering agreements and the Deed of Trust on the Property, wherein Borrower is the trustor and Holder is the beneficiary. The terms of the Deed of Trust are hereby incorporated into this Note and made a part hereof. This Note is nonrecourse to Borrower and the general and limited partners of the Borrower, and the sole recourse of Holder with respect to the payment of the principal of, and interest on this Note shall be to the Property and the Improvements and any other collateral held by Holder as security for this Note; provided however, nothing contained herein is intended to relieve the Borrower of liability to the extent of any loss for fraud or intentional misrepresentation, or bad faith, waste, willful misrepresentation by the Borrower; or the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); or be deemed in any way to limit the rights of the Holder to obtain specific performance by the Borrower of its covenants under the City Documents, other than the covenants to pay the Holder principal and interest due under this Note.

8. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at the address set forth in the first paragraph of this Note, or to such other place as Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to Holder, and Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

9. Default.

(a) Any of the following shall constitute an event of default under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the Holder of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 10.1 of the AHLA; and

(iii) The occurrence of any Borrower event of default under the AHLA, the Deed of Trust, the Regulatory Agreement, or other instrument securing the obligations of Borrower under this Note or under any other promissory notes hereafter issued by Borrower to Holder pursuant to the AHLA or the Deed of Trust (the "City Loan Documents"), subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of one or more of the foregoing events of default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of Holder become immediately due and payable upon written notice by Holder to Borrower without further demand.

(c) Holder's failure to exercise the remedy set forth in Subsection 9(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

(d) Notwithstanding anything herein to the contrary, Holder hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent hereunder to Borrower shall be sent to Borrower's limited partners at the address provided pursuant to Section 12.3 of the AHLA.

10. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment

of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

11. Miscellaneous Provisions.

(a) All notices to Holder or Borrower shall be given in the manner and at the addresses set forth in the AHLA, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the City Loan Documents, contains the entire agreement between the parties as to the City Loan. It may not be modified except upon written consent of the parties.

IN WITNESS WHEREOF, Borrower is executing this Promissory Note as of the date first above written.

THORNTON, L.P.,
a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit corporation,
its general partner

By: _____
Name: Susan Friedland
Its: Chief Executive Officer

5267131.4

EXHIBIT D

CITY DEED OF TRUST

[To Be Attached]

Recorded at the Request of
Old Republic Title Company - Oakland
11190256660

No fee per GC27388.1; recorded in connection with concurrent transfer subject to imposition of documentary transfer tax

2023048228 04/28/2023 01:19 PM 22 PGS

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK, CLERK-RECORDER
RECORDING FEES: $0.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: Community Development Director

ELECTRONICALLY RECORDED

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

A.P.N. 092A-0919-016-02; 092A-0919-017-02; 092A-0919-018

DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING
(Thornton Avenue Apartments)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of April 1, 2023, by and among Thornton, L.P., a California limited partnership ("Trustor"), Old Republic Title Company ("Trustee"), and the City of Newark, a California municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's interest in the property located in the County of Alameda, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property");

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

Recorded at the Request of
Old Republic Title Company -
Oakland
11790256660

No fee per GC27388.1; recorded in connection with concurrent transfer subject to imposition of documentary transfer tax

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: Community Development Director

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

A.P.N. 092A-0919-016-02; 092A-0919-017-02; 092A-0919-018

DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (Thornton Avenue Apartments)

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TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (the "Secured Obligations"):

(a) Payment to Beneficiary of all sums at any time owing under or in connection with the Note (defined in Section 1.3 below) until paid or cancelled and any other amounts owing under the Loan Documents (defined in Section 1.2 below). Said principal and other payments shall be due and payable as provided in the Note or other Loan Documents, as applicable. The Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents; and

(d) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Agreement" means that certain Affordable Housing Loan Agreement between Trustor and Beneficiary, dated April 1, 2023, providing for the Beneficiary to loan to Trustor Twelve Million Dollars ($12,000,000).

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means the promissory note in the principal amount of Twelve Million Dollars ($12,000,000), of even date herewith, executed by Trustor in favor of the Beneficiary, as it may be amended or restated, the payment of which is secured by this Deed of Trust. (A copy of the Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Principal" means the amount required to be paid under the Note.

Section 1.5 The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith by and between the Beneficiary and the Trustor.

ARTICLE 2
MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition, reasonable wear and tear excepted. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Alameda County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those otherwise required by law, and as approved, in writing, by Beneficiary.

Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on

such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in

installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all Secured Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become part of the Secured Obligations (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in

any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property (collectively, the "Funds") shall be used to repair or restore the Property, but if the property cannot be repaired or restored such Funds are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. The Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (taking into account the Funds) has sufficient funds to rebuild the improvements in substantially the form they existed prior to the casualty or condemnation.

ARTICLE 5
AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined in Section 7.1) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the Secured Obligations, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations

relating to industrial hygiene or to the environmental conditions ("Environmental Laws") on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except (a) as permitted under Environmental Laws; or (b) such of the foregoing as may be customarily used in construction or operation of a multi-family residential development.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); and (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims").

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims. Beneficiary shall have its reasonable attorneys' fees in connection therewith paid by Trustor, provided Trustor has failed, based on reasonable evidence produced by Beneficiary, to adequately defend such Hazardous Materials Claims. Trustor shall indemnify, defend, and hold harmless Beneficiary and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties).

Without Beneficiary's prior written consent, which shall not be unreasonably delayed or withheld, Trustor shall not take any Environmental Measure or other remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's

reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the default rate specified in the Loan Agreement until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute events of default ("Events of Default") following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination; (3) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any other debt instrument or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein; or (4) a default is declared under the Approved Financing by the lender of such Approved Financing. Notwithstanding anything to the contrary contained herein, Beneficiary hereby agrees that any cure of any default made or tendered by one or more of Trustor's limited partners shall be deemed a cure by the Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor. Copies of all notices which are sent to Trustor hereunder shall be sent to Investor Limited Partner at the address set forth in the Loan Agreement, and the Investor Limited Partner shall have the right, but not the obligation to cure an Event of Default hereunder, and Beneficiary will accept tender of such cure as if delivered by Trustor.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and all unpaid Secured Obligations shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Sale (as defined below) hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of

Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Alameda County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing the Secured Obligations.

Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall deliver to the Trustee the Notice of Sale and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of the Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in the Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without

further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of the Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligation, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any

such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8
MISCELLANEOUS

Section 8.1 Amendments.

This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment

by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) delivered by express delivery service, return receipt requested, (c) delivered personally, or (d) sent by electronic mail, provided that any notice sent by electronic mail must be followed by notice delivered under either (a), (b), or (c) within 2 business days. All such notices shall be delivered to the principal office of the Parties as follows:

Borrower: Thornton, L.P.
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, CA 94703
Attention: Chief Executive Officer

City: City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: Community Development Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable) except that any electronic mail received after 5:00 p.m. shall be deemed to have been received on the next business day.

Section 8.4 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or

other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions.

Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Security encumbered by this Deed of Trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986 (26 USC 42 (h)(6)(E)(ii)), as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by a Regulatory Agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

THORNTON, L.P.,
a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit corporation,
its general partner

By: _____
Name: Susan Friedland
Its: Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF Alameda)

On April 19, 2023, before me, Stacy Zamora, Notary Public, personally appeared Susan Friedland, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

STACY ZAMORA
Notary Public - California
Alameda County
Commission # 2408666
My Comm. Expires Jun 21, 2026

Name: Stacy Zamora
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

6361 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the N/W line of Thornton Avenue distance thereon North 33° 00' East 440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page
11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue distance thereon North 33° 00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.
EXCEPTING THEREFROM the Southeastern 10 feet, as granted to the City of Newark recorded
September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.
6375 Thornton Avenue

APN: 092A-0919-016-02

6375 Thornton Avenue:

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00' East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00' East 55.00 feet; thence North 56° 58' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 58' East 150.00 feet to the point of beginning.

APN: 092A-0919-018

EXHIBIT E

SCHEDULE OF PERFORMANCE

Performance Milestones	**Milestone Completion Date**
Borrower satisfaction of Conditions Precedent to Predevelopment Loan Component of City Loan.	By April 30, 2023
Close of escrow for acquisition of Property	By April 30, 2023
Borrower satisfaction of Conditions Precedent to Construction Loan Component of City Loan.	By January 31, 2026
Close of escrow for Construction Financing	Within 30 days after Borrower satisfaction of Conditions Precedent to Construction Loan Component of City Loan, and not later than February 28, 2026
Commencement of construction and development work on Development	Within 30 days after Construction Loan Closing, and not later than March 31, 2026
Completion of construction and development work on Development	Not later than May 31, 2028
Commencement of occupancy of apartment units	Not later than June 30, 2028
Full occupancy of apartment units	Not later than August 31, 2028

EXHIBIT F

SCOPE OF DEVELOPMENT

At 6347, 6361 and 6375 Thornton Avenue, Borrower proposes to build, own and manage a single five-story building with approximately 57 rental apartments. One home will be occupied by Property Management staff and the remaining 56 homes will be affordable for households with incomes at or below 60% of the area median. The building will include 26 one-bedroom apartments, 15 two-bedroom apartments and 16 three-bedroom apartments. The community will be programmed with ample community space including an approximately 1,350 square foot community room with kitchenette and a spacious courtyard that will include wheelchair-accessible raised gardening beds, a tot play area, ornamental landscaping and seating. Additional amenities will include a computer lab, an acoustically insulated music practice room, property management and resident services offices, secure structured parking, bicycle and scooter parking and a bicycle repair station. Borrower will pursue an aggressive approach to sustainability and energy efficiency and score platinum on the GreenPoint Rated scale.

EXHIBIT G

CITY REGULATORY AGREEMENT

[To Be Attached]

Recorded at the Request of
Old Republic Title Company -
Oakland
11170256666

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

2023048227 04/28/2023 01:19 PM 26 PGS
OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK, CLERK-RECORDER
RECORDING FEES: $0.00

ELECTRONICALLY RECORDED

City of Newark
37101 Newark Blvd
Newark, CA 94560
Attn: Community Development Director

No fee for recording pursuant to
Government code Section 27383

No fee per GC27388.1; recorded in connection with concurrent transfer subject to imposition of documentary transfer tax

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS
(Thornton Avenue Apartments)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of April 1, 2023, by and between the City of Newark, a California municipal corporation (the "City"), and Thornton, L.P., a California limited partnership (the "Owner"). City and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. Owner owns that certain property located at 6347 – 6375 Thornton Avenue in the City of Newark, as more particularly described in Exhibit A (the "Property"). Owner intends to construct an approximately fifty-seven (57) unit multifamily rental housing development on the Property for rental to extremely low, very low and low income households, including one (1) manager's unit that is not subject to affordability restrictions. Together the Property and its improvements are referred to herein as the "Development".

B. City has entered into an Affordable Housing Loan Agreement with Owner dated April 1, 2023 ("AHLA"), pursuant to which the City agreed to loan to the Owner Twelve Million Dollars ($12,000,000) ("City Loan") to assist with the construction of the Development.

C. The City has agreed to make the City Loan on the condition that the Owner construct, maintain and operate the Development in accordance with restrictions set forth in this Regulatory Agreement for a fifty-seven (57) year term, and in related documents including the AHLA.

D. The Owner may apply for and receive a density bonus pursuant to the State Density Bonus Law (Government Code Sections 65915-65918) ("Density Bonus Law"). The Density Bonus Law requires the City to ensure and the Owner to agree to continued affordability of the apartment units subject to the density bonus. In the event that Owner applies for and receives a density bonus, Owner and City will enter into a "Density Bonus Regulatory Agreement" which would satisfy the requirements and obligations of the Density Bonus Law.

Recorded at the Request of
Old Republic Title Company -
Oakland
111702566

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Newark
37101 Newark Blvd
Newark, CA 94560
Attn: Community Development Director

No fee for recording pursuant to
Government code Section 27383

No fee per GC27388.1; recorded in connection with concurrent transfer subject to imposition of documentary transfer tax

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E. In consideration for the City Loan at an interest rate substantially below the market rate, Owner agrees to observe all of the terms and conditions set forth below.

THEREFORE, City and Owner hereby agree as follows.

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Affordable Units" shall mean the Extremely Low Income Units, the Very Low Income Units and the Lower Income Units.

(c) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Affiliate" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Owner which, if Owner is a partnership or limited liability company, shall include each of the constituent members or partners, respectively thereof. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, with respect to a person that is a nonprofit corporation, the right to appoint more than fifty percent of the board of directors, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

(e) "AHLA" shall mean the Affordable Housing Loan Agreement entered into by and between the City and Owner and dated of April 1, 2023.

(f) "Area Median Income" shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size as specified herein, in Alameda County, California, as published from time to time and periodically updated in Title 25, California Code of Regulations, Section 6932 (or successor provision) by HCD. In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(g) "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" in accordance with California Health and Safety Code Section 50053.

(h) "City" shall mean the City of Newark, a California municipal corporation.

(i) "City Loan" shall mean all funds loaned to Owner pursuant to the AHLA.

(j) "Completion Date" means the date a final certificate of occupancy is issued by the City to certify that the construction of the Development is complete and the Development may be legally occupied.

(k) "Deed of Trust" shall mean the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among Owner, as trustor, Old Republic Title Company, as trustee, and the City as beneficiary, that encumbers the Property to secure repayment of the City Loan and Owner's performance of the Loan Documents.

(l) "Development" shall mean the Property and the fifty-seven (57) units to be developed on the Property, and any additional improvements and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(m)"Extremely Low Income Household" shall mean a household with a Household Income that does not exceed thirty percent (30%) of Area Median Income.

(n) "Extremely Low Income Units" shall mean the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Extremely Low Income Households.

(o) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(p) "Household Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with the California Tax Credit Allocation Committee rules and regulations or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, City shall provide the Owner with a reasonably similar method of calculation of gross income as provided in 25 California Code of Regulations Section 6914.

(q) "Investor Limited Partner" means the limited partner or partners of the Owner.

(r) "Loan Documents" shall mean this Agreement, the AHLA, the Note, and the Deed of Trust.

(s) "Low Income Household" shall mean household with a Household Income which does not exceed that does not exceed eighty percent (80%) of Area Median Income.

(t) "Low Income Unit" shall mean the Units which pursuant to Section 2.1(c) below, are required to be occupied by Low Income Households.

(u) "Note" shall mean the promissory note from the Owner to City evidencing all or any part of the City Loan.

(v) "Owner" shall mean Thornton, L.P., a California limited partnership, and its successors and assigns to the Development.

(w) "Partnership Agreement" means the Agreement of Limited Partnership, as it may be amended and restated from time to time, which governs the operation and organization of Owner, as a California limited partnership.

(x) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(y) "Rent" shall mean the total of monthly payments by the tenants of a Unit for the following: use and occupancy of the Unit and land and associated facilities (including parking if applicable), any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant. Utility allowances may be determined by use of the utility allowance published by the local public housing authority or the California Utility Allowance Calculator ("CUAC") model allowed by the California Tax Credit Allocation Committee regulations, if the Property qualifies.

(z) "Tenant" shall mean a household occupying a Unit.

(aa) "Term" means the term of this Regulatory Agreement, which commences as of the date of this Regulatory Agreement and shall remain in effect until the fifty-seventh (57th) anniversary of the Completion Date.

(bb) "Units" shall mean the fifty-seven (57) rental units to be constructed by the Owner on the Property.

(cc) "Very Low Income Household" shall mean a household with a Household Income that does not exceed fifty percent (50%) of Area Median Income.

(dd) "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1(b) below, are required to be occupied by Very Low Income Households.

ARTICLE 2.
AFFORDABILITY COVENANTS

Section 2.1 Occupancy Requirements.

(a) Extremely Low Income Units. Nine (9) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Extremely Low Income Households.

(b) Very Low Income Units. Twelve (12) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(c) Low Income Units. Six (6) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

(d) Manager's Unit. One (1) Unit shall be reserved for an on-site manager and shall not be subject to affordability or occupancy restrictions.

(e) Intermingling of Units. All Affordable Units shall be intermingled and of comparable quality. Tenants in all Affordable Units shall have equal access to and enjoyment of all common facilities of the Development.

(f) Disabled Persons Occupancy.

(1) Owner shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) the United States Fair Housing Act, as amended, (iv) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its city council, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Regulatory Agreement, repayment of the City Loan, cancellation of the Promissory Note, and the reconveyance of the Deed of Trust.

Section 2.2 Allowable Rent.

(a) Extremely Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Extremely Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of thirty percent (30%) of Area Median Income, adjusted for Assumed Household Size.

(b) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(c) Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size.

(d) Compliance with TCAC Requirements. During the term of any regulatory agreement associated with the provision of low income housing tax credits by the California Tax

Credit Allocation Committee ("TCAC") and recorded against the Property (the "TCAC Regulatory Agreement"), Owner may use the occupancy standards, assumed household sizes, income limits, rent levels and rent increases that are permitted by TCAC in the TCAC Regulatory Agreement, in place of such requirements imposed by this Regulatory Agreement. During the term of the TCAC Regulatory Agreement, compliance with the TCAC Regulatory Agreement as it pertains to occupancy standards, assumed household sizes, income limits, rent levels and rent increases shall be deemed compliance with such requirements of this Agreement.

Section 2.3 Rent Increases.

(a) Rent Amount. The initial Rent for all Affordable Units must be approved by the City prior to occupancy. The utility allowance schedule will be determined either by use of the CUAC or local public housing authority schedule. Notwithstanding the approved schedule of maximum rents, Owner shall not be obligated to reduce rents for any existing tenants should maximum rents decrease, or utility allowances increase for any Units which must conform to the approved schedule of maximum rents.

(b) Rent Increases. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting an Affordable Unit, Owner shall submit to the City a schedule of any proposed increase in the Rent charged for the Affordable Units. The Rent for such Affordable Units may be increased no more than once annually based upon updated rent schedules corresponding to the updated Area Median Income. Any rent increase resulting from use of the CUAC model for utility allowances shall comply with the TCAC limitation. Owner shall give Tenants of Affordable Units written notice at least thirty (30) days prior to any Rent increase, following completion of the City approval process set forth above. Notwithstanding the above, in no event will any annual rent increase exceed the annual rent increase allowed pursuant to Civil Code Section 1947.12, although the parties acknowledge that the Affordable Units are not subject to such restrictions pursuant to Civil Code Section 1947.13. For purposes of this Agreement, if any rent subsidy is terminated or reduced, an increase in the tenant's total monthly payment toward rent to offset the terminated or reduced rent subsidy shall not constitute a Rent increase as long as the Rent for the Affordable Unit is not increased above the maximum allowable Rent.

(c) Rent During Term of TCAC Regulatory Agreement. Notwithstanding the foregoing, Section 2.2 (d) shall apply to the rent amounts and rent increases during the term of the TCAC Regulatory Agreement.

Section 2.4 Increased Income of Occupying Households.

(a) Increased Income Below 80% of Area Median Income.

(1) In the event that, upon recertification of an occupant household's income, the income of a Very Low Income Household increases above the qualifying limit for a Very Low Income Household, but not above the qualifying income for a Low Income Household, the rent shall increase to thirty percent (30%) of sixty percent (60%) of Area Median Income, the Unit shall qualify as a Low Income Unit, and the next available Unit shall be rented

to a Very Low Income Household, as applicable, as necessary to meet the requirements of Section 2.1 above.

(b) Non-Qualifying Household. If, upon recertification of a Tenant's income, the Owner determines that a Tenant has an Adjusted Income exceeding the qualifying income for Low Income Household, adjusted for Actual Household Size, such Tenant shall be permitted to continue to occupy the Unit at a Rent not exceeding one-twelfth of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, and the Unit shall continue to be classified as a Low Income Unit until the Tenant vacates the Unit, at which time the Unit shall be re-rented to a Very Low Income Household or Low Income Household as applicable, to meet the requirements of Section 2.1 above. Notwithstanding the above, if the Owner determines that a Tenant has an Adjusted Income exceeding One Hundred Twenty Percent (120%) of Area Median Income, the Owner may elect to increase the Rent to the maximum permissible.

(c) Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Extremely Low Income Household, Very Low Income Household, or Low Income Household) as the initial income level of the vacating Tenant, until such Affordable Unit is reoccupied, at which time the income character of the Affordable Unit (e.g., Extremely Low Income Unit, Very Low Income Unit, or Low Income Unit) shall be redetermined.

(d) Continued Compliance. In the event an occupant household's income increases and the rent is increased as set forth in Sections (a) and (b) above, the Affordable Unit shall continue to be classified as an Extremely Low Income Unit, a Very Low Income Unit, or a Low Income Unit, as applicable, until such time as the Affordable Unit is either vacated by the occupant or another Affordable Unit is rented at the applicable income limit.

(e) Income Limits During Term of TCAC Regulatory Agreement. Notwithstanding the foregoing, during the term of the TCAC Regulatory Agreement, compliance with the TCAC Regulatory Agreement as it pertains to increased income of occupying households shall be deemed compliance with this Agreement.

Section 2.5 Lease Provisions. Owner shall include in leases for all Affordable Units provisions which authorize Owner to immediately terminate the tenancy of any household one or more of whose members has misrepresented any fact material to the household's qualification as an Extremely Low Income Tenant, Very Low Income Household or Low Income Unit. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for a Very Low Income Household or Low Income Household, as applicable, such household's Rent may be subject to increase.

Section 2.6 Condominium Conversion. The Owner shall not convert the Development or any Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

Section 2.7 Loss of Subsidy.

(a) It is anticipated that certain Affordable Units in the Development will receive rental subsidies throughout the Term from governmental project based vouchers or other sources ("Subsidy Units"), as reflected in the operating pro forma contained in the Revised Financing Plan approved by the City. If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination, or nonrenewal of the rental subsidy through no fault of the Borrower, such that the rental subsidy shown on the annual operating pro forma approved by the City is no longer available, Borrower shall, in anticipation of such loss of rental subsidy, use good faith efforts for a period of sixty (60) days, to obtain alternative sources of rental subsidies and shall provide the City weekly progress reports on Borrower's efforts to obtain alternative sources of rental subsidies. If at the end of such sixty (60) day period Borrower is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.3, Borrower may increase the Rent on one or more of the Affordable Units that are Subsidy Units, to the TCAC rent limit for a 60% AMI unit, subject to the following requirements:

(1) Any such Rent increase must be pursuant to a transition plan approved by the City showing how the Rent increase will be phased in, and which Affordable Units will be subject to the increase, and if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or such successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program.

(2) At the time Borrower requests an increase in the Rent, Borrower shall provide the City with a copy of the proposed annual, operating budget showing the impact of the loss or reduction of the rental subsidy.

(3) Any subsequent Rent increases remain subject to Section 2.3 above.

(4) The number of Affordable Units subject to the Rent increases and the level of Rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown in the annual operating pro forma, and as is necessary to maintain the financial stability of the Development.

(b) Borrower shall continue to use good faith efforts to obtain alternative sources of rental subsidies and shall provide the City with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the Rents on the Affordable Units to be reduced back to the Rents set forth in Section 2.2. Upon receipt of any alternative rental subsidies, Borrower shall reduce the Rents on the Affordable Units back to the Rents set forth in Section 2.2, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown in the annual operating pro forma.

Section 2.8 Foreclosure. After a foreclosure of a loan or deed in lieu of foreclosure, the City agrees to meet and confer with the successor owner of the Development upon its request to determine if the maximum Rent on one or more of the Affordable Units needs to be increased to the TCAC 60% AMI rent (together with rent increases on Units other than the Affordable Units) in order to cover operating costs and debt service, and maintain the financial stability of the Development, subject to a mutually acceptable transition plan approved by the City showing how the Rent increase will be phased in and which Affordable Units would be subject to the increase. The City agrees to reasonably consider and shall not unreasonably disapprove such changes to the Rent requirements of this Agreement, consistent with the foregoing, as necessary to maintain the financial stability of the Development.

ARTICLE 3.
INCOME CERTIFICATION AND REPORTING

Section 3.1 Income Certification. The Owner shall obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Affordable Units (excluding the manager's Unit). The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification or utilize a self-certified statement. Copies of tenant income certifications shall be available to City upon request.

Section 3.2 Annual Report to City. Each year by July 1 Owner shall submit an annual report to City, in a form approved by City. The annual report shall include for each Affordable Unit covered by this Agreement, the Rent and the income and household size of the household occupying the Affordable Unit and shall have the income certifications for each Tenant, prepared pursuant to Section 3.1 above available upon request. The report shall also state the date the tenancy commenced for each Affordable Unit, the number of bedrooms in such Affordable Unit, and such other information as City may be required by law to obtain.

Section 3.3 Additional Information. Owner shall provide any additional information reasonably requested by City. City shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to any Affordable Unit.

Section 3.4 Records.

(a) Owner shall keep and maintain at the principal place of business of the Owner set forth in Section 6.10 below, or elsewhere with the City's written consent, full, complete and appropriate books, records and accounts relating to the Development. Owner shall cause all books, records and accounts relating to the Development to be kept and maintained in

accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Regulatory Agreement. Owner shall cause all books, records, and accounts to be open to and available for inspection and copying by the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Owner shall cause copies of all tax returns and other reports that Owner may be required to furnish to any government agency to be open for inspection by the City at all reasonable times at the place that the books, records and accounts of Owner are kept. Owner shall preserve such records for a period of not less than five (5) years after their creation. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Development is pending at the end of the record retention period stated herein, then Owner shall retain the records until such action and all related issues are resolved. Such records are to include but are not limited to:

(1) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

(2) Financial records; and

(3) Records demonstrating compliance with the marketing, tenant selection, affordability, and income requirements.

(b) The City shall notify Owner of any records it deems insufficient. Owner has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Owner must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

ARTICLE 4.
OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use. The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

Section 4.2 Compliance with Loan Documents and Development Regulatory Agreements. Owner shall comply with all the terms and provisions of the Loan Documents and any other regulatory requirement imposed on the Development, including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by the California Tax Credit Allocation Committee (the "Development Regulatory Documents"). Owner shall promptly notify the City in writing of the existence of any default under any Development Regulatory Documents and provide the City with copies of any such notice of default.

Section 4.3 Property Tax Exemption. Owner shall not apply for a property tax exemption for the Property under any provision of law other than Revenue and Taxation Section 214(g) without City's prior written consent.

Section 4.4 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 4.5 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Owner shall comply with state and federal fair housing laws in the marketing and rental of the Units in the Project. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, veteran or military status, or genetic information, or any other basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Development. All deeds, leases or contracts made or entered into by Owner as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the AHLA.

Section 4.6 City Preference. To the extent permitted by law and consistent with the program regulations for funding sources used for the development of the Units, Owner shall give a preference in the rental of any Units to eligible households in which at least one member lives or works in the City. The preference stated in this section applies to the rentals of Units throughout the Term.

Section 4.7 Section 8 Certificate Holders. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor, or similar programs. The Owner shall not apply selection criteria to holders of Section 8 certificate or similar certificates or vouchers that is more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective tenants.

Section 4.8 Marketing Plan. No later than nine (9) months prior to the date construction of the Development is projected to be complete, Owner shall submit to the City for approval its plan for marketing the Development to income-eligible households as required by this Regulatory Agreement (the "Marketing Plan"). The Marketing Plan shall be in compliance

with all applicable fair housing, equal opportunity and affirmative fair marketing laws and requirements.

Upon receipt of the Marketing Plan, the City shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after receipt. If the Marketing Plan is not approved, the City shall give Owner specific reasons for such disapproval and Owner shall submit a revised Marketing Plan within fifteen (15) days of notification of the City's disapproval. Owner shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the City. The City understands that the Owner needs to have the Marketing Plan approved at least six (6) months prior to the date construction of the Development is projected to be complete in order to timely lease up the Development. If the Owner does not submit a revised Marketing Plan that is approved by the City at least three (3) months prior to the date construction of the Development is projected to be complete, Owner will be in default of this Regulatory Agreement.

Section 4.9 Environmental Requirements. Owner shall comply with the environmental requirements set forth in Article IX of the AHLA and Article 6 of the Deed of Trust, which are incorporated herein.

ARTICLE 5.
PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility over management of the Development. The Owner shall retain a professional property management company approved by City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required.

Section 5.2 Approval of Management Agent. The Development shall at all times be managed by an experienced management agent reasonably acceptable to City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner shall submit for City's approval the identity of any proposed Management Agent. The City has approved Satellite Affordable Housing Associates Property Management, a California nonprofit public benefit corporation, as the Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.3 Performance Review. City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with City in such reviews.

Section 5.4 Replacement of Management Agent. If, as a result of a periodic review, City determines in its reasonable judgement that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Owner of such written notice, City staff and Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development. If after a reasonable period as determined by City (not to exceed sixty (60) days), City determines that the Owner is not operating and managing the Development in accordance with the material requirements and standards of this Agreement, City may require replacement of the Management Agent.

If, after the above procedure, City requires in writing the replacement of the Management Agent, Owner shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this Agreement, and City may enforce this provision through legal proceedings as specified in Section 6.5.

Section 5.5 Management Policies. The Owner shall submit its written management plan with respect to the Development to City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

Section 5.6 Property Maintenance. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the Units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate safety and security services for occupants of the Project, including without limitation parking lot and pathway lighting and security cameras. To the extent feasible, Owner shall employ

defensible space design principles and crime prevention measures in the operation of the Project. Owner shall conduct a yearly security inspection, employing Crime Prevention Through Environmental Design (CPTED) principles, and shall participate in an illegal activity review with Newark Police Department (provided that the Newark Police Department agrees to participate in such review). Owner shall maintain an on-site contact, during normal business hours, to receive complaints and concerns from the community, and Owner shall promptly respond to and address such complaints and concerns. Documents and reports relating to security inspections, community complaints and concerns, and illegal activities on the Property shall be maintained and available for inspection by the City.

a. Yard Area. Owner shall not leave any yard areas on the Property unmaintained, including broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week; packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and vehicles parked or stored in other than approved parking areas.

b. Buildings. Owner shall not leave any buildings located on the Property in an unmaintained condition so that any of the following exist: violations of state law, uniform codes, or City ordinances; conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance; broken windows; graffiti (must be removed within 72 hours); and, conditions constituting hazards and/or inviting trespassers, or malicious mischief.

c. Safety and Security. Owner acknowledges that it is a priority of the City to facilitate the security and safety of the residents and surrounding community. Owner shall implement and maintain throughout the Term the following security measures in the Project:

i. Owner shall provide adequate safety and security services for occupants of the Project, including without limitation parking areas and pathway lighting and security cameras.

ii. Owner shall use best efforts to work with the City of Newark Police Department to implement and operate an effective neighborhood watch program.

iii. Owner shall provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

d. City Right to Enter Property. The City shall have the right to enter on the Property and/or contact the City of Newark Police Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition. The City shall provide Owner notice of its contact with the City of Newark Police Department.

e. Documents and Reports. Documents and reports relating to security inspections, community complaints and concerns, and illegal activities on the Property shall be maintained and available for inspection by the City.

In the event that Owner breaches any of the covenants contained in this Section 5.6, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the rate of 10% per annum.

Section 5.7 Social Services. Owner shall provide a variety of social services at the Development. Such social services are subject to the prior written approval of the City, in its reasonable discretion. Owner shall use its best efforts to create a comprehensive social service program that is targeted to the needs of the residents of the Development which may include, but is not limited to, the following services: after-school programs of an ongoing nature for school age children, financial planning skills, job coaching, and/or the availability of a bona fide services coordinator to the tenants. Owner shall ensure that all personnel providing or coordinating all social services shall be adequately trained and counseled, including with respect to the appropriate means and methods of communicating and interacting with residents. Any substantive decrease in the amount of social services to be provided at the Property shall be subject to prior reasonable approval of City and approval shall not be unreasonably withheld.

ARTICLE 6.
MISCELLANEOUS

Section 6.1 Transfers.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under the Loan Documents; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Owner retains title. The term "Transfer" excludes the leasing of any single Unit in the Development to an occupant in compliance with this Regulatory Agreement.

(b) Except as otherwise permitted in this Section 6.1, no Transfer is permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The City Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the City.

(c) The City hereby approves the admission of the Investor Limited Partner to Owner as limited partner. The City hereby approves future Transfers of the limited partner

interest of Owner provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement (as such capital contributions may be adjusted pursuant to the terms of the Partnership Agreement); and (ii) in subsequent Transfers, the Investor Limited Partner or an Affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The City hereby approves a Transfer of the Property from Owner to Satellite Affordable Housing Associates, or a non-profit Affiliate of Satellite Affordable Housing Associates, and an assumption of the City Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Owner under the Loan Documents, and (iii) the City is provided executed copies of all documents evidencing the Transfer.

(e) The City hereby approves the purchase of the Investor Limited Partner interest by Satellite Affordable Housing Associates, or a non-profit Affiliate of Satellite Affordable Housing Associates, at or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the City is provided executed copies of all documents evidencing the Transfer.

(f) In the event the general partner of Owner is removed by the limited partner of Owner for cause following default under the Partnership Agreement, the City hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, with significant experience in the ownership and operation of affordable housing projects similar to the Development, and with financial resources sufficient for the ownership of the Development, as selected by the Investor Limited Partner and approved by the City, and (ii) the Investor Limited Partner or an Affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above.

(g) The City hereby approves the grant of the security interests in the Development for financing approved pursuant to the AHLA.

Section 6.2 Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the entire City Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by City. City makes the City Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

Section 6.3 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (a) the anticipated date of the expiration of the Term, (b) any anticipated increase in Rent upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to City, and (d) a statement that a public hearing may be held by City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Owner shall also file a copy of the above-described notice with City.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a three (3) year notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term, (iii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iv) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; and (v) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.4 Covenants to Run with the Land. City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

Section 6.5 Enforcement by the City.

(a) If Owner fails to perform any obligation under this Agreement, and fails to cure the default within 30 days after City has notified the Owner in writing of the default or, if the default cannot be cured within 30 days, fails to commence to cure within 30 days and thereafter diligently pursue such cure, City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(1) Calling the Loan. City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Deed of Trust.

(2) Action to Compel Performance or for Damage. City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

(3) Remedies Provided Under Loan Documents. City may exercise any other remedy available at law or provided under the Loan Documents.

(b) The City shall provide notice of a default to the Investor Limited Partner and any limited partner of Owner who has requested written notice from the City in the manner set forth in Section 6.1 of the Loan Agreement, and the Investor Limited Partner shall have the right, but not the obligation to cure such event of default.

Section 6.6 Attorney's Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.7 Recording and Filing. City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Alameda.

Section 6.8 Governing Law. This Agreement shall be governed by the laws of the State of California.

Section 6.9 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Alameda, California. The City agrees to amend this Agreement at the Construction Loan Closing to reflect any changes made to the affordability levels and other factual changes and to make other reasonable amendments as requested by the Investor Limited Partner or lenders included in the approved Financing Plan (as those terms are defined in the AHLA).

Section 6.10 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent. Notices shall be sent to:

City: City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attention: Community Development Director
(with copy to City Attorney)

Developer: Thornton, L.P.
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, California 94703
Attention: Chief Executive Officer

With a copy to: Gubb & Barshay
235 Montgomery Street, Suite 1110
San Francisco, CA 94104
Attention: Erica Williams Orcharton

Section 6.11 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

Section 6.12 Multiple Originals; Counterparts. This Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 6.13 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this Regulatory Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or a leasehold interest in the Property.

Section 6.14. Indemnification. Owner shall defend, indemnify and hold the City and its officials, officers, directors, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of Owner's failure to perform any obligation as and when required by this Agreement, or any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Development or the Property, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section 6.14. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Development or the Property with counsel reasonably approved by City. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

Section 6.15. Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

Section 6.16. Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or designee, without further approval by the City Council.

Section 6.17. Time is of the Essence. Time is of the essence in the performance of this Agreement.

Section 6.18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the City and Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

[signatures on following page]

CITY:

CITY OF NEWARK, a California municipal corporation

By: _____
David Benoun, City Manager

Attest:

By: Kathleen L. Slayter for
Sheila Harrington, City Clerk

Approved as to Form:

By: _____
Kris Kokotaylo, City Attorney

OWNER:

THORNTON, L.P.,
a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit
corporation,
its general partner

By: _____
Name: Susan Friedland
Its: Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF Alameda)

On April 21, 2023, before me, Kathleen L. Slafter, Notary Public, personally appeared David Benoun, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

KATHLEEN L. SLAFTER
Notary Public - California
Alameda County
Commission # 2347536
My Comm. Expires Feb 17, 2025

Kathleen L. Slafter

Name: Kathleen L. Slafter
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

OWNER:

THORNTON, L.P.,
a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit corporation,
its general partner

By: _____
Name: Susan Friedland
Its: Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF Alameda)

On April 19, 2023, before me, Stacy Zamora, Notary Public, personally appeared Susan Friedland, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

STACY ZAMORA
Notary Public - California
Alameda County
Commission # 2408666
My Comm. Expires Jun 21, 2026

Name: Stacy Zamora
Notary Public

* Stacy Zamora
Alameda County
com # 2408666
Exp Jun 21, 2026

EXHIBIT A
Property Description

6361 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the N/W line of Thornton Avenue distance thereon North 33° 00' East 440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue distance thereon North 33° 00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM the Southeastern 10 feet, as granted to the City of Newark recorded September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.

APN: 092A-0919-016-02

6375 Thornton Avenue:

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00' East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00' East 55.00 feet; thence North 56° 58' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 58' East 150.00 feet to the point of beginning.

APN: 092A-0919-018

EXHIBIT H

CERTIFICATE OF COMPLETION

Recording requested by and when recorded mail to:	
EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383	

Space above this line for Recorder's use.

CERTIFICATE OF COMPLETION

This Certificate of Completion (this "**Certificate**") is made by the City of Newark, a California municipal corporation ("**City**"), effective as of _____, 202__.

RECITALS

A. City and Thornton, L.P., a California limited partnership ("**Owner**"), entered into that certain Affordable Housing Loan Agreement dated as of April 1, 2023 ("**Loan Agreement**") concerning the development of a fifty-seven (57) unit affordable housing development (the "**Development**") on certain real property located in the City of Newark, California and more particularly described in Exhibit A attached hereto (the "**Property**"). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Loan Agreement.

B. Pursuant to Section 3.13 of the Loan Agreement, the City is required to furnish the Owner or its successors with a Certificate of Completion upon completion of construction and development of the Development in accordance with the Loan Agreement.

C. The City has determined that the construction and development of the Development has been satisfactorily completed in accordance with the Loan Agreement.

NOW, THEREFORE, the City hereby certifies as follows:

1. Construction and development of the Development has been satisfactorily completed in conformance with the Loan Agreement.

2. All use, maintenance and nondiscrimination covenants contained in the Loan Agreement and the City Regulatory Agreement recorded in the Official Records on

_____, 2023 as Instrument No._____ in connection therewith shall remain in effect and enforceable in accordance therewith. This Certificate does not constitute evidence of Owner's compliance with those covenants in the Loan Agreement or City Regulatory Agreement that survive the issuance of this Certificate.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a deed of trust securing money loaned to finance the Improvements or any part thereof (except City) and does not constitute a notice of completion under the California Civil Code.

4. Nothing contained in this instrument shall modify any provisions of the Loan Agreement, City Regulatory Agreement or any other document executed in connection therewith.

IN WITNESS WHEREOF, City has executed and issued this Certificate of Completion as of the date first written above.

THE CITY OF NEWARK

By: _____

Name: _____
[Title]

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

SIGNATURES MUST BE NOTARIZED.

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

6361 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the N/W line of Thornton Avenue distance thereon North 33° 00' East 440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue distance thereon North 33° 00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM the Southeastern 10 feet, as granted to the City of Newark recorded September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.
6375 Thornton Avenue

APN: 092A-0919-016-02

6375 Thornton Avenue:

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00' East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00' East 55.00 feet; thence North 56° 58' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 58' East 150.00 feet to the point of beginning.

APN: 092A-0919-018

EXHIBIT I

CITY INSURANCE REQUIREMENTS

Prior to issuance of building permits for the Project and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Property ("Improvements"), in an amount equal to one hundred percent (100%) of the full replacement cost of all such property.

1. The insurance shall:

(a) Cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property,

(b) Cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management City or as shown on a National Flood Insurance Program flood map;

2. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars ($10,000) deductible (or such higher deductible approved by the City, which approval shall not be unreasonably withheld) from the loss payable for any casualty.

3. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property and the Improvements. The limits of liability under this Paragraph B shall be not less than Two Million Dollars ($2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars ($10,000) or such higher deductible as may be approved by City, which approval shall not be unreasonably withheld.

1. The insurance shall also include coverage for:

(a) Liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;

(b) Premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(c) Environmental liability and indemnification of City therefore;

(d) Broad form property damage liability;

(e) Additional insured and primary insured endorsements protecting the City and its respective elected and appointed officials, officers, employees and agents;

(f) Personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Property or engaged in services or operations in connection with the Project or the Property. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Property include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Property.

E. General Insurance Provisions.

1. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Project, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit D, Owner shall deliver to City certificates evidencing the insurance required to be carried by Owner under this Exhibit D. If requested by City, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

2. Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide:

(a) A waiver by the insurer of the right of subrogation against City, Owner or any tenant of the Project for negligence of any such person,

(b) A statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and

(c) A provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(d) By endorsements, City, and its elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. City shall be named as loss payee on the property insurance policies required to be maintained hereunder.

3. Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to City.

4. All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

5. Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with City prior to commencement of construction of any Improvements.

6. Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability

7. Each policy shall be written as a primary policy not contributing with and not in excess of coverage that City may carry.

8. Each policy shall expressly provide that City shall not be required to give notice of accidents or claims and that City shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit F-3 may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Property and the Project shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, City and Owner each waive any right to recover against the other:

1. Damages for injury or death of persons,

2. Damage to property,

3. Damage to the Property or the Improvements or any part thereof, or

4. Claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either City or Owner.

This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Property, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

5273725.5

FIRST AMENDMENT TO AFFORDABLE HOUSING LOAN AGREEMENT

THIS FIRST AMENDMENT TO AFFORDABLE HOUSING LOAN AGREEMENT (the "First Amendment") is made and entered into as of February __, 2025, by and between the **CITY OF NEWARK**, a California municipal corporation (the "City"), and **THORNTON, L.P.,** a California limited partnership (the "Developer").

RECITALS

A. City and Developer have entered into an Affordable Housing Loan Agreement with respect to certain property located at 6347, 6361 and 6375 Thornton Avenue, Newark, California (the "**Property**"), dated as of April 1, 2023. Developer intends to construct, operate and maintain a 59-unit multifamily affordable housing development for lower income and very low income households on the Property (the "**Development**").

B. Pursuant to the AHLA, City has made a loan to Developer in the amount of Twelve Million Dollars ($12,000,000) to be used for the expenses related to the acquisition of the Property and the construction of the Development (the "**City Loan**"). City has disbursed to Seller a portion of the City Loan funds as needed to acquire the Property, and Developer has purchased the Property with such funds. Seller has executed and delivered to Purchaser a "**Promissory Note**" in the original principal amount of the City Loan, dated April 1, 2023, and has recorded a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, dated April 1, 2023 ("**Deed of Trust**"). The Parties have also executed a Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory Agreement**"), dated April 1, 2023, as an encumbrance to the Property.

C. In order to assist the Developer in securing the funds needed for the construction and operation of the Development, Developer now desires to sell the Property to the City, and City desires to purchase the Property from the Developer. The Parties intend that after acquiring the Property the City would subsequently ground lease the Property back to the Developer for the construction and operation of the Development thereon.

D. City and Developer now desire to make certain revisions to the AHLA and other associated documents that have been or will be entered in connection therewith. All capitalized terms used herein that are not otherwise defined herein shall have the same meaning as set forth for such terms in the AHLA.

NOW, THEREFORE, City and Developer hereby agree as follows:

1. Conveyance of the Property. Section 3.1 of the AHLA is hereby amended to read as follows:

"3.1 The Property.

a. Sale of Property to City. Concurrently with the execution of the First Amendment, City and Borrower shall enter into a Purchase and Sale Agreement and Joint

Escrow Instructions ("**Purchase and Sale Agreement**"), substantially in the form attached to the First Amendment as Exhibit "A", which provides for Borrower's sale of the Property to City. Upon the close of escrow for the City's acquisition of the Property, the Parties shall enter into an Amended and Restated Promissory Note substantially in the form attached to the First Amendment as Exhibit "B", the City shall execute and record in the Official Records a Reconveyance of the City Deed of Trust, substantially in the form attached to the First Amendment as Exhibit "C", and a Termination of Regulatory Agreement, substantially in the form attached to the First Amendment as Exhibit "D".

b. Ground Lease of Property to Borrower. Concurrently with the close of escrow for the City's acquisition of the Property, City and Borrower shall enter into a Ground Lease Option Agreement, substantially in the form attached hereto as Exhibit "E", which provides to Borrower a binding option to ground lease the Property from the City, for a term of not less than 99 years from the date of the City's Certificate of Occupancy for the Development, for the construction and operation of the Development thereon. Concurrently with the parties' execution of the Ground Lease, the Borrower shall execute and record in the Official Records a new City Deed of Trust which encumbers the Borrower's leasehold interest in the Property, and the parties shall execute and record in the Official Records a new Regulatory Agreement substantially in the form attached to the AHLA as Exhibit G, with such additions as are mutually acceptable to the parties, including an increase of total unit count from 57 to 59 units, which encumbers the Borrower's leasehold interest in the Property."

2. City Loan. Sections 4.1 and 4.2 of the AHLA shall be revised as follows:

4.1 City Loan. The City shall provide a loan in the amount of Eight Million Five Hundred Twenty-Three Thousand Seven Hundred Forty-Three Dollars and Sixteen Cents ($8,523,743.16) (the "**City Loan**") to Borrower upon the terms and conditions and for the purposes set forth in this Agreement. The City Loan shall be evidenced by an Amended and Restated Promissory Note (the "**City Promissory Note**") substantially in the form attached to the First Amendment as Exhibit B, and shall be secured by a deed of trust (the "**City Deed of Trust**") executed by Borrower as Trustor, substantially in the form attached to the AHLA as Exhibit D, with the modification of the City Loan amount and other mutually acceptable modifications, and recorded against the Property and subordinate only to such liens as City shall approve in writing. The outstanding principal balance of the Note will accrue simple interest at the rate of three percent (3%) per annum.

Provided that Borrower has complied with all conditions precedent to disbursement of the City Loan set forth in Section 4.6, the proceeds of the City Loan ("**City Loan Proceeds"**) shall be disbursed in accordance with Section 4.2 hereof. The Parties agree that City shall disburse City Loan Proceeds only for the purposes set forth in Section 4.2.

"4.2. Use and Disbursement of Proceeds. The City Loan Proceeds shall be used as follows:

a. A portion of the City Loan Proceeds shall be used to fund a portion of Borrower's predevelopment costs for the Development, which shall be funded prior to the commencement of the Ground Lease, and in accordance with the Predevelopment Loan Component Budget included in the Preliminary Financing Plan (the "**Predevelopment Loan Component**"). The Predevelopment Loan Component shall not exceed Eight Hundred Seventy Thousand Six Hundred Twenty-Three Dollars ($870,623).

b. The remaining undisbursed portion of the City Loan Proceeds (*i.e.,* $8,523,743.16 less the total amount of the Predevelopment Loan Component that has actually been disbursed) shall be used to pay for the cost of construction of the Development, and development fees and other costs related to the construction of the Development, in accordance with the Construction Loan Component Budget included in the Revised Financing Plan, to be funded through monthly City Loan draws after the Construction Loan Closing (the "**Construction Loan Component**"). City Loan Proceeds shall not be used or disbursed for Borrower fee, overhead or profit."

3. Security for City Loan. The following shall replace the last sentence of Section 4.3 of the AHLA:

"The City Deed of Trust dated _____, that was executed and recorded in the official records of Alameda County on _____, as Document No. _____, shall be released and reconveyed concurrently with the City's acquisition of the Property from the Borrower pursuant to the Purchase and Sale Agreement. The City Deed of Trust, with appropriate modifications to reflect its change to a leasehold deed of trust and the change in the City Loan amount, shall be re-signed and recorded in the Official Records as an encumbrance to the Borrower's ground leasehold interest in the Property concurrently with the Construction Loan Closing. Upon the Construction Loan Closing, the City Deed of Trust may be subordinated to such construction and permanent financing which are designated as senior loans in the Revised Financing Plan approved by the City, pursuant to any subordination agreements agreed upon by the City and senior lenders, as applicable. Such senior loans shall not encumber the City's fee title to the Property."

4. Title Policy. The following shall be added to the end of Section 4.4 of the AHLA:

"A new lender's policy of title insurance, and/or endorsements reasonably acceptable to the City, shall be provided to the City upon the construction loan closing."

5. Revised Financing Plan. The Revised Financing Plan attached hereto as Exhibit F is hereby approved by the City in accordance with Section 4.5 of the AHLA.

6. Conditions to Disbursement of Construction Loan Component. The following replaces subparagraph (d) of Section 4.7 of the AHLA:

"(d) The Title Company's issuance of a new lender's policy of title insurance, and/or such endorsements to the City Title Policy as are required by the City.

(e) The Ground Lease has been duly executed, and the new City Deed of Trust, Regulatory Agreement and Memorandum of Ground Lease have been duly executed and recorded in the Official Records as encumbrances to Borrower's leasehold interest in the Property."

7. **Mortgages**. The following shall be added to the end of Section 8.1 of the AHLA:

"All mortgages and deeds of trust shall encumber only Borrower's leasehold interest in the Property, and shall not encumber the City's fee interest in the Property."

8. **Defaults.** The following shall be added to the end of Section 10.1 of the AHLA:

"(n) Any default of the Purchase and Sale Agreement or Ground Lease which has not been cured within the time set forth in the applicable document."

9. No Other Amendments. Except as amended by this First Amendment, the AHLA shall continue unmodified and in full force and effect. All terms not separately defined herein shall have the meanings as defined in the AHLA.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed as of the date set forth above.

CITY:

CITY OF NEWARK, a municipal corporation

By: _____
David Benoun, City Manager

Attest:

_____
Sheila Harrington, City Clerk

Approved as to Form:

-_____
Kristopher Kokotaylo, City Attorney

DEVELOPER:

THORNTON, L.P.,
a California limited partnership

By: SAHA Thornton LLC,
a California limited liability company,
its general partner

By: Satellite Affordable Housing Associates,
a California nonprofit public benefit corporation,
its sole member/manager

By:_____
Susan Friedland,
Chief Executive Officer

EXHIBIT "A"

FORM OF PURCHASE AND SALE AGREEMENT

[To Be Attached]

PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "Agreement") is entered into as of _____, 2025 (the "Effective Date"), by and between Thornton, L.P., a California limited partnership ("Seller"), and the City of Newark, a California municipal corporation ("Purchaser"). Seller and Purchaser are collectively referred to herein as the "Parties."

RECITALS

A. Seller and Purchaser have entered into an Affordable Housing Loan Agreement with respect to certain property located at 6347, 6361 and 6375 Thornton Avenue, Newark, California (the "Property"), dated as of April 1, 2023, as amended by the First Amendment to Affordable Housing Loan Agreement dated February __, 2025 (as amended, the "AHLA"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

B. Pursuant to the AHLA, Purchaser has made a loan to Seller in the amount of Twelve Million Dollars ($12,000,000) to be used for the expenses related to the development of an affordable housing project on the Property (the "City Loan"). Purchaser disbursed to Seller a portion of the City Loan funds as needed to acquire the Property, and Seller purchased the Property with such funds. Seller executed and delivered to Purchaser a "Promissory Note" in the original principal amount of the City Loan.

C. The First Amendment to the AHLA provides for Seller to enter into an agreement to sell the Property to Purchaser for the same price that Seller paid for the acquisition of the Property.

D. By this Agreement, Purchaser agrees to purchase the Property from Seller, and Seller agrees to sell the Property to Purchaser, subject to the terms and conditions of this Agreement.

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

Incorporation of Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

Purchase and Sale.

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

2.2 **Purchase Price**. The purchase price for the Property to be paid by Purchaser to Seller (the "Purchase Price") is Three Million Four Hundred Twenty-Nine Thousand Three Hundred Seventy-Seven Dollars ($3,429,377). The Purchase Price shall be paid through a reduction of the balance of the Promissory Note in the amount of the Purchase Price. The Parties shall execute and deliver into Escrow an "Amended and Restated Promissory Note," substantially in the form attached hereto as Exhibit "E", which memorializes such reduction of the balance of the Promissory Note.

Escrow.

3.1 **Escrow Account.** Purchaser has opened an escrow account (the "**Escrow**") with Old Republic Title Company, Title Officer Julie Massey (the "Escrow Holder"). Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 **Opening of Escrow**. Within five (5) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the "Opening of Escrow**,**" and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 **Satisfaction of Due Diligence Contingency**. Purchaser will have _____ (__) days from Opening of Escrow (the "Due Diligence Contingency Period") to complete physical inspections of the Property and due diligence related to the purchase of the Property. Seller shall provide to Purchaser copies of all reasonably available and known documents relating to the ownership and use of the Property, including but not limited to plans, permits and reports (such as environmental, engineering and land surveys) that Seller has in its possession not later than five (5) days following the execution and delivery of this Agreement.

3.4 **Due Diligence Inspections.** During the Due Diligence Contingency Period, Purchaser and its agents, contractors and employees shall have the right to enter upon the Property for the purpose of making inspections or to perform environmental testing, at Purchaser's sole risk, cost and expense. All of such entries upon the Property shall be within fifteen days after the Effective Date of this Agreement, during normal business hours and after at least twenty-four (24) hours prior notice to Seller, and Seller or Seller's agent shall have the right to accompany Purchaser during any activities performed by Purchaser on the Property. At Seller's request, Purchaser shall provide Seller with a copy of the results of any environmental tests and inspections made by Purchaser, at no cost to Seller. If any inspection or test disturbs the Property, Purchaser will restore the Property to the substantially the same condition as existed before the inspection or test. Purchaser shall defend, indemnify and hold Seller and the Property harmless from and against any and all losses, costs, damages, claims or liabilities, including but not limited to, mechanic's and materialmen's' liens, arising out of or in connection with Purchaser's inspection of the Property as allowed pursuant to this Section 3.4.

3.5 Termination Upon Due Diligence Disapproval. Purchaser shall have the right, in its sole discretion, to terminate this Agreement for any reason (or no reason) by written notice to Seller prior to the expiration of the Due Diligence Contingency Period (as it may be extended). If Purchaser timely sends such a termination notice, this Agreement shall terminate,

and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. In the event of Purchaser's termination of this Agreement pursuant to this Section 3.5, Purchaser shall be responsible for the costs of Escrow and any cancellation fees.

Property Disclosure Requirements.

4.1 **Condition of Title/Preliminary Title Report**. Escrow Holder shall deliver a Preliminary Title Report for the Property (the "Preliminary Report") to Purchaser within three (3) days after the Opening of Escrow. Purchaser shall have until the end of the Due Diligence Contingency Period to approve or disapprove the condition of title to the Property; provided that all existing deeds of trust, mechanic's liens and other financial liens and encumbrances, if any, shall be paid off and removed from title concurrently with or prior to the Closing. If there are any changes to the Preliminary Report prior to Closing, Purchaser shall have five (5) days after receipt of the revised Preliminary Report to approve or disapprove such changes.

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

5. **Closing and Payment of Purchase Price.**

5.1 **Closing.** The closing (the "Closing" or "Close of Escrow") will occur no later than _____ (__) days after the expiration of the Due Diligence Contingency Period, as it may be extended ("Closing Date"), or such other date that the Parties agree in writing. In the event that Closing has not occurred on or prior to the Closing Date, either Party not then in default may, upon five (5) days advance written notice to the other Party, terminate this Agreement and the Escrow. As long as neither Party so elects to terminate this Agreement and the Escrow, Escrow Holder shall close the Escrow as soon as possible. Upon any such termination of this Agreement, neither Party shall have any further rights or obligations hereunder, except for the rights and obligations expressly provided to survive termination of this Agreement.

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

(a) Purchaser has not sent a notice of termination to Seller prior to the end of the Due Diligence Contingency Period.

(b) Seller has deposited into the Escrow a fully executed "Grant Deed" substantially in the form attached hereto as Exhibit "B" and incorporated herein.

(c) Seller has deposited into the Escrow a fully executed "Lease Option Agreement" and "Memorandum of Lease Option" substantially in the form attached hereto as Exhibit "C" and incorporated herein.

(d) Seller and Purchaser have executed and deposited into Escrow a Lease of City Real Property ("Short-Term Property Lease Agreement") substantially in the form attached hereto as Exhibit "D" and incorporated herein.

(e) Seller and Purchaser have executed and deposited into Escrow an Amended and Restated Promissory Note substantially in the form attached hereto as Exhibit "E" and incorporated herein.

(f) Purchaser has executed and deposited into Escrow a Reconveyance of Deed of Trust substantially in the form attached hereto as Exhibit "F" and incorporated herein.

(g) Seller and Purchaser have executed and deposited into Escrow a Termination of Regulatory Agreement substantially in the form attached hereto as Exhibit "G" and incorporated herein.

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

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

(j) The Title Company is irrevocably committed to issue a CLTA or ALTA standard coverage title insurance policy to Purchaser, together with such endorsements as are requested by Purchaser, effective as of the Closing Date, insuring title to Purchaser in the full amount of the Purchase Price, subject only to those exceptions to title which have been approved by Purchaser.

(k) There shall be no litigation or administrative proceeding pending with respect to the Property as of the Closing, nor any moratoria which would adversely impact the development of the Property.

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

(a) Purchaser has deposited into the Escrow all costs required by this Agreement to be paid by Purchaser.

(b) Purchaser has deposited into the Escrow the Grant Deed Acceptance, Lease Option Agreement, Memorandum of Option, Short-Term Property Lease Agreement, Amended and Restated Promissory Note, Reconveyance of Deed of Trust,

Termination of Regulatory Agreement, and all documents to be submitted by Purchaser pursuant to this Agreement, all duly executed by Purchaser and notarized where applicable.

(c) Purchaser has performed all obligations to be performed by Purchaser pursuant to this Agreement before the Closing Date.

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

5.4 **Conveyance of Title**. Seller will deliver fee simple title to Purchaser at the Closing, subject only to the exceptions to title which have been approved by Purchaser.

5.5 **Deliveries at Closing.**

Deliveries by Seller. Seller shall deposit into the Escrow for delivery to Purchaser at Closing duly executed original copies of the Grant Deed, Lease Option Agreement, Memorandum of Option, Termination of Regulatory Agreement, Amended and Restated Promissory Note and Short-Term Property Lease Agreement.

Deliveries by Purchaser. No less than one (1) business day prior to the close of escrow, Purchaser shall deposit into Escrow duly executed original copies of the Grant Deed Acceptance, Lease Option Agreement, Memorandum of Option, , Reconveyance of Deed of Trust, Termination of Regulatory Agreement, Amended and Restated Promissory Note, Short-Term Property Lease Agreement, and immediately available funds in the amount equal to the Escrow fees and recording fees, and the cost of the Title Policy.

Closing. Upon Closing, Escrow Holder shall: (i) record the Grant Deed and the Grant Deed Acceptance, Memorandum of Option, Reconveyance of Deed of Trust, and Termination of Regulatory Agreement; (ii) charge the Purchaser for documentary transfer taxes and governmental conveyance fees, if any; (iii) deliver to Seller and Purchaser a certified copy of the executed Grant Deed; (iv) pay any expenses payable through Escrow; and (v) distribute to itself the payment of Escrow fees and expenses required hereunder.

Closing Costs. Purchaser will pay all Escrow fees, recording fees, title insurance and title report costs, documentary transfer taxes and governmental conveyance fees, if applicable. All costs payable by Purchaser hereunder shall be deemed disbursements of the City Loan and shall be added to the balance of the Amended and Restated Promissory Note.

Proration of Taxes. At the Close of Escrow, Seller shall be responsible for a prorated share of property taxes and assessments due through the Close of Escrow. In the event that, prior to the Close of Escrow, Seller has paid the installment of property taxes and assessments applicable to the current period, there shall be no proration of property taxes and assessments, and Seller shall be responsible for applying for a refund of any overpayment of property taxes and assessments as a result of the acquisition of the Property by a public agency. In the event any real property taxes are due and unpaid at the Close of Escrow for any periods prior to the Close of Escrow, Escrow Holder is hereby authorized and instructed to pay such taxes from proceeds due the Seller at the Close of Escrow. At the Close of Escrow, the Purchaser will file a Preliminary

Change of Ownership Report and any necessary documentation with the County Assessor-County Clerk-Recorder for the property tax exemption, and shall be responsible for coordinating with Escrow Holder for the payment of any periods occurring from and after the Close of Escrow (if any are due or payable). Seller shall have the right, after Close of Escrow, to apply for a refund to the County Tax Collector/Assessor outside of Escrow for any overpayments, and if eligible, to receive such refund.

Rent Proration and Security Deposits. Rents paid by any existing tenants shall be prorated through the Close of Escrow, and Seller shall transfer all security deposits of existing tenants to Purchaser through the Escrow.

6. **As Is Conveyance.** Notwithstanding anything to the contrary in this Agreement, this sale is made and will be made without representation, covenant, or warranty of any kind by Seller. As a material part of the consideration for this Agreement, Purchaser agrees to accept the Property on an "as is" and "where is" basis, with all faults, and without any representation or warranty, all of which Seller hereby disclaims. No warranty or representation is made by Seller as to fitness for any particular purpose, merchantability, design, quality, condition, operation or income, compliance with drawings or specifications, absence of defects, absence of hazardous or toxic substances, hazardous materials, hazardous wastes, absence of faults, flooding, or compliance with laws and regulations including, without limitation, those relating to health, safety, and the environment. Purchaser acknowledges that it has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, environmental, economic use, compliance, and legal condition of the Property and that Purchaser is not now relying, and will not later rely, upon any representations and warranties made by Seller or anyone acting or claiming to act, by, through or under or on Seller's behalf concerning the Property. The provisions of this Section 6 shall survive indefinitely any closing or termination of this Agreement.
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7. Remedies. In the event of a breach or default under this Agreement by Seller prior to Close of Escrow, Purchaser reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive in writing the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and the Closing Date until Seller is able to perform; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Purchaser any and all sums placed into the Escrow by Purchaser, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder. In the event of a breach or default under this Agreement by Purchaser prior to Close of Escrow, Seller shall have all remedies available at law or equity.

8. Brokers. Each Party represents that no real estate broker has been retained by it in the procurement of the Property or negotiation of this Agreement. Each Party shall indemnify, hold harmless and defend the other Party from any and all claims, actions and liability and any commission, finder's fee, or similar charges from such Party's broker, and its respective employees, agents, consultants and contractors.

9. Assignment. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Purchaser may assign its rights or delegate its duties under this Agreement without the express written consent of the other. No permitted assignment of any of

the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

10. Miscellaneous.

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

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

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

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

10.5 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

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

10.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If

any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

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

To Purchaser: City of Newark
37101 Newark Blvd
Newark, California 94560
Attention: _____

To Seller: Thornton, L.P.
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, California 94703
Attention: Chief Executive Officer

If to Escrow Holder: Old Republic Title Company
555 12th Street, Suite 2000
Oakland, California 94607
Attention: Julie Massey, Title Officer

Email: JMassey@ORTC.com

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

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

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

10.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is

required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

10.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

10.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by another party shall not be construed to be consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

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

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

10.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

10.18 Approvals. Whenever this Agreement calls for Purchaser approval, consent, extension or waiver, the written approval, consent, or waiver of the Purchaser, the City Manager of Purchaser or his or her designee(s) shall constitute the approval, consent, extension or waiver of the Purchaser, without further authorization required from the City Council. Purchaser hereby authorizes the City Manager and his or her designee(s) to deliver any such approvals, consents, or extensions or waivers as are required by this Agreement, or that do not otherwise reduce Purchaser's rights under this Agreement, and to waive requirements under this Agreement, on behalf of the Purchaser.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

PURCHASER:

CITY OF NEWARK

By: _____
David Benoun, City Manager

ATTEST:

By: _____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

By: _____
Kristopher Kokotaylo
City Attorney

SELLER:

THORNTON, L.P., a California limited partnership

By: SAHA Thornton LLC,
a California limited liability company,
its general partner

By: Satellite Affordable Housing Associates,
a California nonprofit public benefit corporation,
its sole member/manager

By:_____
Susan Friedland,
Chief Executive Officer

Exhibit A

LEGAL DESCRIPTION

That real property in the City of Newark, County of Alameda, State of California, described as follows:

6361 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, filed December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the N/W line of Thornton Avenue distance thereon North 33° 00' East 440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, filed December 8, 1916, Map Book 16, Page
11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue distance thereon North 33° 00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.
EXCEPTING THEREFROM the Southeastern 10 feet, as granted to the City of Newark recorded
September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.
6375 Thornton Avenue

APN: 092A-0919-016-02

6375 Thornton Avenue:

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00’ East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00’ East 55.00 feet; thence North 56° 58’ West 150.00 feet; thence South 33° 00’ West 55.00 feet; thence South 56° 58’ East 150.00 feet to the point of beginning.

APN: 092A-0919-018

EXHIBIT B

Recording Requested by and When Recorded, Return to:	

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Exempt from Documentary Transfer Tax
Per Rev. & Tax. Code § 11922
Governmental Agency acquiring title

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, as of _____, 2025, Thornton, L.P., a California limited partnership, hereby grants to the City of Newark, a California municipal corporation and charter city, all that real property located in the City of Newark, County of Alameda, State of California and more particularly described in Attachment No. 1 hereto and incorporated in this Grant Deed by this reference.

By: _____

Attachment No. 1 to Grant Deed

LEGAL DESCRIPTION

6361 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, filed December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the N/W line of Thornton Avenue distance thereon North 33° 00' East 440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page
11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue distance thereon North 33° 00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.
EXCEPTING THEREFROM the Southeastern 10 feet, as granted to the City of Newark recorded
September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.
6375 Thornton Avenue

APN: 092A-0919-016-02

6375 Thornton Avenue:

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00’ East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00’ East 55.00 feet; thence North 56° 58’ West 150.00 feet; thence South 33° 00’ West 55.00 feet; thence South 56° 58’ East 150.00 feet to the point of beginning.

APN: 092A-0919-018

APN:

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 2025 from Thornton, L.P. ("Grantor") to the City of Newark ("City"), is hereby accepted on behalf of the City by the undersigned officer or agent pursuant to authority conferred by resolution of the City Council of the City of Newark adopted on _____, and that the City consents to recordation of the Grant Deed in the official records of Alameda County by its duly authorized officer.

Dated: _____, 2025

CITY OF NEWARK

By: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On_____, 20____ before me, _____, a Notary Public, in and for said State and County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

Exhibit C

LEASE OPTION AGREEMENT

[To Be Inserted]

Exhibit D

SHORT-TERM PROPERTY LEASE AGREEMENT

[To Be Inserted]

Exhibit E

AMENDED AND RESTATED PROMISSORY NOTE

[To Be Inserted]

Exhibit F

RECONVEYANCE OF DEED OF TRUST

[To Be Inserted]

Exhibit G

TERMINATION OF REGULATORY AGREEMENT

[To Be Inserted]

EXHIBIT "B"

AMENDED AND RESTATED PROMISSORY NOTE

[To Be Attached]

AMENDED AND RESTATED PROMISSORY NOTE
(Thornton Avenue)

$8,523,743.16 Newark, California
February __, 2025

FOR VALUE RECEIVED, the undersigned Thornton, L.P., a California limited partnership ("Borrower"), hereby promises to pay to the order of the City of Newark, a California municipal corporation ("Holder"), 37101 Newark Blvd., Newark, California, 94560, Attn: Community Development Director, the principal amount of Eight Million Five Hundred Twenty-Three Thousand Seven Hundred Forty-Three Dollars and Sixteen Cents ($8,523,743.16), plus interest thereon pursuant to Section 2 below (the "City Loan"). This Amended and Restated Promissory Note amends and restates in full that certain Promissory Note dated April 1, 2023 in the amount of $12,000,000 executed by Borrower for the benefit of Holder.

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to pay Holder the principal amount of up to Eight Million Five Hundred Twenty-Three Thousand Seven Hundred Forty-Three Dollars and Sixteen Cents ($8,523,743.16) with interest for the funds loaned to Borrower by Holder pursuant to the Affordable Housing Loan Agreement between Borrower and Holder dated April 1, 2023, as amended by the certain First Amendment to Affordable Housing Loan Agreement dated February ____, 2025 (the "AHLA"). The source of funds for the City Loan is the City of Newark Affordable Housing Fund, from affordable housing impact fees received by the City pursuant to the City's inclusionary housing ordinance. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the AHLA.

2. Interest. The City Loan bears interest from the date of this Note at three percent (3%) interest, until full repayment of the outstanding balance of the City Loan.

3. Term and Repayment Requirements. Principal and interest under this Note in the amount of the City Prorata Percentage of Fifty Percent (50%) of the Residual Receipts is due and payable as set forth in Section 4.9 of the AHLA. The unpaid principal balance hereunder, together with accrued interest thereon, is due and payable no later than the date that is the fifty-seventh (57th) anniversary of the date that a final certificate of occupancy is issued by the City of Newark to certify that the construction of the Development is complete and the Development may be legally occupied (the "Completion Date"), provided, however, if a record of the Completion Date cannot be located or established, the City Loan is due and payable on the fifty-seventh (57th) anniversary of the date of the Ground Lease of the Property between Borrower and Holder.

4. Disbursements. No more than Eight Hundred Seventy Thousand Six Hundred Twenty-Three Dollars ($870,623) of the City Loan shall be disbursed to the Borrower prior to the Construction Loan Closing as defined in the AHLA. All disbursements shall be in accordance with the terms of the AHLA.

5. Prepayment. Borrower may prepay the City Loan at any time without penalty or fee.

6. Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of Holder unless the assignment complies with Section 7.3 of the AHLA. Holder may assign its interest in the Note to any person or entity in Holder's sole discretion.

7. Security. Prior to the closing of the construction financing for the Project and entering into the Ground Lease, this Note shall be secured by an assignment of architect and engineering agreements. After the Ground Lease is executed and a Memorandum of Ground Lease is recorded in the Official Records, the Loan will be secured by a Deed of Trust on the Property, wherein Borrower is the trustor and Holder is the beneficiary. After the Deed of Trust is recorded, its terms will hereby be incorporated into this Note and made a part hereof. This Note is nonrecourse to Borrower and the general and limited partners of the Borrower, and the sole recourse of Holder with respect to the payment of the principal of, and interest on this Note shall be to the Property and the Improvements and any other collateral held by Holder as security for this Note; provided however, nothing contained herein is intended to relieve the Borrower of liability to the extent of any loss for fraud or intentional misrepresentation, or bad faith, waste, willful misrepresentation by the Borrower; or the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); or be deemed in any way to limit the rights of the Holder to obtain specific performance by the Borrower of its covenants under the City Documents, other than the covenants to pay the Holder principal and interest due under this Note.

8. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at the address set forth in the first paragraph of this Note, or to such other place as Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to Holder, and Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the

laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

9. Default.

(a) Any of the following shall constitute an event of default under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the Holder of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 10.1 of the AHLA; and

(iii) The occurrence of any Borrower event of default under the AHLA, the Deed of Trust, the Regulatory Agreement, or other instrument securing the obligations of Borrower under this Note or under any other promissory notes hereafter issued by Borrower to Holder pursuant to the AHLA or the Deed of Trust (the "City Loan Documents"), subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of one or more of the foregoing events of default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of Holder become immediately due and payable upon written notice by Holder to Borrower without further demand.

(c) Holder's failure to exercise the remedy set forth in Subsection 9(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

(d) Notwithstanding anything herein to the contrary, Holder hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent hereunder to Borrower shall be sent to Borrower's limited partners at the address provided pursuant to Section 12.3 of the AHLA.

10. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

11. Miscellaneous Provisions.

(a) All notices to Holder or Borrower shall be given in the manner and at the addresses set forth in the AHLA, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the City Loan Documents, contains the entire agreement between the parties as to the City Loan. It may not be modified except upon written consent of the parties. Any terms used herein but not separately defined herein shall have the definitions set forth in the City Loan Documents.

IN WITNESS WHEREOF, Borrower is executing this Amended and Restated Promissory Note as of the date first above written.

THORNTON, L.P.,
a California limited partnership

By: Satellite AHA Development, Inc.,
a California nonprofit public benefit corporation,
its general partner

By: _____
Name: Susan Friedland
Its: Chief Executive Officer

Approved by Holder:

CITY OF NEWARK

By: _____
David Benoun, City Manager

ATTEST:

By: _____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

By: _____
Kristopher Kokotaylo
City Attorney

EXHIBIT "C"

RECONVEYANCE OF CITY DEED OF TRUST

[To Be Attached]

,Recording requested by and when recorded mail to:

City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

A.P.N.: _____

SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE

WHEREAS, the City of Newark, a municipal corporation (the "**Beneficiary**"), is the Beneficiary under that certain Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing (the "**Deed of Trust**") dated as of _____, executed by Thornton, L.P. as trustor (the "**Trustor**"), to Old Republic Title Company, as trustee (the "**Trustee**"), and recorded on April 28, 2023 as Instrument No. 2023048228 in the Official Records of the County of Alameda, State of California and affecting the real property described therein (the "**Property**");

WHEREAS, the Deed of Trust secures repayment of a loan payable to Beneficiary in the original principal amount of Twelve Million Dollars ($12,000,000);

WHEREAS, concurrently with the recordation of this Substitution of Trustee and Full Reconveyance Trustor has conveyed the Property to Beneficiary;

WHEREAS, the Beneficiary wishes to release and reconvey to the person or persons legally entitled thereto all rights and interests of the Beneficiary in the Property pursuant to the Deed of Trust; and

WHEREAS, the Beneficiary desires to substitute a new Trustee under the Deed of Trust in place and stead of Old Republic Title Company.

NOW THEREFORE, the Beneficiary hereby substitutes itself as Trustee under the Deed of Trust and hereby: (i) reconveys to the person or persons legally entitled thereto, without warranty, all the estate, title and interest acquired by Trustee and by Beneficiary under the Deed of Trust in the Property; and (ii) authorizes the recordation of this instrument in the Official Records of Alameda County.

Dated: _____, 2025

City of Newark, a municipal corporation

By: _____
David Benoun, City Manager

ATTEST:

_____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

_____
Kristopher Kokotaylo, City Attorney

SIGNATURES MUST BE NOTARIZED.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On_____, 20____ before me, _____, a Notary Public, in and for said State and County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

EXHIBIT "D"

TERMINATION OF REGULATORY AGREEMENT

[To Be Attached]

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Newark
3101 Newark Boulevard
Newark, CA 94560
Attn: City Clerk

No fee for recording pursuant to
Government code Section 27383

TERMINATION OF REGULATORY AGREEMENT

This TERMINATION OF REGULATORY AGREEMENT ("Termination") is entered into as of _____, 2025, by and between the CITY OF NEWARK, a California municipal corporation (the "City"), and THORNTON, L.P., a California limited partnership (the "Owner") (City and Owner are hereinafter referred to collectively as the "Parties").

RECITALS

City and Owner have entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated April 1, 2023 _____ (the "Regulatory Agreement") with respect to certain real property located at 6347 – 6375 Thornton Avenue, Newark, California (the "Property"). The Regulatory Agreement was recorded in the official records of Alameda County on April 28, 2023, as Document No. 2023048277.

Owner is now granting the Property to City, and the Parties desire to terminate the Regulatory Agreement as of the date of City's acquisition of the Property.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Termination. From and after the date that this Termination is recorded against the Property, the Regulatory Agreement is hereby terminated, and the Property shall not be bound or burdened by any of the Regulatory Agreement.

IN WITNESS WHEREOF, City and Owner have executed this Termination as of the day and year set forth above.

CITY:

CITY OF NEWARK

By: _____
David Benoun, City Manager

ATTEST:

By: _____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

By: _____
Kristopher Kokotaylo
City Attorney

OWNER:

THORNTON, L.P., a California limited partnership

By: SAHA Thornton LLC,
a California limited liability company,
its general partner

By: Satellite Affordable Housing Associates,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Susan Friedland,
Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On_____, 20____ before me, _____, a Notary Public, in and for said State and County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC

EXHIBIT "E"

FORM OF LEASE OPTION AGREEMENT

[To Be Attached]

OPTION AGREEMENT

This Option Agreement (this "**Agreement**") is made and entered into effective as of _____, 2025 (the "**Effective Date**"), between the City of Newark, a California municipal corporation ("**Optionor**"), and Thornton, L.P., a California limited partnership ("**Optionee**"). Optionor and Optionee are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**" in this Agreement.

RECITALS

A. Optionor and Optionee have entered into an Affordable Housing Loan Agreement with respect to certain property located at 6347, 6361 and 6375 Thornton Avenue, Newark, California (the "**Property**"), dated as of April 1, 2023, as amended by the First Amendment to Affordable Housing Loan Agreement dated February __, 2025 (as amended, the "**AHLA**"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

B. In order to provide for the development of an affordable housing project on the Property (the "**Development**"), by this Agreement, Optionor is granting to Optionee the option and right to enter into a long-term lease of the Property for a nominal One Dollar ($1.00) per year rent, conditioned upon and subject to Optionee's performance of certain criteria relating to the implementation of the development plan for the affordable housing project.

NOW, THEREFORE, the Parties agree as follows:

1. **Grant of Option.** Optionor hereby grants to Optionee the right and option to lease from Optionor that certain real property described in Exhibit "A", conditioned upon and subject to Optionee's satisfaction of the conditions and performance of its obligations as set forth in Section 4 below, as reasonably determined by Optionor (the "**Option**").

2. **Option Term; Exercise of Option.** Optionee may exercise the Option by providing Optionor with written notice of exercise ("**Exercise Notice**") at any time during the Option Term (as defined below), provided, however, that as a condition to the exercise of the Option, Optionee shall have satisfied the conditions and performed its obligations set forth in Sections 4.1 through 4.10 below in all material respects, as reasonably determined by Optionor. The date that the Exercise Notice is given by Optionee to Optionor during the Option Term is referred to herein as the "**Exercise Date**." For purposes of this Agreement, the term "**Option Term**" shall mean the period commencing on the Effective Date and ending June 30, 2027. Optionee shall have the right to exercise two one year extensions of the Option Term, which may be exercised upon written notice to Optionor, the effectiveness of which shall be conditioned upon Optionee being in compliance with this Agreement and the AHLA as of the date of the notice and the date that the extension would take effect. Within thirty (30) days after Optionee's delivery of an Exercise Notice, Optionor shall determine whether Optionee has satisfied all of the conditions and performed its obligations set forth in Sections 4.1 through 4.10 below, and shall deliver written notice thereof to Optionee (which determination shall not be unreasonably withheld, conditioned or delayed). Within thirty (30) days after Optionor's written notice that all such conditions and obligations have been satisfied, Optionor shall deliver to Optionee a form of ground lease of the Property which contains all of the terms and conditions required pursuant to Section 3 of this

Agreement (the "**Ground Lease**"). The Parties shall use good faith efforts to negotiate and mutually agree upon the final form of the Ground Lease, and shall thereupon execute the mutually agreed upon Ground Lease. The executed Ground Lease shall supersede the Temporary Lease in its entirety as of the Commencement Date of the Ground Lease; provided that the Parties shall remain responsible for performance of any obligations which arose under the Temporary Lease at any time prior to the Commencement Date of the Ground Lease.

3. Preparation of Ground Lease. The Ground Lease shall include the following terms and conditions:

a. The Ground Lease shall have a term of not less than 99 years from the effective date of Ground Lease.

b. Annual rent will be One Dollar ($1.00). Lessee agrees to pay Lessor a one-time rent payment in advance, on the Effective Date of Ground Lease in the amount of the full amount of rent due for the term.

c. The Ground Lease will require that construction of the Development will be in accordance with all of the requirements of Article III of the AHLA.

d. The Ground Lease will require compliance with the schedule of performance attached to the AHLA, as such schedule of performance may be amended.

e. Lessor shall have authority to consent to all liens, encumbrances, and clouds on title of the Property and Development in accordance with Article IV of the AHLA and the Revised Financing Plan.

f. The Ground Lease shall require that during the term of the Ground Lease the Optionee shall own fee title to all of the improvements constructed on the Property, and that fee title to such improvements shall revert to Optionor at the expiration or termination of the term of the Ground Lease.

g. The Ground Lease will permit the Optionee to encumber its leasehold interest in the Property to secure any loans deemed necessary by the Optionee, as approved by Optionor. Any funds from a loan secured by the leasehold interest must be used in or on the Property. The Ground Lease will not permit such loans to encumber the Optionor's fee interest in the Property.

h. The Ground Lease shall include standard mortgagee protection provisions.

4. Conditions Precedent to Exercise of Option. Optionee's right to exercise the Option is conditioned upon Optionee's satisfaction of the conditions and performance of its obligations set forth below in this Section 4 in all material respects.

4.1 Construction Plans. Optionor has approved the Construction Plans for the construction of the Development and development of the Property pursuant to Section 3.9 of the AHLA.

4.2 Close of Construction Financing. Optionee shall have provided to Optionor evidence reasonably satisfactory to Optionor that adequate financing (including equity funding, construction financing, and governmental loans and grants) is available to ensure the construction of the Development at the time and in the manner set forth in the Revised Financing Plan.

4.3 Construction Contract. Optionee shall have entered into, or shall provide satisfactory evidence that it is prepared to enter into, general construction contract(s) for the Development in accordance with the requirements of the Ground Lease.

4.4 Insurance. Optionee shall have submitted to Optionor evidence of the insurance policies required pursuant to the Ground Lease.

4.5 Bonds and Security. Optionee shall have submitted to Optionor its proposed form of payment and performance bonds or alternate security in the form required by the Ground Lease.

4.6 Construction to Commence. Optionor shall be reasonably satisfied that construction of the Development is ready to commence in the time and manner referred to in the construction schedule referred to in Section 4.1 above and thereafter shall be pursued to completion in a diligent and continuous manner.

4.7 Surplus Land Act Requirements. Optionor shall have timely made all submissions to HCD and shall have resolved to the satisfaction of Optionor any objection or challenge by HCD regarding compliance with the Surplus Land Act, and there shall be no outstanding notice of violation of the Surplus Land Act from HCD.

4.8 No Default. No Event of Default of this Agreement, the AHLA or the Temporary Lease by Optionee shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Optionee.

4.9 No Litigation. No litigation or other administrative or judicial proceeding that would materially affect Optionee's ability to carry out its obligations with respect to the Development or the Property shall have been filed or be pending.

4.10 Representations and Warranties. The representations of Optionee contained in this Agreement, the AHLA and the Ground Lease shall be correct in all material respects as of the Ground Lease Commencement Date as though made on and as of that date and, if requested by Optionor, the Optionor shall have received a certificate to that effect signed by Optionee.

5. Notices. Any notice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this Agreement shall be in writing and shall be served personally or by reputable express overnight courier service or by U.S. certified mail, return receipt requested, in each case addressed to the relevant parties at the address stated below or at any other address notified by that Party to the other as its address for service. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. Notice of change of address shall be given by written notice in the manner detailed in this Section. Any notice shall be addressed as follows:

If to Optionor:
City of Newark
37101 Newark Blvd
Newark, California 94560
Attention: _____

with a copy to City Attorney

If to Optionee:
Thornton, L.P.
c/o Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, California 94703
Attention: Chief Executive Officer

with a copy to:

Gubb & Barshay LLP
235 Montgomery Street, Suite 1110
San Francisco, CA 94104
Attn: Erica Williams Orcharton

6. Assignment. Optionee shall have the right to assign its rights and obligations under this Agreement to any entity that is permitted or approved by Optionor pursuant to Article 7 of the AHLA.

7. Entire Agreement. This Agreement together with the Exhibits attached hereto supersedes any prior agreement or understanding between the Parties and contains the entire agreement of the Parties concerning the subject of this Agreement together with the Exhibits attached hereto; provided that this Agreement does not modify or supersede the Temporary Lease, which shall remain in effect in accordance with its terms.

8. Optionee Default. Optionee's failure to perform any material obligation of Optionee set forth in this Agreement shall constitute an "**Optionee Default**" under this Agreement unless Optionee cures such failure within thirty (30) days after delivery of written notice of such

failure given by Optionor to Optionee; provided, however, if such failure by its very nature is not reasonably capable of being cured within said thirty (30) day period, then no Optionee Default shall exist so long as Optionee commences to cure such failure within thirty (30) days after delivery of written notice of such failure to Optionor and thereafter diligently prosecutes such cure to completion within ninety (90) days of delivery of such written notice. In the event of an Optionee Default that remains uncured as provided above, Optionor shall have the right to terminate the Option and this Agreement effective upon written notice from Optionor to Optionee.

9. Attorney's Fees. In the event of any dispute or litigation arising in relation to this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and expenses.

10. Governing Law. This Agreement and any lease of the Property by Optionee shall be governed by the law of the state in which the Property is located, notwithstanding any conflict of law provisions to the contrary.

11. No Third Parties Benefitted. The terms and provisions of this Agreement are for the sole benefit of Optionor and Optionee, and no third party is intended to benefit herefrom.

12. Memorandum of Option**.** This Agreement will not be recorded. Concurrently with the execution of this Agreement, Optionor and Optionee shall execute a Memorandum of Option Agreement (the "**Memorandum**") in the form attached hereto as Exhibit "B", which Optionee shall have the right to record in the Official Records of Alameda County. Upon the termination of this Agreement, Optionee shall promptly (and no later than ten (10) days following Optionor's written request) execute and record a Memorandum of Termination of Option Agreement or other instrument of termination reasonably satisfactory to Optionor removing the Memorandum of record.

13. Counterpart Originals. This Agreement may be executed, and any memorandum thereof recorded, in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Facsimile of signatures and copies of signatures sent by electronic pdf shall have the same force and effect as original signatures and each Party shall be entitled to rely upon executed copies of this Agreement transmitted by facsimile and/or electronic pdf to the same and full extent as the originals.

14. Brokers. Optionor and Optionee each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity is entitled to any commission or finder's fee in connection with said transaction. Optionor and Optionee do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any broker, finder or other similar party by reason of any dealings or actions of the indemnifying party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

15. Authority. Optionor and Optionee hereby represent to the other that: (i) such party validly exists and is in good standing and qualified to do business in the State of California, (ii) such party has full right and authority to enter into this Agreement, (iii) each person signing

on behalf of such party is authorized to do so, and (iv) the execution and delivery of this Agreement by such party will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which such party is a party or by which such party may be bound.

16. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

17. Action or Approval. Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the Optionor is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing by the City Manager, without further approval by the City Council. Any such action shall be in writing.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

OPTIONOR:

City of Newark,
a California municipal corporation

By_____
David Benoun, City Manager
ATTEST:

_____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

_____
Kristopher Kokotaylo, City Attorney

OPTIONEE:

Thornton, L.P.,
a California limited partnership

By: SAHA Thornton LLC,
a California limited liability company,
its general partner

By: Satellite Affordable Housing
Associates, a California nonprofit
public benefit corporation, its sole
member/manager

By:_____
Susan Friedland,
Chief Executive Officer

Exhibit A

Legal Description

ATTACHMENT G

Exhibit B

Form of Memorandum of Option Agreement

WHEN RECORDED, MAIL TO:

APN: _____

MEMORANDUM OF OPTION AGREEMENT

This Memorandum of Option Agreement (this "**Memorandum**") is made effective as of _____, 2025 (the "**Effective Date**"), between the City of Newark, a California municipal corporation ("**Optionor**"), and Thornton, L.P., a California limited partnership ("**Optionee**").

RECITALS

A. Optionor is the owner of certain premises located within the City of Newark, California (the "**Property**"), more particularly described on Attachment No. 1 hereto.

B. Optionor and Optionee have entered into that certain unrecorded Option Agreement dated _____, 2025 (the "**Option Agreement**"), pursuant to which Optionor has granted to Optionee an exclusive option to lease the Property on the terms and conditions set forth in the Option Agreement (the "**Option**").

C. Optionor and Optionee desire to execute this Memorandum and cause the same to be recorded in the Official Records of the County of Alameda, California for the purpose of providing constructive notice of the Option and the Option Agreement.

NOW THEREFORE, Optionor and Optionee agree as follows:

1. Pursuant to the Option Agreement, Optionor has granted to Optionee an exclusive option to lease the Property on the terms and conditions set forth in the Option Agreement.

2. The Option granted by the Option Agreement is exercisable for a period commencing on _____, 2025 and ending June 30, 2027, with two one year extension options (the "**Option Term**"), unless sooner expired or terminated in accordance with the terms of the Option Agreement.

3. This Memorandum is for the purpose of providing record notice of the Option Agreement only. Nothing herein shall be deemed to modify, amend or otherwise affect the terms

and conditions of the Option Agreement, and in the event of any inconsistency between the provisions of this Memorandum and the Option Agreement, the provisions of the Option Agreement shall prevail.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Memorandum as of the date referred to above.

OPTIONOR:

City of Newark

By_____
David Benoun, City Manager
ATTEST:

_____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

_____
Kristopher Kokotaylo, City Attorney

OPTIONEE:

Thornton, L.P.,
a California limited partnership

By: SAHA Thornton LLC,
a California limited liability company,
its general partner

By: Satellite Affordable Housing Associates, a California nonprofit public benefit corporation, its sole member/manager

By:_____
Susan Friedland,
Chief Executive Officer

ATTACHMENT G

ATTACHMENT NO. 1

Legal Description of the Property

That real property in the City of Newark, County of Alameda, State of California, described as follows:

6361 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page 11, Alameda County Records, described as follows:

Beginning at a point on the N/W line of Thornton Avenue distance thereon North 33° 00' East 440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue:

Portion of Lot 23, Block "J", Map of Newark Acres, flied December 8, 1916, Map Book 16, Page
11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue distance thereon North 33° 00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.
EXCEPTING THEREFROM the Southeastern 10 feet, as granted to the City of Newark recorded
September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.
6375 Thornton Avenue

ATTACHMENT G

APN: 092A-0919-016-02

6375 Thornton Avenue:

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00’ East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00’ East 55.00 feet; thence North 56° 58’ West 150.00 feet; thence South 33° 00’ West 55.00 feet; thence South 56° 58’ East 150.00 feet to the point of beginning.

APN: 092A-0919-018

ATTACHMENT G

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
County of _____)

On _____, before me, _____ a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

_____
Signature of Notary

(Affix seal here)

ATTACHMENT G

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
County of _____)

On _____, before me, _____ a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

_____
Signature of Notary
(Affix seal here)

ATTACHMENT G

EXHIBIT "F"

REVISED FINANCING PLAN

[To Be Attached]

LEASE OF CITY REAL PROPERTY
AT 6347, 6361 AND 6375 THORNTON AVENUE, NEWARK, CA TO
_____

This lease of real property ("Lease") at 6347, 6361 and 6375 Thornton Avenue, Newark, dated _____, 2025, is by and between the City of Newark, a municipal corporation of the State of California, hereafter called "Lessor," and _____, a California_____, hereafter called "Lessee", collectively referred to as "the Parties".

RECITALS

A.**WHEREAS**, Lessor is the owner in fee of all that certain property described in Exhibit "A", attached hereto and incorporated herein by this reference, along with all buildings and improvements located thereon, hereafter referred to as "Property"; and

B.**WHEREAS**, the Lessor and Thornton, L.P., entered into that certain Option Agreement whereby Thornton, L.P. obtained an option to ground lease the Property from the City ("Option"); and

C.**WHEREAS**, Lessee has requested a short-term lease for the Property during the term of the Option.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the Parties agree as follows:

1. **Lease of Property**. Lessor hereby leases to Lessee the Property, including the buildings and improvements located thereon.

2. **Term of Lease.** The term of this Lease shall commence on the date hereof and shall expire on the earlier of (i) termination of the Option if the Option expires before Lessee exercises the Option; (ii) the date the Lessor and Thornton, L.P., enter into a Ground Lease for the Property or (iii) June 30, 2027 ("Term"). If the term of the Option is extended, the date set forth in subparagraph (iii) above will be extended, to the extent necessary to correspond to the term of the Option. At the end of the term the Parties may mutually agree to extend the term on a month-to-month basis for a period of one (1) year. The Parties may also mutually agree to an early termination.

3. **Condition of Property.** Lessee is fully aware of the existing condition of the Property and accepts the Property in its existing condition.

4. **Rent.** Rent shall be $_____ per month paid on or before the 1st of each and every month of the Term and any extensions herein. In the event this rent amount is not received by Lessor by the 1st of the month, a late fee of $50.00 shall be assessed, except that the late fee shall not be assessed until the 10th of the month for the first month's rent only.

5. **Use of Property.** The Property shall only be used for purposes consistent with the zoning for the Property and in accordance with any permits and approvals issued by the City in its regulatory capacity for such use and no demolition, alterations or construction shall occur during the term unless

otherwise authorized in accordance with Section 16 below. Additionally, Lessee is required to maintain the Property in accordance with Section 13 below and keep the Property secured at all times.

6. **Assignment and Sublease.** Lessee shall not assign this Lease or any interest therein, nor let or sublet the whole or any part of the Property without the express written consent of Lessor which Lessor may grant in its sole discretion, except Lessee shall be permitted to assign this Agreement without the express written consent of Lessor to any affiliated entity of Lessee, provided Lessee provides written notice of such assignment to Lessor at least thirty (30) days prior to the effective date of such assignment and a fully executed copy of any assignment documents. Lessee is permitted to sublet the Property to A&B Construction through approximately December 31, 2025.

7. **Expiration.** Upon the expiration of the Term of this Lease, or of any extension, Lessee shall quit and surrender the Property in as good state and condition, reasonable wear and tear excepted, as its condition at the commencement of said Term.

8. **Compliance with All Laws.** Lessee, at its sole cost, shall comply with all applicable lawful requirements, policies, statutes and ordinances with respect to the use of the Property.

9. **Utilities.** Lessee shall pay all charges for utilities and other services upon the Property, including but not limited to gas, electricity, sewer, water and garbage charges.

10. **Indemnification and Hold Harmless.** Lessee shall defend, indemnify and hold harmless Lessor, its officers, agents, and employees against any liability, claim or loss for damage to any property or injury to or death of any person or persons arising from or connected to the Property during the Term of this Lease, except to the extent such liability claim or loss is attributable to the gross negligence or willful misconduct of Lessor, its officers, agents, or employees. Without limitation, Lessee's indemnification obligations hereunder shall apply to any relocation benefits to which any of Lessee's subtenants may be entitled.

11. **Hazardous Materials.**

A. Hazardous materials are those substances listed in Division 4, Chapter 30, Article 9 of Title 22, California Code of Regulations, or those which meet the toxicity, reactivity, corrosiveness or flammability criteria of Article 11 of the above Code, as well as any other substance which poses a hazard to health or environment.

B. Except as otherwise permitted in the Lease, Lessee shall not use, create, store or allow any such substances on the Property. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted.

C. In no case shall Lessee cause or allow the deposit or disposal of any such substance on the Property.

D. However, household products necessary for routine cleaning and maintenance of the Property may be kept on the Property in quantities reasonable for current needs.

E. Lessor, or its agents or contractors, shall at all times have the right, upon reasonable notice, to go upon and inspect the Property and the operations conducted thereon to assure compliance with the

requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or testing soils or underground tanks on the Property.

F. Breach of any of these covenants, terms and conditions shall give Lessor authority to immediately terminate this Lease. It is the intent of the parties hereto that the Lessee shall be responsible for and bear the entire cost of removal and disposal of hazardous materials or waste introduced to the Property during the term of this Lease. The Lessee shall also be responsible for any cleanup and decontamination on or off the Property necessitated by such materials or waste.

G. Lessee shall further indemnify, defend, and hold Lessor and its officers or employees, harmless from any and all responsibility, loss, damage, liability and expenses (including reasonable attorneys' fees) resulting from the presence or use of hazardous materials on the Property during the Lessee's periods of use and possession.

12. **CASp Compliance**. Pursuant to California Civil Code section 1938, Lessor hereby notifies Lessee that as of the date of this Lease, the buildings located on the Property have not undergone inspection by a "Certified Access Specialist" ("CASp") to determine whether each building meets all applicable construction-related accessibility standards under California Civil Code section 55.53. Lessor hereby discloses pursuant to California Civil Code section 1938 as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the Lessee from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the Lessee, if requested by the Lessee. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Lessor and Lessee hereby acknowledge and agree that in the event that Lessee elects to perform a CASp inspection of the building hereunder (the "Inspection"), such Inspection shall be (a) performed at Lessee's sole cost and expense, (b) limited to the building and (c) performed by a CASp who has been approved or designated by Lessor prior to the Inspection. Any Inspection must be performed at a time reasonably approved by Lessor. Lessor reserves the right to be present during the Inspection. Lessee agrees to: (i) promptly provide to Lessor a copy of the report or certification prepared by the CASp inspector upon request (the "Report"). Lessee shall be solely responsible for the cost of modifications or improvements required to comply with all applicable accessibility standards under state or federal Regulations, as well as any other repairs, upgrades, improvements, modifications or alterations required by the Report or that may be otherwise required to comply with applicable Regulations or accessibility requirements (the "Access Improvements") to the building necessary to correct any such violations of construction-related accessibility standards identified by such Inspection as required by Regulations, which Access Improvements may, at Lessor's option, be performed in whole or in part by Lessor at Lessee's expense, payable as Additional Rent within ten (10) days following Lessor's demand.

13. **Maintenance and Repairs.** Lessee shall be responsible for securing the Property to protect the Property from trespassers, which may include installing security fencing around the perimeter of the Property and taking other appropriate security measures as needed to secure the Property. Lessee shall also keep the Property free of all debris and waste and shall conduct any weed abatement or other

maintenance necessary to keep the Property in a neat and well-maintained manner. Lessor shall not maintain any part of the Property or the improvements located thereupon.

14. **Taxes.** Lessee shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied and assessed against the Property, including but not limited to possessory interest taxes and taxes on any of Lessee's personal property installed or located in or on the Property, that become payable during the term of this Lease. On demand by Lessor, Lessee shall furnish Lessor with satisfactory evidence of these payments.

15. **Insurance**. As a condition precedent to this Lease, Lessee shall provide evidence of insurance in accordance with the insurance requirements shown in Exhibit "B" and incorporated herein by reference. Lessee shall maintain these insurance requirements throughout the lease term and name Lessor as additional insured on its insurance policies.

16. **Alterations, Additions and Improvements.**

A. Lessee shall not undertake any demolition, building, construction, reconstruction or development on the Property without submitting to Lessor a plan and receiving Lessor's approval thereof. Any such approved alterations, additions or improvements shall be made solely at the cost of Lessee and shall not be made until Lessee has obtained any and all necessary permits and approvals.

B. Lessee shall keep the Property free and clear of any and all liens or encumbrances. Lessor shall have the right to post and keep posted in a conspicuous place on the Property a notice of non-responsibility during the period of time during which any alterations, additions or improvements may be made by Lessee.

17. **Waiver.** No waiver by either party at any time of any of the terms, conditions or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of Lessor to reenter the Property or to exercise any right, power or privilege or option arising from any breach shall impair any such rights, power, privilege or option or be construed as a waiver of such breach or a relinquishment of any right or acquiescence therein.

18. **Default**. Should Lessee default at any time in the payment of any installment of rent, or of any other charges when the same become due, or should Lessee default in the performance of any covenant or agreement or condition hereunder, including the use of the Property, and fail to cure the default after thirty (30) days' written notice of such default by Lessor to Lessee, Lessor shall have the right to terminate this Lease forthwith. In the event of such termination, Lessee shall quit and surrender the Property to Lessor and Lessor shall have the right of immediate reentry. The right to terminate this Lease shall be in addition to the other rights or remedies of Lessor in the event of a default.

19. **Binding on Successors**. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

20. **Severability**. If any section, paragraph, sentence, clause, phrase, or portion of this Lease is invalid or shall be held to be invalid, such invalidity shall not affect the validity of the balance of the Lease.

21. **Notice**. Any notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and either personally delivered to the other party or deposited in the United States mail, postage prepaid and addressed as follows:

To Lessee:

To Lessor: City of Newark
37101 Newark Blvd
Newark
Attention: _____

22. **Destruction of Property**. In the event the Property is totally or partially destroyed, rendering the Property totally or partially inaccessible or unusable, either party may terminate this Lease by giving written notice of such termination to the other party.

23. **Taking by Eminent Domain**. If, during the term of this Lease there is any taking of all or any part of the Property or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to this paragraph. If the Property is totally taken by condemnation, this Lease shall terminate on the date of taking. If any portion of the Property is taken by condemnation, the lease terminates as to the part taken and remains in effect as to the remainder. The terms of this Lease shall remain in effect, including a pro rata percentage of the rent commensurate with the percentage of the remainder, as to the remainder unless Lessee shall give written notice of termination to Lessor within thirty (30) days of the date of taking. In the event of either a total or partial taking by condemnation, Lessor shall be entitled to all compensation paid as a result of the taking, whether by negotiated settlement or judgment entered by a court, and Lessee shall have no claim to or interest in any of the proceeds of such eminent domain action.

24. **Memorandum of Lease**. A short form Memorandum of Lease referring to this Lease shall be executed by Landlord and Tenant and recorded in the Official Records of the County of Alameda, California.

25. **Governing Law, Jurisdiction and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Alameda. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Alameda and waive all venue objections.

26. **Integrated Agreement; Amendment**. This document represents the entire and integrated agreement between Lessor and Lessee and supersedes all prior negotiations, representations, and agreements, either written or oral. This document may be amended only by written instrument signed by both Lessor and Lessee.

27. **Electronic Execution and Counterparts.** The Parties agree that this Lease may be signed electronically and may be executed in counterparts.

[SIGNATURES ON NEXT PAGE]

LESSOR:

CITY OF NEWARK,
a California municipal corporation

By:
David Benoun, City Manager

ATTEST:

By:

APPROVED AS TO FORM:

By:

LESSEE:

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____

_____

Exhibit A
Legal Description of the Property

That r

6361 Thornton Avenue

Portion of Lot 23, Block "J", Map of Newark Acres,

Beginning at a point on the N/W line of Thornton Avenue
440 feet from the point of intersection thereof with the N/W line of Cherry Road, as said avenue and
33° 00' East 55 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Newark:

The Southeasterly 10 feet of that certain parcel of land described in the Deed from Clyde W. Lindsay and Marie T. Lindsay, his wife, to Edward C. Jackson and. Eunice M. Jackson, his wife, recorded October 2, 1952 in the Office of the County Recorder of Alameda County in Book 6839, Page 514, Official Records of Alameda County.

APN: 092A-0919-017-02

6347 Thornton Avenue

Portion of Lot 23, Block "J", Map of Newark Acres,
11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue
00' East 495.00 feet from the Northeastern line of Cherry Road, as said avenue and road are shown on said map; running thence along the said line of Thornton Avenue, North 33° 00' East 55.00 feet; thence North 56° 86' West 150.00 feet; thence South 33° 00' West 55.00 feet; thence South 56° 66' East 150.00 feet to the point of beginning.
EXCEPTING
September 10, 1969, Series No. 101382 in Book 2474, Page 50 of Official Records.
6375 Thornton Avenue

APN: 092A-0919-016-02

6375 Thornton Avenue

A portion of Lots 22 and 23 in Block J, map of Newark Acres, filed December 8, 1916, in Book 16 of Maps, Page 11, Alameda County Records, described as follows:

Beginning at a point on the Northwestern line of Thornton Avenue, distant thereon North 33° 00’ East 385 feet from the point of intersection thereof with the Northeastern line of Cherry road, as said Avenue and Road are shown on said map; running thence along said line of Thornton Avenue North 33° 00’ East 55.00 feet; thence North 56° 58’ West 150.00 feet; thence South 33° 00’ West 55.00 feet; thence South 56° 58’ East 150.00 feet to the point of beginning.

APN: 092A-0919-018

Exhibit B

INSURANCE REQUIREMENTS FOR LESSEES

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Lessee, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Lessee shall maintain limits no less than:

1. **Commercial General Liability**: $2,000,000 per occurrence and $3,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.

2. **Workers' Compensation:** Statutory Limits **Employer's Liability**: $1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared and approved by the City of Newark. The lessee shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

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

1. The City of Newark, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; Property owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Newark, its officers, employees, agents or volunteers.

2. For any claims related to this projects, the Lessee's insurance shall be primary. Any insurance or self -insurance maintained by the City of Newark, its officers, officials, employees, agents and volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Newark, its officers, officials, employees, agents or volunteers.

4. The Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Newark.

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 of Newark.

Verification of Coverage

Lessee shall furnish the City of Newark with an original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Newark prior to commencement of lease.

Attachment I

Summary of Risks and Mitigations

Affordable housing development is rarely without setbacks, and oftentimes falls behind schedule due to resource shortages. While the recommended actions are not without risk, said risk should be weighed against the City's existing financial commitments to the Project, and the City Housing Element and Affordable Housing Workplan. The following are three scenarios associated with potential Council action and their related risks.

1. No Action Alternative- Should the City not take action to support the Project's MHP competitiveness, the Project will continue to apply for gap financing in a very competitive environment. The Project will lose its DDA status, creating a larger funding gap and causing the Project to seek additional competitive sources. The Project will likely languish until the state or region secures significant new affordable housing funds, such as through a bond initiative or major budget surplus.

    a. If the City opts to take no action, the Project is almost certain to be unsuccessful in securing MHP and thereby LIHTCs and bonds; the Project would miss its construction commencement and completion deadlines in 2026.

    b. Having been unsuccessful in securing MHP in 2025, the Project would seek alternative funding sources in 2026, subject to their availability. Applicable alternative sources have not been identified at this time. Once all gap funds are secured, the Project would apply for LIHTCs and bonds.

2. Acquire the Project Site and Re-Dispose to SAHA: Acquisition Risks-Should the City acquire the Project Site, the City would absorb legal and financial liability for the Project Site including, but not limited to: prior agreements or obligations to existing or recent tenants, if any; pre-existing environmental conditions; Project Site operation, security and maintenance.

    a. The City could mitigate this risk by transferring site control and all liability back to SAHA shortly after acquisition, likely through some combination of a right of entry and licensing agreement, lease-option agreement, or direct lease of the Project Site back to SAHA. SAHA must have site control to apply for MHP, so it will be in SAHA's interest to agree to terms before the April 2025 MHP application deadline.

    b. Prior to accepting conveyance of the Project Site, the City will conduct due diligence regarding the property, including the review of all environmental documentation and tenant agreements. SAHA conducted its own due

diligence prior to acquiring the Project Site and did not identify significant risks; SAHA's purchase agreement with the Project Site's previous owners included delivering the individual properties vacant.

c. SAHA has leased the Project Site to a contractor of the Alameda County Water District (ACWD), which is undertaking the Central Newark Thornton Avenue Project to replace aging infrastructure and improve water service reliability. The contractor is using the Project Site as a construction management office while completing the ACWD project, which is expected to conclude in June 2025. If the City acquires the Project Site, the City could either be assigned and administer this lease directly, or assign responsibility to SAHA for lease administration. Given the short term nature of this lease, the lessee's limited on-site activities, and its nature as a public project, risk to either scenario is low.

3. Continued Financial Competitiveness- There is a chance that even if the City acquires and re-disposes of the Project Site to SAHA that the Project will not be awarded MHP and/or LIHTCs and bonds before the Performance Milestone deadlines. In addition to the highly competitive nature of those programs' applications, certain factors are outside of the City's control, such as potential for application error on behalf of SAHA, rule changes by HCD, TCAC or CDLAC, or budgetary adjustments at the state or federal levels that reduce funds.

    a. This risk is not uncommon in affordable housing development. Fortunately, SAHA is a competent and committed local developer with a successful track record securing MHP, LIHTCs, bonds, and other competitive funding sources. SAHA has also operated in Newark for over 40 years and owns and manages 200 homes for low-income seniors at Newark Gardens I and II, across the street from Newark Community Center.

    b. Additional Consideration(s): SAHA purchased the Project Site with funds from the City's NOFA. If SAHA defaults on the Agreement, the City would have recourse to reclaim the value of the loan, thereby potentially taking fee title of the Project Site anyway. The recommended action provides a clean and mutually agreeable path to this potential eventuality.



First Amendment to Loan Agreement, Acquisition, Lease, and Declaration of Exempt Surplus Land for SAHA Affordable Housing

February 27, 2025
City Council Meeting

Michael Coulom, Housing Policy and Programs Manager
Carmelisa Lopez, Senior Planner

Agenda

1. Introductions
2. Housing Element and Housing Workplan
3. Thornton Ave Apartments Project History
4. Affordable Housing Finance
5. First Amendment to Loan Agreement
6. Next Steps
7. Staff Recommendation
8. Q&A



Introductions

City of Newark

Steven Turner, Community Development Director

Art Interiano, Deputy Community Development Director

Michael Coulom, Housing Policy and Programs Manager

Carmelisa Lopez, Senior Planner

Satellite Affordable Housing Associates

Jonathan Astmann, Associate Director, Real Estate Development

2023 – 2031 Housing Element

- City Council adopted the Housing Element (HE) on October 26, 2024, whereafter HCD found it compliant with state law on December 21, 2024

- Newark's HE establishes policies and programs to plan for 1,874 new homes by 2031, including 464 homes for very low-income households, and 268 homes for low-income households

- Example programs include:
  - H2.7: Providing financing for the development of new low-income homes
  - H4.1: Developing local preferences for individuals who live/work in Newark
  - H5.3: Utilizing public land for affordable housing development

Affordable Housing Work Plan

- City Council adopted the Affordable Housing Work Plan in May 2021

- Identifies the priority housing needs, types, and programs to help address the needs of Newark residents

- Establishes parameters for use of the Housing Impact Fee Fund
  - 40 percent of funds for development of new affordable housing
  - 40 percent of funds for acquisition of land for new affordable housing
  - 20 percent other uses

Thornton Ave Apartments: Project History

- City released a Notice of Funding Availability on June 2, 2022
- City Council authorized a $12 million loan to Satellite Affordable Housing Associates (SAHA) in March 2023
- The City and SAHA entered into the loan agreement for acquisition and development of three parcels on Thornton Avenue in April 2023



Main Terms of City Loan

Loan Amount	$12,000,000
Interest Rate	3%
Term	57th anniversary of Final Certificate of Occupancy
Repayment	City's prorata share of residual receipts
Affordability	Regulatory Agreement and forthcoming state density bonus and California TCAC regulatory agreements will protect the affordability of 100% of the units (except for the manager's unit)

Main Terms of City Loan

Affordability Levels	33% Extremely Low-Income, 44% Very Low-Income, 22% Low-Income
City Preference	To the extent permitted by law and funding regulations, preference will be given to applicants who live or work in Newark
Covenants Runs With The Land	The Regulatory Agreement remains in place even if the property is transferred to another owner
Subordination	Commitment to meet and confer with the successor owner to discuss need for rent increases to 60% AMI

Main Terms of City Loan

Performance Milestones	Construction Start: Not later than March 31, 2026 Construction Complete: Not later than May 31, 2028
Predevelopment Loan Component	Not to exceed $4.3 million for site acquisition and other predevelopment expenses, such as architectural, engineering or City legal fees
Construction Loan Component	Available at construction close for construction expenses

Thornton Ave Apartments: Project Site

- Project Site consists of 6347, 6361, and 6375 Thornton Avenue
- Each parcel consists of a single-family home previously occupied by commercial uses
- All parcels have been vacant since 2023*



**ACWD is leasing the Project Site through March 31, 2025 for use as a construction office*

Thornton Ave Apartments: Proposed Project

- 59 homes (including one manager's unit) for low- and very low-income households.
- 50+ percent of homes are 2- and 3-bedroom units for families
- 10 homes for households with a member who has an intellectual or development disability (I/DD) and receives services from the Regional Center of the East Bay
- Terraced courtyard with play area and community gardens
- 42 parking stalls

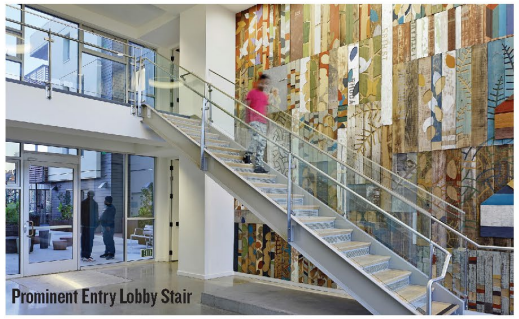
Design Features







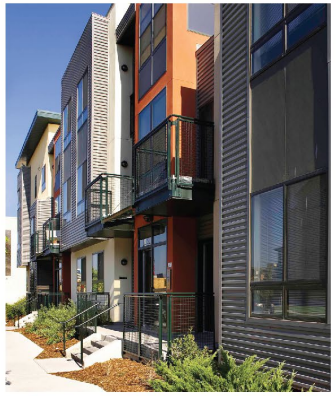





C) Rooftop Photovoltaic Panels



D) Special Corner Frame Elements

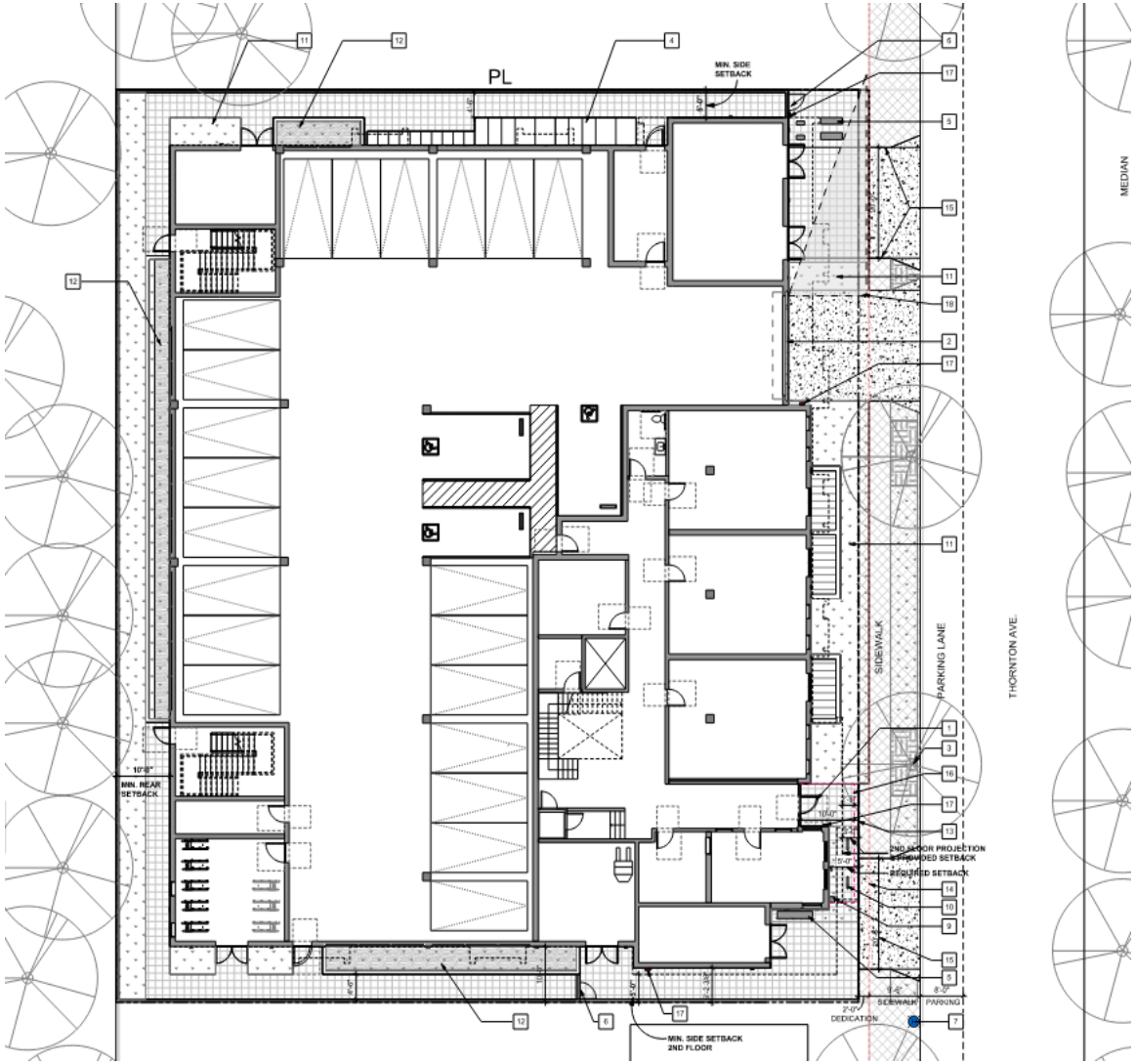

E) Entry Stoops


Community Garden

SAHA SATELLITE AFFORDABLE HOUSING ASSOCIATES

VAN METER WILLIAMS POLLACK LLP

Thornton Ave Apartments: Site Plan



Thornton Ave Apartments: Elevations



SOUTH ELEVATION



EAST ELEVATION

Thornton Ave Apartments: Elevations



WEST ELEVATION



NORTH ELEVATION

Thornton Ave Apartments: Elevations



3 A3.3 COURTYARD WEST ELEVATION



2 A3.3 COURTYARD SOUTH ELEVATION



1 A3.3 COURTYARD NORTH ELEVATION

Thornton Ave Apartments: Renderings



STREET VIEW LOOKING FROM SOUTH SIDE



STREET VIEW LOOKING FROM NORTH SIDE

Thornton Ave Apartments: Renderings



2ND FLOOR COURTYARD



COURTYARD AERIAL VIEW

Project Entitlements

- SAHA submitted a formal entitlement application in December 2023
- City staff and SAHA have worked collaboratively to address various department comments
- The Project requires the following entitlements: Design Review, Tentative Parcel Map Review, a Minor Use Permit for building height over 35 feet, and a Density Bonus request
- The Project also requires City Council approval for Alternative Means of Compliance to the City's Affordable Housing Impact Fees. Because the project is providing affordable units on-site, it is not subject to these fees.

Affordable Housing Finance

- SAHA's Preliminary and Revised Financing Plans target state and federal subsidy programs in addition to the City's loan, including:
  - State Multifamily Housing Program (MHP)
  - State and Federal Low-Income Housing Tax Credits (LIHTC)
  - Federal Home Loan Bank's Affordable Housing Program (AHP)

- State and federal sources are consistently oversubscribed, construction costs continue to increase, and mortgage rates remain high
  - A 2023 report by Enterprise Community Partners identified 433 affordable housing communities in predevelopment in the 9-county Bay Area collectively seeking $9.7 billion in public subsidy

Difficult To Develop Area Status

- Newark lost its Difficult to Develop Area (DDA) status in January 2025
- DDA is a federal designation that accounts for high construction, land and utility costs in relation to area median gross income. Projects in DDAs are eligible for increased tax credit equity and bond authority
- SAHA has secured a DDA extension until December 2026
- If SAHA is not able to obtain outstanding financing by December 2026, it will be more challenging to finance the Project and stay on schedule

Affordable Housing Finance

- SAHA has made progress in this competitive environment
- Significant funding applications are forthcoming

Application Deadline	Program	Source	$ Requested	Notes
COMPLETE	Newark NOFA	City	$12 million	Committed
COMPLETE	DDS/RCEB Loan	State- DDS	$1.5 million	Committed
April 15, 2025	Multifamily Housing Program (MHP)	State- HCD	$10.2 million	
Sept. 9, 2025	Federal LIHTCs/Bonds	TCAC/CDLAC	$20.9 million	Contingent on MHP
Sept. 9, 2025	State LIHTCS	TCAC	$3.5 million	Contingent on MHP
Mid-2025	Affordable Housing Program	FHLB	$1.8 million	Post-Permitting
Undetermined	Project-Based Voucher (PBV)	HACA	7 PBVs	

Affordable Housing Finance

- Governor Newsom's administration is prioritizing public land for affordable housing
- Multiple affordable housing financing programs, including MHP, now allocate extra points to projects on public land
- The City can increase the Project's likelihood of success with MHP and other applications by acquiring the Project Site and leasing it back to SAHA for a long-term and nominal cost
- The City's ownership of the Project Site and long-term, low-cost lease to SAHA would increase the Project's MHP score by three (3) points.

2025 MHP Self-Score

	Scoring Categories	Maximum Possible Score		Thorton Avenue Apartments	
		First 50% of funds	Second 50% of funds	City-Owned Land	SAHA-Owned Land
Universal Scoring Criteria	Serving Households at Lowest Income Levels	30	30	30	30
	State Policy Priorities	18	13	12	9
	Projects in "High/Highest Resource" areas	*5*	*NA*	*0*	*0*
	% of Units Serving Special Needs	*10*	*10*	*9*	*9*
	Projects on Public Land	*3*	*3*	*3*	*0*
	Sponsor and Prop. Mgmt. Experience	20	20	20	20
	Project Readiness	17	17	17	17
	Adaptive Reuse / Infill / Proximity to Amenities / Sustainable Building Methods	10	10	10	10
	Cost Containment	5	5	5	5
Total Possible Universal Points		100	95	94	91

First Amendment to Loan Agreement

- The First Amendment to the Agreement for the City's loan accounts for the following:
  - Increases the Project's ***unit count*** from 57 to 59 homes
  - Revises the ***loan value*** and authorizes the City Manager to enter into various agreements to acquire the Project Site.
  - Revises the Project's ***financing plan*** to reflect a revised loan value of $8,570,623

First Amendment Components

Purchase and Sale Agreement	City to acquire the Project Site for the same price that SAHA originally paid in 2023 ($3,429,377). All closing costs to be paid through the City's loan
Lease Option Agreement	Provides SAHA the right to lease the Project Site from City for 99 years at $1/year Option term extends until June 30, 2027, with two one- (1) year extensions at City's discretion
Memorandum of Option Agreement	To be recorded in the Official Records memorializing the Lease Option Agreement

First Amendment Components

Amended and Restated Promissory Note	Reduces principal balance of Predevelopment Loan Component to account for City's acquisition of the Project Site and re-secures City's loan
Short-Term Lease Agreement	Extends for the duration of the Option Term. Assigns Thornton L.P. with responsibility for operating, maintaining, and securing site for duration of the Option Term. Not subject to the Surplus Land Act
Reconveyance of Deed of Trust	Remove's City's Deed of Trust once City acquires Project Site. A new Deed of Trust will be recorded when the long-term ground lease is executed

First Amendment Components

Termination of Regulatory Agreement	The City will release the current Regulatory Agreement and record a new one against the Project Site once the long-term Ground Lease is executed.

Surplus Land Act

- Leases of public land for longer than 15 years are subject to the Surplus Land Act (California Government Code 54200, *et seq)*

- Prior to disposing of public land, local agencies must determine whether the land is “surplus land” or “exempt surplus” land

- A long-term lease to SAHA for development of affordable housing qualifies as “exempt surplus land” pursuant to Government Code Section 54221(f)(1)(F)

Next Steps

1. In March the City Manager will finalize all terms and conditions and enter into the First Amendment. City staff will notify HCD of City Council's determination that the Project Site is exempt surplus land.

2. By the end of March, the City will complete acquisition of the Project Site and enter into the Lease Option Agreement with SAHA.

3. In March City Staff will present the Proposed Project to the Planning Commission for entitlement approval and subsequently to City Council for alternative means of compliance approval.

4. By April 15, SAHA will apply for HCD's MHP program

Staff Recommendation

Staff recommends that the City Council adopt a resolution to amend the Affordable Housing Loan Agreement, inclusive of authorizing the City Manager to:

1. Enter into a Purchase and Sale Agreement with Thornton L.P. to acquire the Project Site
2. Enter into a Lease Option Agreement with Thornton L.P.
3. Execute an Amended and Restated Promissory Note
4. Enter into a Short-Term Lease Agreement with Thornton L.P.
5. Execute a Reconveyance of Deed of Trust
6. Terminate the Regulatory Agreement for the Project Site

Staff also recommends adopting a resolution declaring the Project Site exempt surplus land and declaring the City's intention to lease it to Thornton L.P. in compliance with the California Surplus Land Act.

Q & A

Staff welcomes questions from Council

STAFF REPORT

Item F. 2.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Oscar Carrillo, Community Preservation Manager
SUBJECT	Community Preservation Presentation

The Community Preservation Division is responsible for enforcing the provisions of the Newark Municipal Code. Its mission is to ensure compliance through intervention, education, and enforcement. Community Preservation is committed to partnering with the community to uphold neighborhood property maintenance standards, preserve property values, and foster a healthy, aesthetically pleasing community to live, work, and play.

Staff will present an overview of Community Preservation's work, emphasizing its process, jurisdiction, and key challenges. They will also highlight recent accomplishments and service improvements and provide a preview of upcoming initiatives.

Attachments

Presentation

Community Preservation Overview and Update



February 27, 2025

Oscar Carrillo – Community Preservation Manager

NEWARK
california

Community Development Department

Overview

- Mission
- Team
- Our Work
- Process
- Accomplishments
- Planned Initiatives
- Q & A



Mission Statement

The Community Preservation Division is responsible for enforcing the provisions of the Newark Municipal Code. To fulfill this duty, we ensure compliance through intervention, education, and enforcement. We are committed to partnering with the community to uphold neighborhood property maintenance standards, with the goal of preserving property values and fostering a healthy, aesthetically pleasing community to live, work, and play.

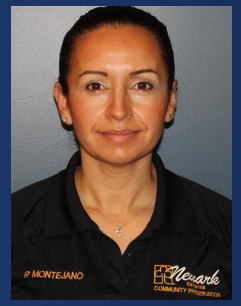


Our Team



Oscar Carrillo

Community Preservation Manager



Patricia Montejano

Community Preservation Specialist



Shama Khan

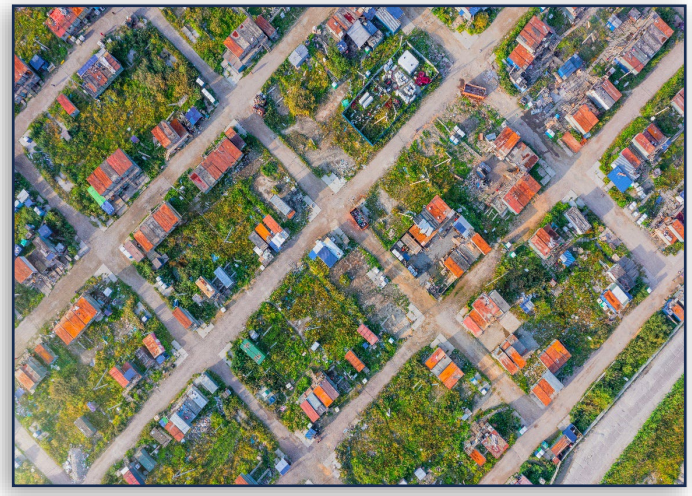
Community Preservation Specialist

What We Do

We enforce various Newark Municipal Codes that regulate ***private property***.

- Blight
- Land Use
- Substandard Housing
- Unpermitted Construction







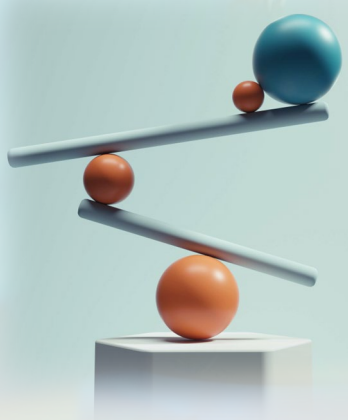


Who We Serve

Reporting Party

- Resident
- Tenant
- Visitor
- City Staff
- Outside Agency

They are both equally important



Responsible Party

- Property Owner
- Attorney
- Business Owner
- Property Manager
- Contractor Architect

Process

- Intake
- Investigation
- Education
- Noticing
- Enforcement
- Resolution









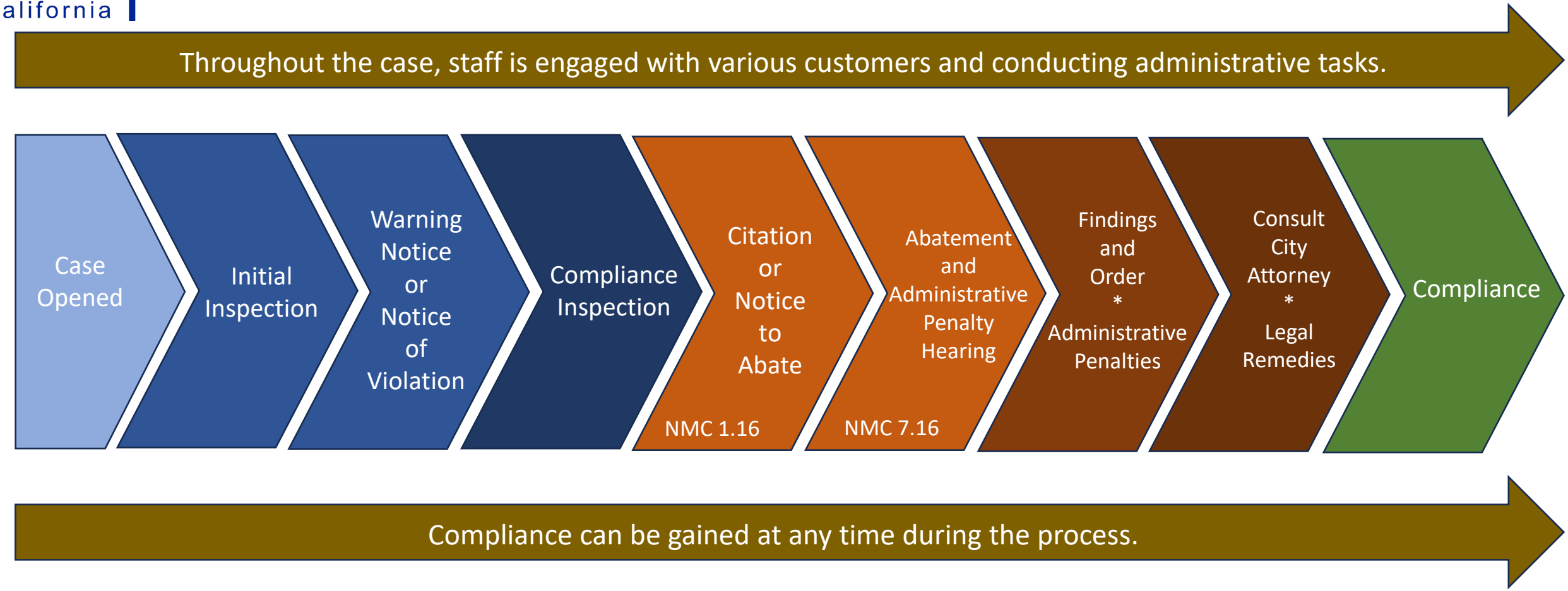




Intake and Investigation



Enforcement Overview



Complexities



Responsible Party

- Deceased Owners
- Personal Issues
- Mental Health Issues
- Financial Issues



Evidence

- 4th Amendment
- Right to Privacy
- Inspection Warrant

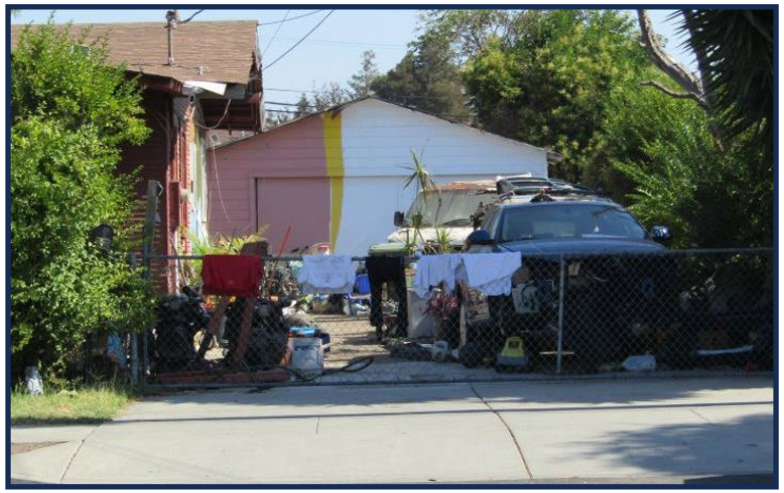


Due Process

- Appeals
- Administrative Remedies
- Abatements
- Other Legal Considerations

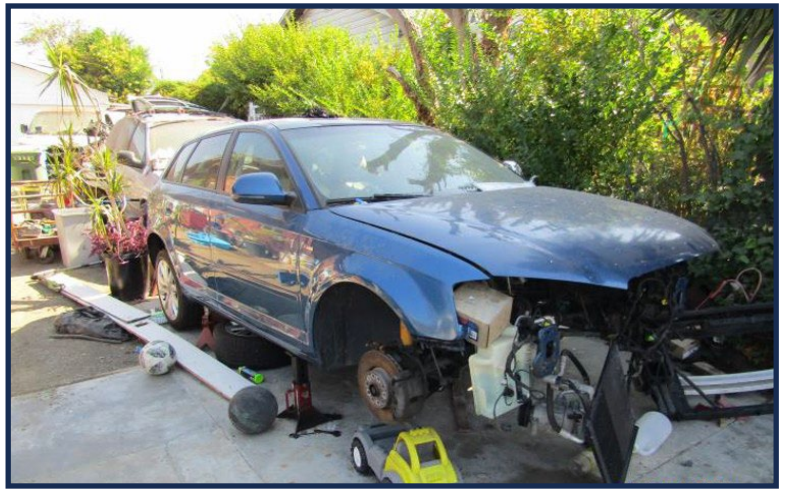
Results

BEFORE





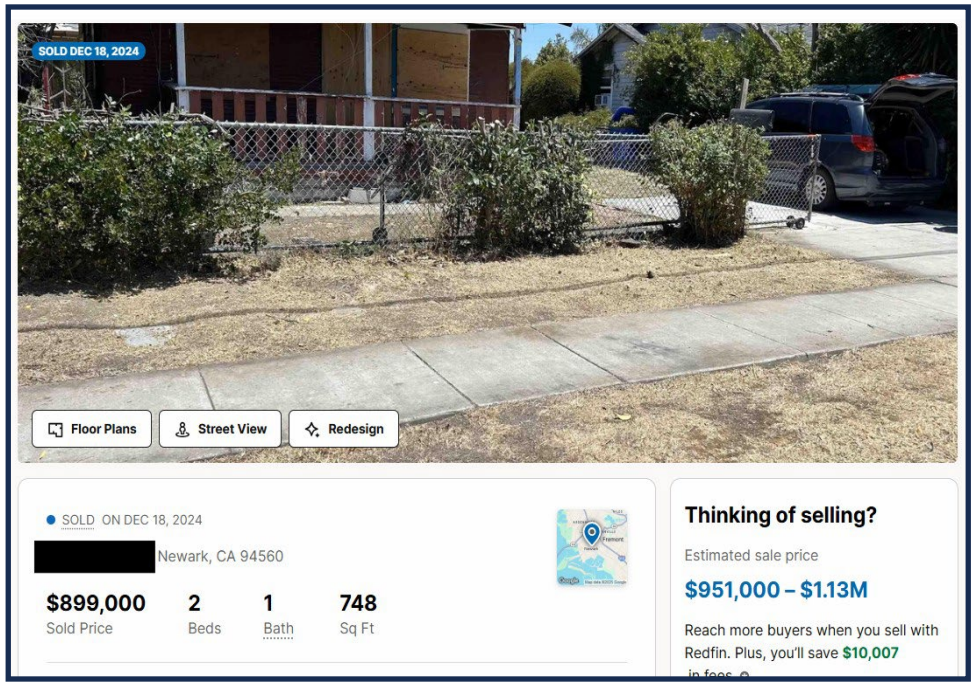




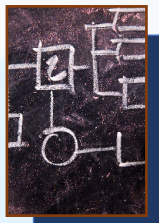
Results

AFTER





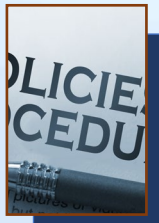
Accomplishments



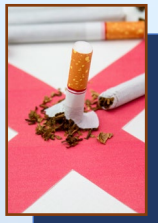
Workflows and Expectations



Templates



Policies and Procedures



Tobacco Retail License



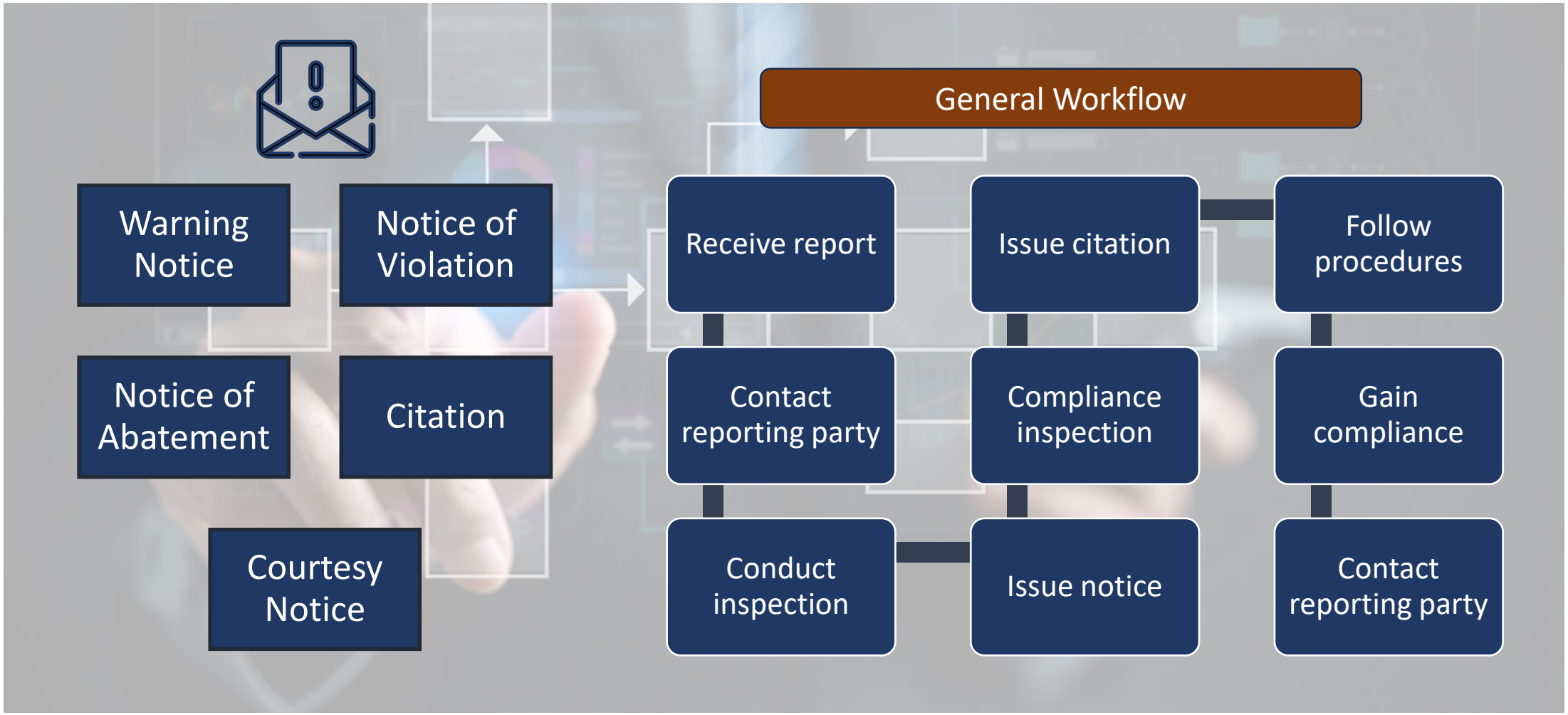
Training



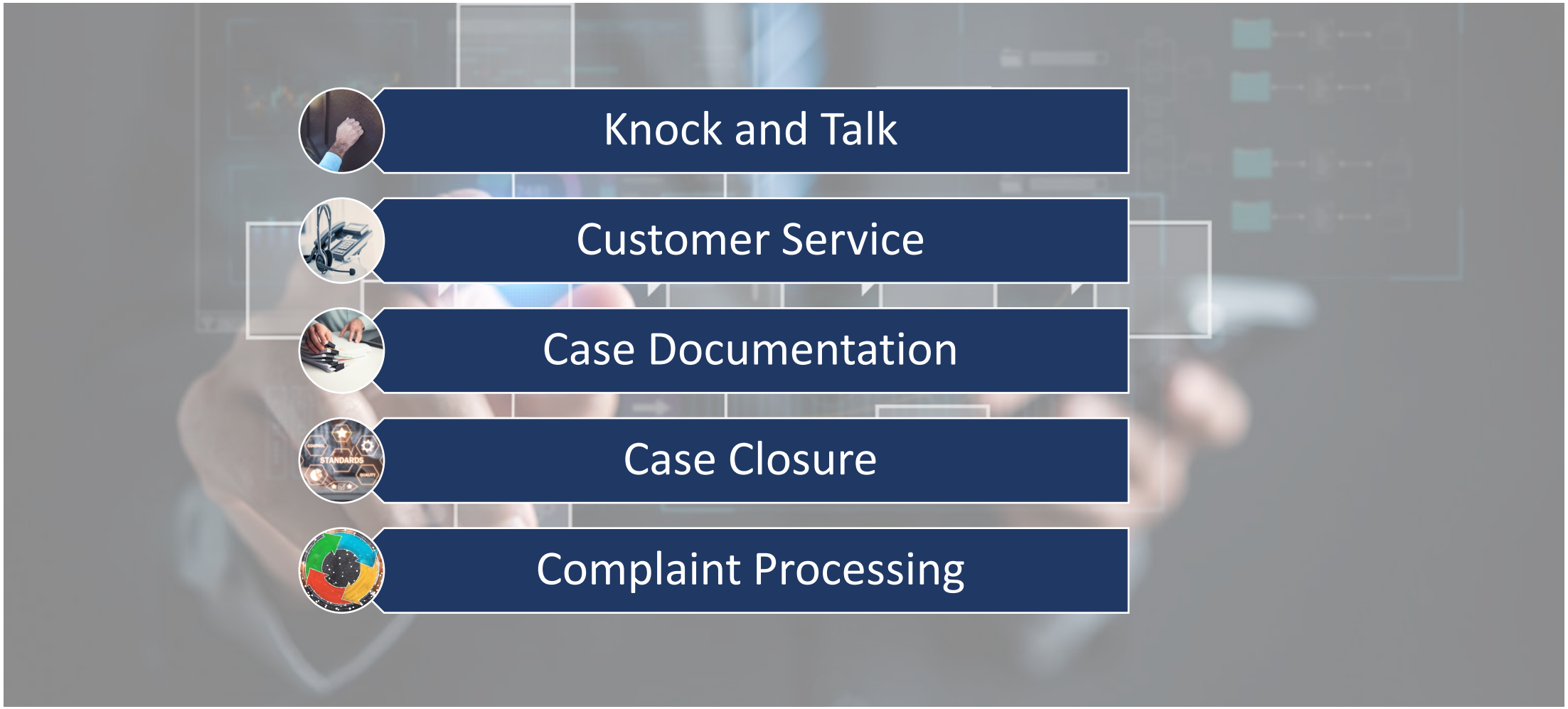
Performance Measures



Templates and Workflows



Policies and Procedures



Tobacco Retail License (TRL)



October 2024: City Council adopted a TRL ordinance creating a tobacco retail licensing program

November 2024: Newark was awarded a Tobacco Grant Program award of $176,802 from the California Department of Justice



February 2025: Began outreach, education and enrollment of tobacco retailers in partnership with Alameda County Public Health

Training



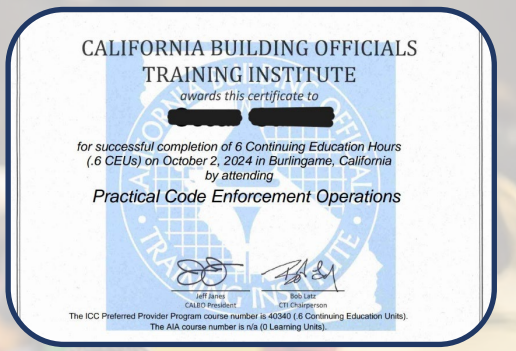
CACEO Certification



Residential Inspection Fundamentals



Mold Inspections

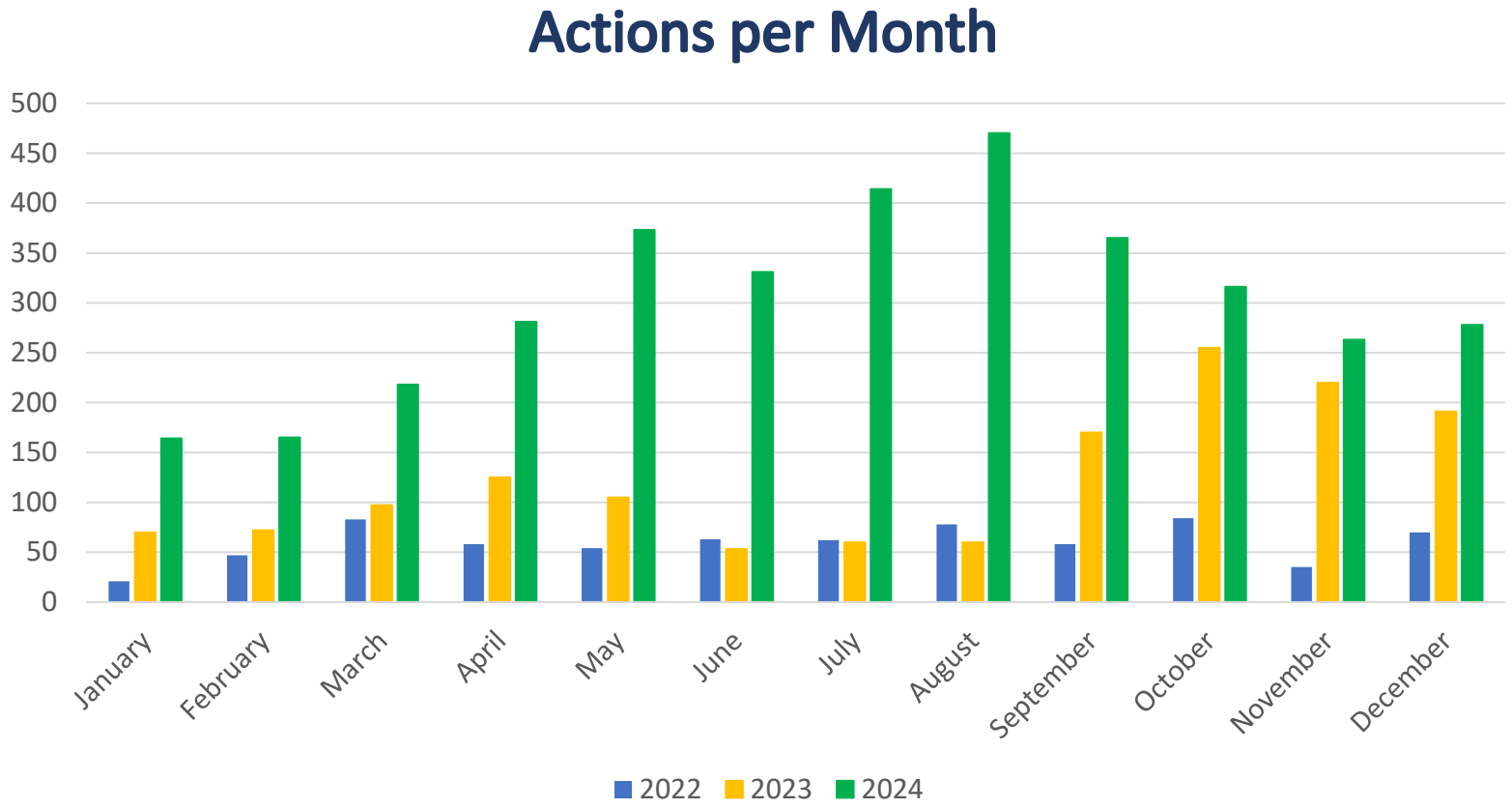


Practical Code Enforcement Operations

Performance Measures

An action is any action taken on a case, such as a phone call, email, inspection, research, or any other activity.

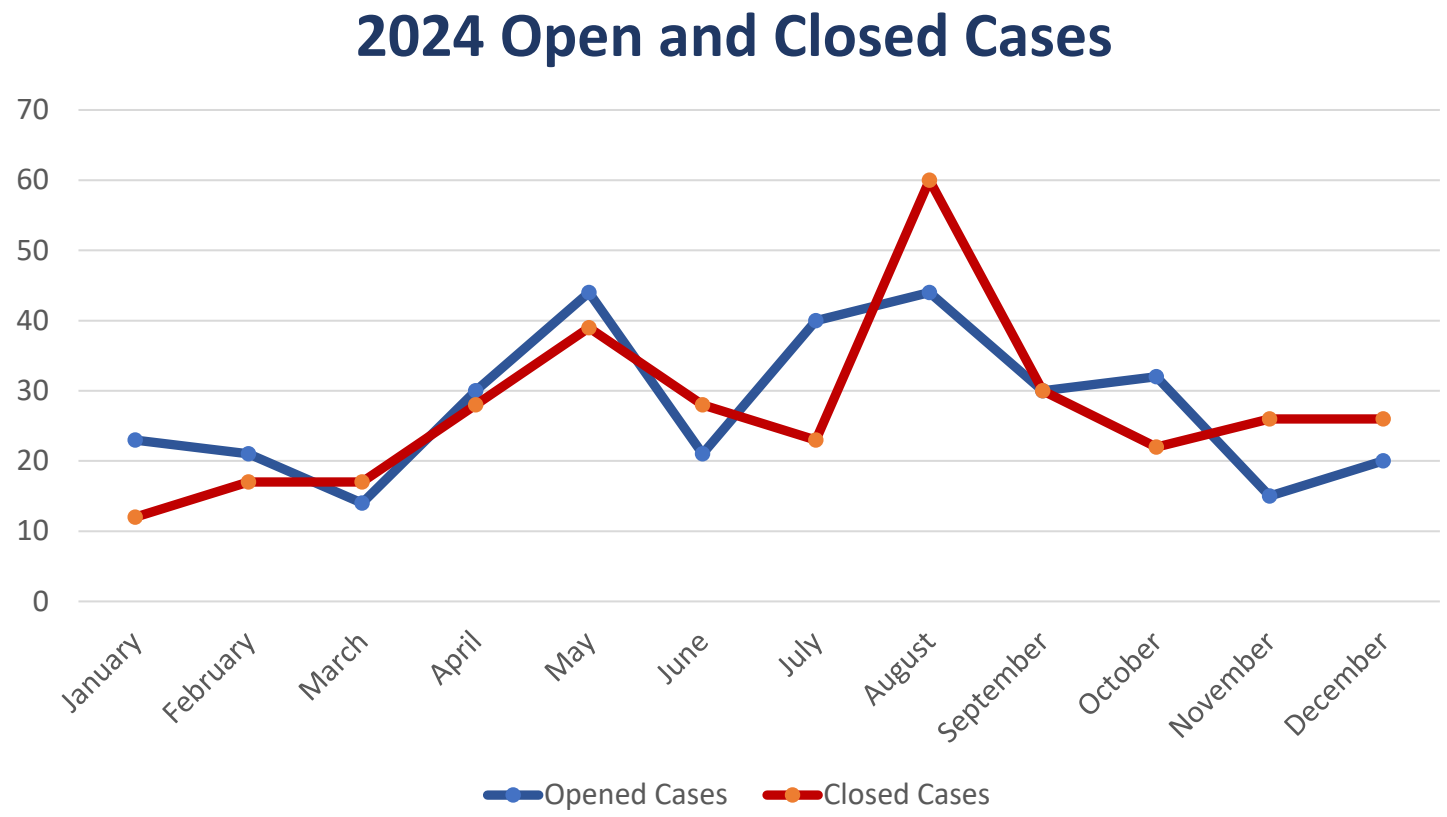
It is important to track actions on a case as they act as a legal chronological record of everything that occurred during the case.



Metrics

This chart shows the number of open cases compared to the number of closed cases for 2024.

Our goal is to have the number of closed cases be the same as the number of opened cases to prevent a backlog.

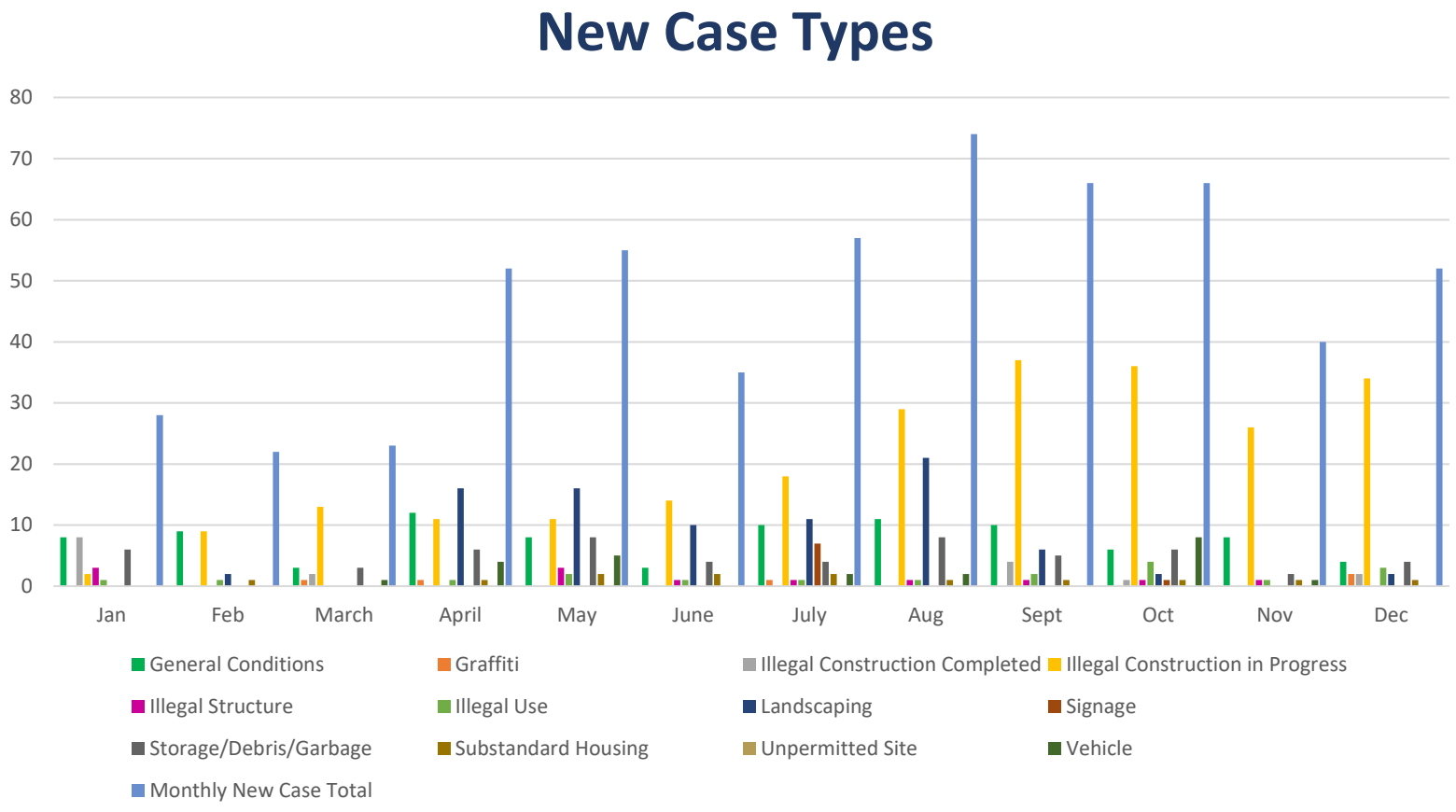


Data and Analysis

This chart shows the types of new cases in 2024 from a total of 570 new cases.

The top new case types are:

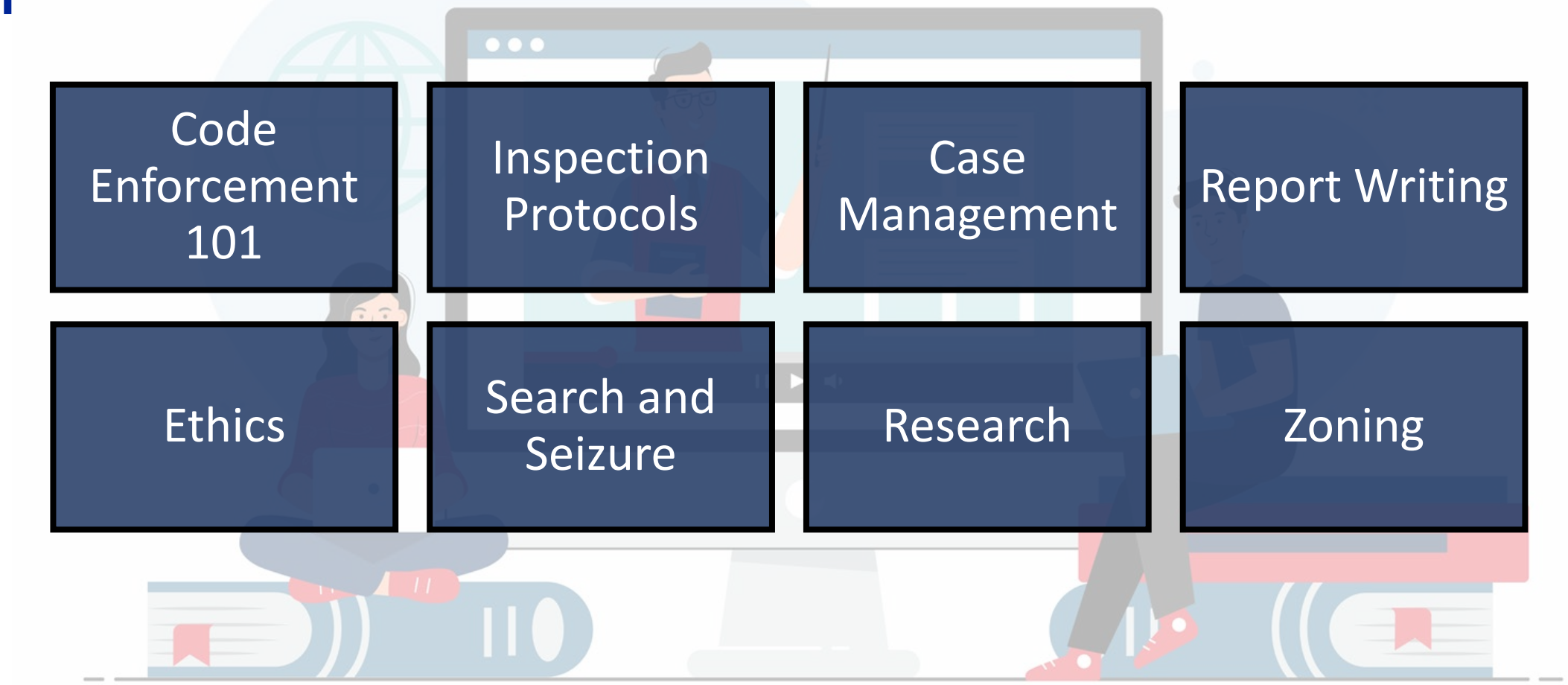
1. Illegal construction (257)
2. General conditions (92)
3. Landscaping (86)
4. Storage, debris, and garbage (56)



Looking Ahead



Code Enforcement Academy



Staff Safety

- Situational Awareness
- Body Language
- De-escalation
- Mental Health
- Encampments
- Meth Labs
- Hoarding
- Environmental Hazards



Municipal Code Updates



State of Disrepair



Overgrown Vegetation



PODs and Storage Containers



Mold and Lead

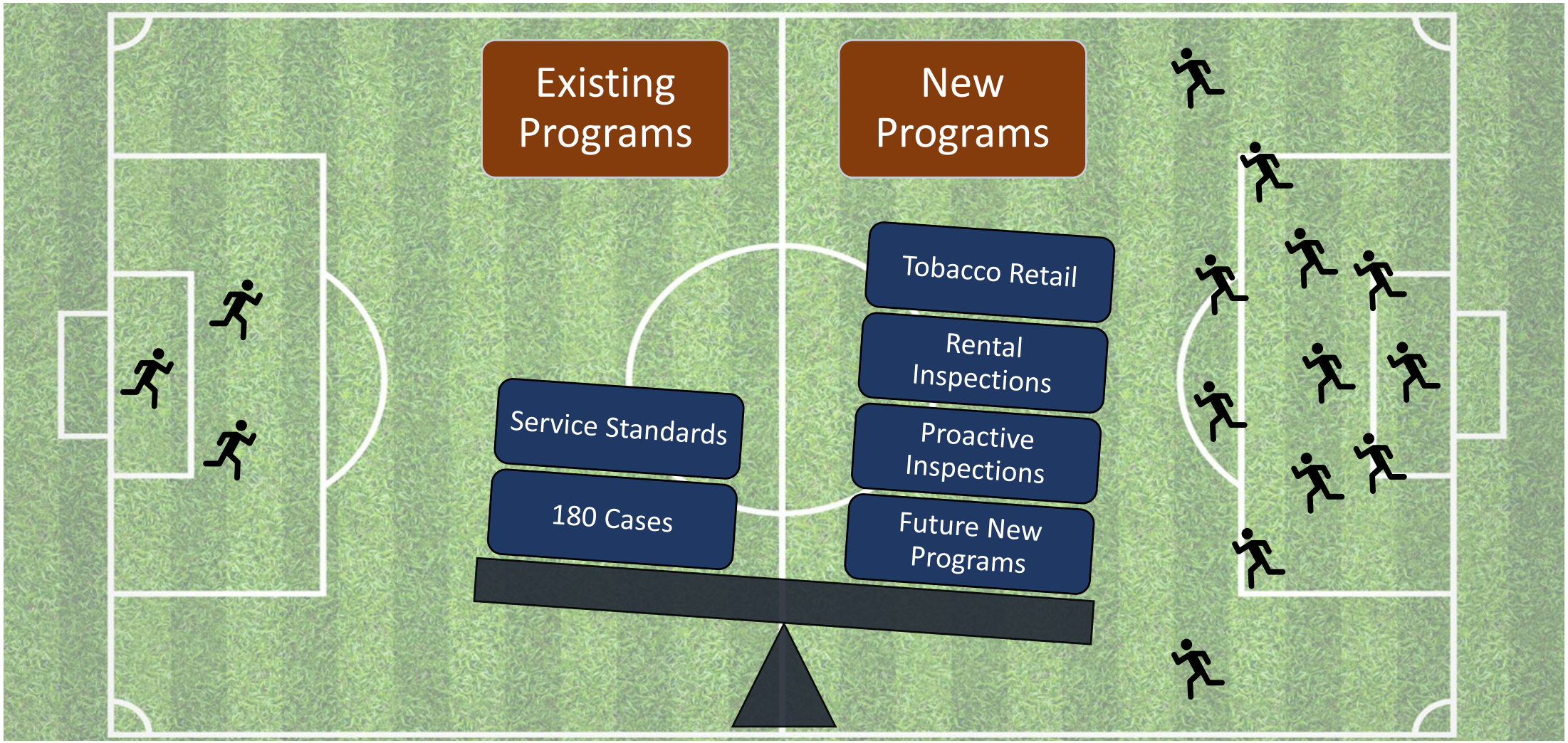
Rental Inspection Pilot Program

Often, our vulnerable and under-resourced communities are not aware of our services or their rights to safe and healthy housing or may be fearful of retaliation for reporting substandard housing conditions.

A proactive rental inspection program can increase compliance with housing regulations, improve the quality of life for our community, and protect our resident's health and safety.

- Multiple-housing (MH) unit is defined as three independent living units within one building
- 185 MH properties were identified
- Average year built: 1967
- 1529 total units
- 16% of units consist of 3-plexes
- 10% of units consist of 4-plexes
- Next steps: Assess complaint and permit histories for older buildings
- Use this data to identify an appropriate pilot program area

Service Delivery



Thank You

Questions & Answers

STAFF REPORT

Item F. 3.

DATE	02/27/2025
TO	Honorable Mayor and City Council Members
FROM	Lenka Hovorka, Assistant City Manager
SUBJECT	Adopt a resolution to appoint Corazon Dino as an Interim Human Resources Director pursuant to Government Code section 21221(h)

SUMMARY AND RECOMMENDATION

The City has a vacant Human Resources Director position. Corazon Dino, a CalPERS retired annuitant that has served as human resources director for a number of agencies, is available for post-retirement employment as Interim Human Resources Director while a recruitment takes place. Staff recommends that the City Council adopt a resolution to appoint Corazon Dino as an Interim Human Resources Director pursuant to Government Code section 21221(h)

BACKGROUND

The City's Human Resources Director position has been vacant since November 20, 2024. In response to the vacancy, the City contacted recruiting firms to lead a recruitment for the City's next Human Resources Director. Based on availability, cost, and expertise, staff selected and entered into an agreement with Municipal Resource Group (MRG) as the recruiting firm. Liz Brown, an experienced former Human Resources Director, will lead the recruitment. The City has opened a recruitment and staff anticipate that the recruitment will take approximately five months with the final pre-employment process and hire of the new Human Resources Director occurring by summer 2025.

DISCUSSION/ANALYSIS

Under Government Code section 21221(h), California Public Employees Retirement System (PERS) benefit recipients can work up to 960 hours per fiscal year as an interim serving in a vacant position during recruitment for a permanent appointment. The City Council must determine that the position requires specialized skills. Additionally, state law requires that the City be engaged in a recruitment at the time of the interim appointment and a retired annuitant can only serve in this capacity once. City Council approval must occur at a public meeting and cannot be a consent calendar item.

Corazon Dino is a PERS retiree with over 15 years of Human Resources Director experience, including extensive labor relations expertise. Ms. Dino served as Director

in the cities of Belmont and San Bruno and with Peninsula Clean Energy, and has a Master of Public Administration degree. Benefit recipients must wait 180 days before they are eligible for post-retirement employment. Ms. Dino retired from PERS on July 1, 2024. Ms. Dino's appointment date of January 6, 2025 occurred after the required 180-day waiting period.

The Human Resources Director is a critical position that provides broad policy direction for the activities of the Human Resources Department; advises the City Manager on matters pertaining to departmental programs and labor issues; and participates as a member of the City's Executive Team in the consideration of general City policies, programs, and concerns.

Hiring Ms. Dino for an interim period allows the City to continue to effectively provide human resources services by filling a critically needed position. As Interim Human Resources Director, Ms. Dino will provide strategic leadership, oversight, and direction to the Human Resources team and throughout the City. This will allow the Human Resources Department team to continue to function with minimal or no disruption.

Post-retirement employment results in a cost savings to the City, as PERS annuitants are ineligible for benefits beyond base hourly pay. A Personnel Action Request form to appoint Ms. Dino to the Interim Human Resources Director position has been completed and is attached for the City Council's consideration.

FISCAL IMPACT

There is sufficient budget in FY 2025 to hire Corazon Dino as a retired annuitant Interim Human Resources Director. Because state law prohibits Ms. Dino, as a retired annuitant, from receiving benefits beyond base hourly compensation, there is a cost savings to the City.

REVIEW AND APPROVAL

Prepared by - Lenka Hovorka, Assistant City Manager
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Resolution Interim Human Resources Director

Appointment Request Interim Human Resources Director

Human Resources Director Job Description

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPOINTING CORAZON DINO AS AN INTERIM HUMAN RESOURCES DIRECTOR PURSUANT TO GOVERNMENT CODE SECTION 21221(H)

WHEREAS, Government (Gov.) Code section 21221(h) of the Public Employees' Retirement Law permits the governing body to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the City Council of the City of Newark desires to appoint Corazon Dino as an interim appointment retired annuitant to the vacant position of Human Resources Director for the City of Newark under Government Code section 21221(h), effective January 6, 2025; and

WHEREAS, the City Council of the City of Newark, the City of Newark, and Corazon Dino certify that Corazon Dino has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, an appointment under Government Code section 21221(h) requires the retiree is appointed into the interim appointment during recruitment for a permanent appointment; and

WHEREAS, the governing body has authorized the search for a permanent appointment on November 21, 2024; and

WHEREAS, this Government Code section 21221(h) appointment shall only be made once and therefore will end on December 1, 2025 or the date prior to the start date of a permanent Human Resources Director, whichever comes first; and

WHEREAS, the appointment document between Corazon Dino and the City of Newark has been reviewed by this body and is attached herein; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum monthly base salary for this position is $23,022.83 and the hourly equivalent is $132.82, and the minimum base salary for this position is $19,185.69 and the hourly equivalent is $110.69; and

WHEREAS, the hourly rate paid to Corazon Dino will be $130.00; and

WHEREAS, Corazon Dino has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Newark hereby certifies the nature of the employment of Corazon Dino as described herein and detailed in the attached employment agreement and that this appointment is necessary to fill the critically needed position of Interim Human Resources Director for the City of Newark by January 6, 2025 because the position is needed to provide broad policy direction for the activities of the Human Resources Department; advise the City Manager on matters pertaining to departmental programs and labor relations; and participate as a member of the City's Executive Team in the consideration of general City policies, programs, and concerns.

PERSONNEL ACTION REQUEST

Corazon Dino	12913	01/06/2025
Employee Name	*Employee Number*	*Effective Date*
Retired Annuitant		
Status	*Date of Last Merit/ Step Increase*	*Next Evaluation/Increase Date*
Appointment		
Type of Action 1	*Type of Action 2*	*Type of Action 3*
Type of Action 4	*Type of Action 5*	*Type of Action 6*

From:

Position:

Department:

Division:

Hourly Rate:

Step/Range:

To:

Position: Interim Human Resources Director

Department: Human Resources

Division: N/A

Hourly Rate: $130

Step/Range: Range 24

Signatures:

City Manager and Finance Director signature is required for all Regular, Temporary PERS, Retired Annuitant and Limited Term employees.

1. *Originator Signature* _____

2. *Human Resources Initial* _____

3. *Human Resources Director* Lenka Hovorka (Dec 17, 2024 08:01 PST)

4. *Division Head* _____

5. *Department Head* Lenka Hovorka (Dec 17, 2024 08:01 PST)

6. *Finance Director* _____

7. *City Manager* David Benoun (Jan 6, 2025 15:34 PST)

Activity Distribution:

110.22.022.200.5120-80%

706.87.706.150.5120-10%

707.87.707.200.5120-10%

Remarks: ***Required if effective date is past due.***

Remark 1: Anticipated duration of term until the appointment of the new HR Director

Remark 2: No Sick leave, service credit, or other benefits per California Public Employees Retirement Law

Remark 3:

Remark 4:

Remark 5:

Remark 6:

CITY OF NEWARK

Distribution: Original - HR Copy - Payroll, Department, Employee

Revised 11/16/2024

Human Resources Director

Class Specification
Revised 9/23
Class ID: 410
Unit: MGMT
Probation: At-Will
FLSA: Exempt

DEFINITION
Under administrative direction, directs activities and operations of the Human Resources Department including recruitment and selection, classification and compensation, benefits administration, workers' compensation and safety, training and development, and employee/labor relations; provides professional assistance to City management staff in areas of responsibility and expertise; participates as a member of the City's Executive Management Team in the consideration of general City policies, programs and concerns; and performs related duties as assigned.

SUPERVISION RECEIVED AND EXERCISED
Receives direction from the Assistant City Manager or City Manager. Exercises direct supervision over Human Resources professional, paraprofessional, and administrative staff.

DISTINGUISHING CHARACTERISTICS
This is an executive level, at-will department director classification. The position serves as the City's Risk Manager and oversees, directs, and participates in all activities of the Human Resources Department, including short- and long-term planning, development and administration of departmental policies, procedures, and services. The incumbent is accountable for accomplishing program planning and operational goals and objectives for the department, and furthering City goals and objectives within general policy guidelines.

EXAMPLES OF JOB FUNCTIONS (Illustrative Only)
Develop and direct the implementation of goals, objectives, policies, procedures and work standards for the Human Resources Department; develop, implement, interpret, and maintain personnel and administrative policies and procedures; ensure compliance with legislative, regulatory and judicial mandates, regulations and current professional best practices; coordinate human resource major policy issues and strategies with the Assistant City Manager or City Manager.

Plan, organize, administer, review, and evaluate the activities of subordinate professional, technical, and administrative staff. Select, supervise, train, and evaluate staff; work with employees on performance issues; implement discipline and termination procedures.

Direct the implementation and administration of programs and activities related to recruitment and selection, classification and compensation, benefits and leave administration, performance evaluation, and training; direct the maintenance of centralized personnel records; and direct the preparation and administration of the department's budget.

Administer the City's risk management program, including examination of general liability claims, participation on boards and committees, making recommendations and overseeing activities for claim mitigation and prevention, and budgeting and disbursement of funds.

Represent the City in matters concerning bargaining units; serve on the City negotiating team during meet and confer sessions with various employee organizations.
Participate in employee and labor relations activities including interpretation of labor agreements, resolution of grievances, management of disciplinary processes and investigations, and formulation of policies and strategies; mediate operational and personnel conflicts; provide employee counseling and recommend employee discipline; confer with City management regarding major personnel and employee relations activities or issues; advise and consult with the Assistant City Manager or City Manager, department heads, employee representatives, and others on matters related to policy interpretation, discipline, grievances, and other personnel matters.

Direct the workers' compensation program; serve as the City's Safety Coordinator responsible for compliance with laws related to employee injury and illness prevention; oversee the City's wellness program.

Develop and oversee implementation of systems to encourage productive and exceptional performance; identify needs and develop training related to employee development, service enhancements, safety and risk management, and compliance with legally mandated programs.

Administer special programs for City employees such as service awards, new employee orientation programs, employee engagement and recognition, and social events.

Direct or perform analytical studies; develop and review reports of findings, alternatives, and recommendations; direct the preparation of a variety of periodic and special reports regarding departmental activities.

Make presentations before the City Council and participate on various city management committees; represent the City in meetings with representatives of governmental agencies, professional and business organizations, employee organizations, and the public.

Monitor developments and legislation related to human resources matters; evaluate their impact upon City operations and recommend and implement policy and procedural improvements.

Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Principles, practices, and techniques of personnel administration, including recruitment and selection, classification and compensation, workers' compensation and safety, benefits and leave administration, and employee training and development.
- Principles and practices of labor relations, including negotiating techniques and grievance handling.
- Principles and practices of supervision, management, and training.
- Administrative principles and methods, including goal setting, program and budget development and implementation and employee supervision.
- Applicable Federal and State laws and regulations.
- Current computer applications and office equipment.

Skill or Ability to:

- Select, train, motivate and evaluate assigned staff.
- Plan, organize, administer, review, and evaluate personnel, employee development and labor relations activities and operations.

- Develop, implement, and interpret goals, objectives, policies, procedures, work standards and internal controls.
- Analyze complex problems, evaluate alternatives, and make creative recommendations.
- Provide staff support in complex, sensitive, or difficult human resources issues.
- requiring a high level of independent judgment, strong analytical skills, strong
- interpersonal skills, and creativity.
- Negotiate labor contracts and other dispute resolution agreements.
- Exercise sound independent judgment within general policy guidelines.
- Establish and maintain effective working relationships with those contacted in the course of work.
- Represent the City effectively in meeting with others.
- Present ideas effectively orally and in writing; prepare clear, concise, and complete reports, correspondence, and other written materials.
- Operate current office equipment including computers and specialized software applications.
- Respectfully and effectively collaborate with a variety of people of varying backgrounds and roles. Demonstrate tact, professionalism, and diplomacy.

Education and Experience:

Any combination of education and experience that would provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the required qualifications would be:

Possession of a Bachelor's degree from an accredited college or university in public administration, human resources, industrial psychology, or a closely related field, and seven (7) years of progressively responsible experience in various areas of personnel administration, including labor relations including three (3) years of supervisory experience. A Master's degree is desirable.

License and Certificate:

Possession of a valid driver license and a satisfactory driving record throughout employment.

PHYSICAL DEMANDS

Must possess mobility to work in a standard office setting and use standard office equipment, including a computer, and to operate a motor vehicle to visit various City and meeting sites; vision to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone. Finger dexterity is needed to access, enter, and retrieve data using a computer keyboard or calculator and to operate standard office equipment. Positions in this classification frequently sit for prolonged periods of time, bend, stoop, kneel, and reach to perform assigned duties, as well as push and pull drawers open and closed to retrieve and file information. Standing in and walking between work areas is frequently required. Employees must possess the ability to lift, carry, push, and pull materials and objects up to 25 pounds with the use of proper equipment.

ENVIRONMENTAL CONDITIONS

Employees work in an office environment with moderate noise levels, controlled temperature conditions, and no direct exposure to hazardous physical substances. Employees may interact with upset staff and/or public and private representatives in interpreting and enforcing departmental policies and procedures.

STAFF REPORT

Item H. 1.

DATE 02/27/2025
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Adopt a resolution approving the Mayor's appointments to the Planning Commission and Measure GG Tax Oversight Committee

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The Planning Commission reviews and takes action on certain planning applications and makes recommendations to the City Council on land use issues. Meetings are on the 2nd and 4th Tuesday of each month beginning at 7:00 p.m. There is one vacancy (Julie Del Catancio) for a term that expires on December 31, 2027.

The Measure GG Tax Oversight Committee reviews expenditures of the revenue from the Measure GG Transactions and Use Tax. The Committee submits a written report to the City Council on an annual basis. Meetings are held annually and are called by the Finance Director. There are two vacancies (Elizabeth Macris and Jacinta Arteaga) for terms that expire on April 12, 2026.

The City Clerk advertised the vacancies and applications were received from:

Planning Commission	Measure GG
Olga Borjon	Hemant Malhotra
Jason Miguel	Jason Miguel (separate application submitted)
Daniel Cardenas	
Darshpal Dhillon	
Taranjit Singh Gujral	
Lucia Gutierrez	
Vinod Kumar	
Geminiano "Jim" A. Lola	

Some of the Planning Commission applicants indicated that they would consider serving on other committees, so they may be considered for the Measure GG appointment too. The applicants have been interviewed and Mayor Hannon will

announce his selections at the City Council Meeting to fill the unexpired terms.

It is recommended that the City Council adopt a resolution approving the appointments to the Planning Commission and Measure GG Tax Oversight Committees.

Attachments

Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE MAYOR'S APPOINTMENTS TO TO THE PLANNING COMMISSION AND THE MEASURE GG TAX OVERSIGHT COMMITTEE

WHEREAS, Planning Commissioner Julie Del Catancio, Measure GG Committee Members Elizabeth Macris and Jacinta Arteaga each submitted resignations from their respective commission/committee appointments; and

WHEREAS, the City Clerk advertised the vacancies and received applications from: Hemant Malhotra, Jason Miguel, Olga Borjon, Daniel Cardenas, Darshpal Dhillon, Taranjit Singh Gujral, Lucia Gutierrez, Vinod Kumar, and Geminiano "Jim" Lola; and

WHEREAS, the Mayor of the City of Newark has considered the applications; and

WHEREAS, the Mayor of the City of Newark has appointed _____ to said position on the Planning Commission for a term expiring December 31, 2027;

WHEREAS, the Mayor of the City of Newark has appointed _____ and _____ to said position on the Measure GG Tax Oversight Committee for terms expiring April 12, 2026;

NOW, THEREFORE, BE IT RESOLVED that said appointments are hereby approved by the City Council of the City of Newark.

STAFF REPORT

Item I. 1.

DATE 02/27/2025

TO Honorable Mayor and City Council Members

FROM Cora Dino, Interim Human Resources Director

SUBJECT Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6.

Agency designated representatives: Assistant City Manager Hovorka, Interim Human Resources Director Dino, and Special Counsel Jesse Lad
Employee Organization: The Newark Police Association

Agency designated representatives: Assistant City Manager Hovorka, and Interim Human Resources Director Dino
Employee Organizations: The Newark Police Management Association and the Newark Association of Miscellaneous Employees
Unrepresented Employees: Employees subject to the Compensation and Benefit Plan for the Confidential Employee Group

Agency designated representative: Interim Human Resources Director Dino
Unrepresented Employees: Employees subject to the Compensation and Benefit Plan for the Management, Supervisory, and Professional Employee Group