

F.3 Acceptance of work with Ghilotti Bros., Inc. for 2014 Asphalt Concrete Street Overlay Program, Project 1063 – from Assistant City Engineer Fajeau.

(RESOLUTION)

Background/Discussion – On June 12, 2014, the City Council authorized award of a contract to Ghilotti Bros., Inc. for 2014 Asphalt Concrete Street Overlay Program, Project 1063. This project provided pavement grinding, paving, and re-striping on various City streets.

All work on this project was completed on time and within the original approved budget using combination of Alameda County Measure B Sales Tax funds, Vehicle Registration Fee funds, the Traffic Congestion Relief Fund, and State gas tax subventions.

Attachment

Action - It is recommended that the City Council, by resolution, accept the work with Ghilotti Bros., Inc., for 2014 Asphalt Concrete Street Overlay Program, Project 1063.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ACCEPTING THE WORK WITH GHILOTTI BROS.,
INC. FOR 2014 ASPHALT CONCRETE STREET OVERLAY
PROGRAM, PROJECT 1063

WHEREAS, the City of Newark has entered into a contract with Ghilotti Bros, Inc., pursuant to Resolution No.10226, for 2014 Asphalt Concrete Street Overlay Program, Project 1063, in the City of Newark, in accordance with the plans and specifications for the contract; and

WHEREAS, said work has been completed in conformance with the plans and specifications of the contract hereinabove referred to and the conditions thereof;

NOW THEREFORE, BE IT RESOLVED that said contract is hereby accepted and the City Council does hereby authorize the release of bonds guaranteeing the completion of the work, the filing of a Notice of Completion, and payment to the contractor pursuant to the contract.

F.4 Acceptance of work with VSS International, Inc. for 2014 Street Microsurfacing Program, Project 1064 – from Assistant City Engineer Fajeau. (RESOLUTION)

Background/Discussion – On July 10, 2014, the City Council authorized award of a contract to VSS International, Inc. for 2014 Street Microsurfacing Program, Project 1064. This project provided a microsurfacing application of sand, aggregate, and asphalt emulsion mixture as well as pavement re-striping on various City streets.

All work on this project was completed on time and within the original approved budget using the Traffic Congestion Relief Fund.

Attachment

Action - It is recommended that the City Council, by resolution, accept the work with VSS International, Inc., for 2014 Street Microsurfacing Program, Project 1064.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ACCEPTING THE WORK WITH VSS
INTERNATIONAL, INC. FOR 2014 STREET
MICROSURFACING PROGRAM, PROJECT 1064

WHEREAS, the City of Newark has entered into a contract with VSS International, Inc., pursuant to Resolution No.10259, for 2014 Street Microsurfacing Program, Project 1064, in the City of Newark, in accordance with the plans and specifications for the contract; and

WHEREAS, said work has been completed in conformance with the plans and specifications of the contract hereinabove referred to and the conditions thereof;

NOW THEREFORE, BE IT RESOLVED that said contract is hereby accepted and the City Council does hereby authorize the release of bonds guaranteeing the completion of the work, the filing of a Notice of Completion, and payment to the contractor pursuant to the contract.

F.5 Approval of Tentative Parcel Map 10295 for commercial condominium purposes at 7015 and 7151 Gateway Boulevard – from Assistant City Engineer Fajeau. (RESOLUTION)

Background/Discussion – Kier and Wright Civil Engineers and Surveyors, Inc., on behalf of KBS Bridgeway Technology Center, LLC, the property owner, has submitted a tentative parcel map for a proposed single-parcel division of land for commercial condominium purposes at 7015 and 7151 Gateway Boulevard. The site is currently one legal parcel and is proposed to remain a single legal parcel with the future recording of a parcel map. The purpose of the record map filing is to obtain approval for up to four (4) commercial condominium spaces within the two existing buildings on the site.

The site encompasses approximately 12.97 developed acres and is zoned MT-1 (High Technology Park District) with a SI (Special Industrial) General Plan Land Use Designation. The two existing office/warehouse buildings were constructed with approximately 186,000 square feet of combined building area. There are no planned improvements associated with the tentative parcel map. Existing utilities and parking facilities will remain and are sufficient for existing and proposed uses. Recommended conditions of approval include requirements for establishing a property owners' association, the recording of covenants, conditions, and restrictions (CC&Rs), and the creation of shared utility and parking easements over the common area of the site for benefit of any future condominium owners. Recommended conditions for landscaping and pavement maintenance are also included.

Pursuant to the Newark Subdivision Ordinance, the Public Works Director acts as the advisory agency for tentative parcel maps. This map is categorically except under the California Environmental Quality Act (CEQA), Article 19, Section 15315 "Minor Land Divisions." A Notice of Exemption can be filed by staff following City Council action on the tentative parcel map.

Attachment

Action - It is recommended that the City Council, by resolution, approve Tentative Parcel Map 10295 for commercial condominium purposes at 7015 and 7151 Gateway Boulevard.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING TENTATIVE PARCEL MAP 10295
FOR COMMERCIAL CONDOMINIUM PURPOSES AT 7015
AND 7151 GATEWAY BOULEVARD.

WHEREAS, Kier and Wright Civil Engineers and Surveyors, Inc., on behalf of KBS Bridgeway Technology Center, LLC, has submitted a tentative parcel map for a commercial condominium project in a MT-1, High Technology Park District, at 7015 and 7151 Gateway Boulevard, on the west side of Gateway Boulevard approximately 750 feet southwest of Overlake Place;

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby approve Tentative Parcel Map 10295, as shown on Exhibit A, as annotated and made a part hereof by reference, subject to the following conditions:

- a. All applicable conditions listed in Planning Commission Resolution No. 991 dated August 7, 1984, approving a Conceptual Planned Unit Development (CP-84-35), and Planning Commission Resolution No. 1353, approving a review of CP-84-35 for site development, dated April 23, 1996, unless otherwise amended.
- b. The property owner shall obtain the City Engineer's approval of a record parcel map that conforms to the tentative parcel map approved by the City Council in accordance with the State Subdivision Map Act and the City's Subdivision Ordinance. The record map shall dedicate storm drain, sanitary sewer, waterline, emergency vehicle access, ingress and egress, and joint use parking easements throughout the site.
- c. The property owner shall incorporate a property owners' association consisting of all property owners of lands in the development at the time of incorporation and in the future for the purpose of maintaining the association's property, common drive aisles, parking facilities, shared utilities, and landscaping, including landscaping in adjacent public rights-of-way, and paying for security lighting, any common garbage collection services, any security patrol services, if provided, and other functions of a property owners' association.
- d. Prior to approval of the record parcel map by the City Engineer, the bylaws governing the property owners' association and the declaration of covenants, conditions, and restrictions (CC&Rs) filed for this development shall be made available for review by the City Attorney and the City Engineer. Said CC&Rs shall be prominently displayed in the project sales office at all times. Approval of the CC&Rs shall not make the City a party to enforcement of same. The CC&Rs shall apply equally to both owners and renters, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall include on-site pavement and landscape maintenance program for existing on-site improvements.

- e. Prior to the approval of the record map, the property owner shall enter into a Landscape Maintenance Agreement. The Landscape Maintenance Agreement shall include all continuous landscaped areas contiguous to the site public street frontage and all visible on-site landscaping. Landscape maintenance by the City under the provisions of the Landscape Maintenance Agreement will only occur in the event the City Council deems the property owner's maintenance to be inadequate.
- f. Prior to the approval of the record parcel map, the property owner's engineer shall submit a pavement maintenance program (or proof of an active program in place) for the drive aisles and parking areas for the review and approval of the City Engineer. The property owner(s) shall follow the maintenance program at the City Engineer's direction.
- g. Following approval of the record parcel map, the property owner shall provide an original full-size mylar copy of the recorded map, a mylar reduction of the recorded map, and an electronic copy of the parcel map in the digital format required by the Southern Alameda County Geographic Information System Authority, from the responsible land surveyor or civil engineer.
- h. If any condition of this tentative parcel map be declared invalid or unenforceable by a court of competent jurisdiction, this tentative parcel map shall terminate and be of no force and effect, at the election of the City Council on motion.
- i. The property owner hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorney's fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the approval granted herein or any California Environmental Quality Act determinations related thereto.
- j. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the property owner may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the property owner fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

F.6 Acceptance of the Annual Report on Newark Development Impact Fees for Fiscal Year 2013-2014 in accordance with Government Code Section 66006(b) – from Assistant City Manager Grindall. (MOTION)

Background/Discussion – The City Council of the City of Newark adopted three development impact fees on July 27, 2000, pursuant to Government Code Section 66001, and updated those fees on January 25, 2007. The City Council adopted a Non-Residential Housing Impact fee on June 10, 2004 and a Community Development Maintenance Fee on May 27, 2010. The City Council also adopted a Park Impact fee on September 26, 2013 and an Affordable Housing Impact fee on April 10, 2014. Government Code Section 66006(b) requires that any city that has adopted impact fees shall provide an annual report on fees collected, interest earned, and the status of planned public improvements to be funded with the fees.

Staff has completed an Annual Report on Newark Impact Fees for Fiscal Year 2013-2014. The report contains all information required by Government Code Section 66006(b) and has been noticed and distributed accordingly.

Attachment

Action - It is recommended that the City Council, by motion, accept the Annual Report on Newark Development Impact Fees for Fiscal Year 2013-2014 in accordance with Government Code Section 66006(b).

Annual Report on Newark Impact Fees

July 2013 – June 2014

The Newark City Council adopted three development impact fees on July 27, 2000, and updated those fees on January 25, 2007. A fourth impact fee was adopted on June 10, 2004, and a fifth fee was adopted on May 27, 2010. A sixth fee was added on September 26, 2013, and a seventh fee was added on April 10, 2014. State law requires that the city annually publish summary information regarding each fee account established. This annual report was prepared in accordance with these state requirements, as set forth in Government Code Section 66006(b)(1), et seq.

TYPE OF FEE (SEC. 66006(B)(1)(A))

The City of Newark had seven development impact accounts during the 2013-2014 fiscal year, as described below:

1. **Public Safety Facilities Fee:** This fee provides funding for additional or improved police and fire services for which the need is generated by new development within the city.
2. **Community Service Facilities Fee:** This fee provides funding for additional or improved governmental, social, and cultural facilities for which the need is generated by new development within the city.
3. **Transportation Facilities Fee:** This fee provides funding for additional or improved traffic signal, operational, and infrastructure improvements for which the need is generated by new development within the city.
4. **Park Impact Fee:** This fee provides funding for park improvements.
5. **Nonresidential Development Housing Impact Fee:** This fee provides funding to increase and improve the supply of housing affordable to households of very low, low, and moderate incomes for which the need is generated by new commercial and industrial development within the city.
6. **Affordable Housing Impact Fee:** This fee provides funding to increase and improve the supply of housing affordable to households of very low, low, and moderate incomes for which the need is generated by new residential development within the city.
7. **Community Development Maintenance Fee:** This fee provides funding to update and implement the Newark General Plan and Zoning Ordinance, which is needed by all new development within the city.

AMOUNT OF FEE (SEC. 66006(B)(1)(B))

The amounts of the first three fees were originally established in Resolution No. 8051 and amended in Resolution 9253. The Park Impact Fee was established by Ordinance No. 470.

The current amounts are shown in the table below.

<i>Land Use Category</i>	<i>Amount of Fee</i>				
	Public Safety Facilities	Community Service Facilities	Transportation Facilities	Park Impact	Total
Single-family Residential (per unit)	\$1,989.00	\$1,942.00	\$801.00	\$7,460.00	\$12,192.00
Multi-family Residential (per unit)	\$2,079.00	\$1,596.00	\$460.00	\$7,460.00	\$11,595.00
Commercial (per sq. ft.)	\$1.73	\$0.36	\$1.38	n/a	\$3.47
Industrial (per sq. ft.)	\$0.17	\$0.31	\$0.68	n/a	\$1.16

The amounts of the Nonresidential Development Housing Impact fee were established in Resolution No. 8802 and are adjusted each year by the percentage change in the Engineering News-Record's Building Cost Index, or a similar index designated by the City Manager. The fee amounts for FY13-14 are shown in the table below.

<i>Land Use Category</i>	<i>Amount of Non-Residential Development Housing Impact Fee</i>
Commercial (per sq. ft.)	3.56
Industrial (per sq. ft.)	0.66

The Affordable Housing Impact Fee was established by Ordinance No. 473 and is set at \$20/square foot for the first 1,000 square feet of floor area per dwelling unit and \$8/square foot for all square footage over 1,000 square feet per dwelling unit.

The amount of the Community Development Maintenance Fee was established by Ordinance No. 441 and is set at 0.5% of the construction valuation as determined for a building permit.

BEGINNING AND ENDING BALANCES OF FUNDS (SEC. 66006(B)(1)(C))

The beginning and ending balances of each of the fee accounts are shown in the table below. The ending balance was arrived at by adding the fees collected and interest earned to each account, and then subtracting the expenditures. Information on fees collected, interest earned and expenditures for each account is presented in later sections of this report.

Balances	Public Safety Facilities	Community Service Facilities	Transport. Facilities	Park Impact	Non-Res Housing	Afford. Housing Impact	Comm'ty Dev't Maint.
Beginning Balance (7/1/2013)	\$-1,392,113.02	\$281,587.72	\$1,252,035.02	\$0	\$130,987.51	\$0	\$151,919.42
Ending Balance (6/30/2014)	\$-1,325,387.03	\$396,346.43	\$1,492,236.31	\$0	\$349,205.64	\$0	\$303,563.15

The Public Safety Facilities Fund shows a negative balance because more money has been spent on projects partially funded by this fund, particularly Fire Station #1, than money has been collected from fees. General Fund money was used to pay the difference, and as public safety impact fees are collected, they are being used to reimburse the General Fund.

FEES COLLECTED AND INTEREST EARNED (SEC. 66006(B)(1)(D))

The table below shows the amount of fees collected and interest earned. No interest was earned in the Public Safety Facilities fund because that fund currently has a negative balance.

Balances	Public Safety Facilities	Community Service Facilities	Transp. Facilities	Park Impact	Non-Res Housing	Afford. Housing Impact	Comm'ty Dev't Maint.
Fees Collected	\$66,725.99	\$113,916.57	\$236,881.96	\$0	\$220,574.08	\$0	\$251,611.75
Interest Earned	\$0	\$842.14	\$3,319.33	\$0	\$678.05	\$0	\$707.44

EXPENDITURES (SEC. 66006(B)(1)(E))

For this section, state law requires an identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees. This information is provided in the table below.

Improvement	Fee Used	Amount of Fees Expended	Percent of Cost Funded by Fees to Date
Mortgage Credit Certificate Program	Housing	\$750.00	100%
HMIS Match	Housing	\$2284.00	100%
General Plan Tune-Up	CD Maint.	\$675.46	100%

CONSTRUCTION COMMENCEMENT DATE (SEC. 66006(B)(1)(F))

For this section, state law requires an identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

Sufficient funds have been collected to commence certain projects. The following projects have commenced or are expected to commence during the current fiscal year:

Public Safety Facilities

- given the deficit in this fund, no projects are planned

Community Service Facilities

- none anticipated this year

Transportation Facilities

- none anticipated this year; Central Avenue overpass anticipated July 2015

Non-Residential Housing

- Mortgage Credit Certificate Program fee
- Homeless Management Information System support fee
- In accordance with Ordinance No. 404, the Community Development Advisory Committee reviews potential projects and determines priorities for this fund. The CDAC approved the use of this fund for ongoing housing expenditures as necessary.

Community Development Maintenance

- Zoning Ordinance Update anticipated this year

INTERFUND TRANSFERS AND LOANS (SEC. 66006(B)(1)(G))

An interfund loan and repayment in the amount of \$300,000 was made between Capital Fund No. 401 and the Community Development Maintenance Fee Fund 025 to cover the costs of the General Plan Tune-Up. To date, \$200,000 of the loan has been repaid.

AMOUNT OF REFUNDS (SEC. 66006(B)(1)(H))

No refunds of any of these fees were made during fiscal year 2013-2014.

F.7 Authorization for the Mayor to reaffirm the authorization of the continued participation of the City of Newark in the Alameda County Urban County for Community Development Block Grant Funds for Fiscal Years 2015-2017 and the execution of the revised cooperation agreement on September 18, 2014 – from Assistant City Manager Grindall (RESOLUTION)

Background/Discussion – Each year, as part of the Alameda County Urban County, the City of Newark receives funding under the United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program. This grant provides funding for activities benefiting low- and moderate-income persons, including public works projects, planning studies, and housing rehabilitation and repair. On September 18, 2014, the City of Newark with Resolution No. 10269, executed a revised cooperation agreement with the County of Alameda to continue its participation in the Alameda County Urban County for federal fiscal years 2015, 2016 and 2017. The agreement was revised at HUD’s request in order to incorporate standard language and meet necessary requirements.

Following the execution of the revised cooperation agreement, HUD requested that a revised resolution be adopted to reaffirm that the City previously authorized the execution of the revised agreement and confirm that the revised agreement had been executed on September 18, 2014.

By approving this resolution, the City Council will authorize the Mayor to reaffirm the authorization of the continued participation of the City of Newark in the Alameda County Urban County for Community Development Block Grant Funds for Fiscal Years 2015-2017 and the execution of the revised cooperation agreement on September 18, 2014.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Mayor to reaffirm the authorization of the continued participation of the City of Newark in the Alameda County Urban County for Community Development Block Grant Funds and the execution of the revised cooperation agreement on September 18, 2014 by the Mayor of the City of Newark.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK REAFFIRMING THE AUTHORIZATION OF THE CONTINUED PARTICIPATION OF THE CITY OF NEWARK IN THE ALAMEDA COUNTY URBAN COUNTY FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND EXECUTION OF THE REVISED COOPERATION AGREEMENT ON SEPTEMBER 18, 2014 BY THE MAYOR OF THE CITY OF NEWARK

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

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

WHEREAS, Title I makes available entitlement grants to cities whose 2010 Census population exceeds 50,000 persons and to counties which qualify as an urban county; and

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

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

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

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

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

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

WHEREAS, the cities of Albany, Dublin, Emeryville, Newark, and Piedmont, each of which has a 2010 Census population of less than 50,000, have expressed their interest in joining with the Alameda County Unincorporated County to continue in the Alameda County Urban County for federal fiscal years 2015, 2016 and 2017; and

WHEREAS, these same five cities combine with the County of Alameda to form a combined 2010 Census population of 200,000 or more persons, thereby qualifying as an urban county, and becoming eligible for an entitlement of CDBG funds; and,

WHEREAS, these same five cities executed cooperation agreements with the County of Alameda, wherein the parties agreed to participate in the Urban County for the duration of the three-year funding cycle; and

WHEREAS, following execution of the cooperation agreements, the cities were informed that certain revisions to the cooperation agreements would be necessary in order to meet the requirements established by HUD's Notice No. CPD-14-07 and that authorizing resolutions would need to be adopted; and

WHEREAS, these same five cities thereafter executed revised cooperation agreements with the County of Alameda, wherein the parties agreed to participate in the Urban County for the duration of the three-year funding cycle, which revised agreements incorporated the revisions required by HUD; and

WHEREAS, on behalf of the City of Newark, its Mayor executed the revised cooperation agreement with the County of Alameda on September 18, 2014, which agreement entitled "Agreement" and states that it is "made and entered into the 18th day of September, 2014"; and

WHEREAS, the City Council of the City of Newark adopted Resolution No. 10269, authorizing the City of Newark to continue participation in the urban County and authorizing the Mayor to execute the cooperation agreement; and,

WHEREAS, the City of Newark wishes to clarify and reaffirm that its prior authorization applied to its continued participation in the Urban County for the CDBG program as well as the Mayor's authority to execute the revised cooperation agreement on September 18, 2014; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby resolve, declare, determine and order as follows:

SECTION 1. The City Council of the City of Newark hereby confirms that Resolution No. 10269, adopted on September 18, 2014 was intended to and did authorize the City of Newark to continue its participation in the Urban County for Fiscal Years 2015-2017 and authorize the Mayor to execute the Revised Cooperation Agreement, and further hereby acknowledges that said Revised Cooperation Agreement was duly executed by the Mayor on September 18, 2014.

SECTION 2. The City Council of the City of Newark hereby reaffirms its authorization of the continued participation of the City of Newark in the Alameda County Urban County for CDBG Funds for Fiscal Years 2015, 2016, and 2017.

SECTION 3. The City Council of the City of Newark hereby reaffirms its approval of the REVISED Cooperation Agreement with the County of Alameda and its authorization for the Mayor to execute the REVISED Cooperation Agreement with the County of Alameda in order to continue the City of Newark's participation in the Urban County for CDBG funds which revised Agreement was duly executed by the Mayor on behalf of the City of Newark on September 18, 2014.

SECTION 4. To the extent that Resolution No. 10269 is inconsistent with the authorization acknowledged herein, it is hereby superseded by this Resolution.

SECTION 5. This resolution shall take effect immediately upon its adoption.

RESOLUTION NO. 10269

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE MAYOR'S EXECUTION OF A
REVISED AGREEMENT WITH ALAMEDA COUNTY FOR
PARTICIPATION IN THE ALAMEDA COUNTY URBAN
COUNTY FOR FISCAL YEARS 2015-2017

BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark is hereby authorized to sign an agreement with Alameda County for participation in the Alameda County Urban County for Fiscal Years 2015-2017, said agreement on file in the Office of the City Clerk.

I HEREBY CERTIFY the foregoing resolution was introduced at a special meeting of the City Council of the City of Newark held on September 18, 2014, by Council Member Freitas, who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES: Council Members Collazo, Freitas, Marshall, Vice Mayor Apodaca and Mayor Nagy

NOES: None

ABSENT: None

SECONDED: Council Member Marshall

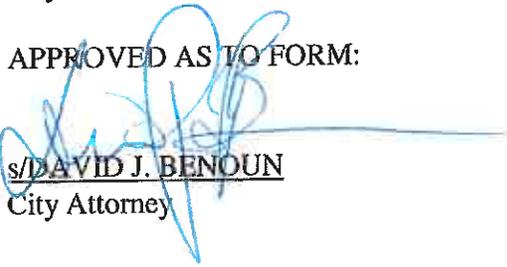
APPROVED:


s/ALAN L. NAGY
Mayor

ATTEST:


s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:


s/DAVID J. BENOUN
City Attorney

AGREEMENT

This Agreement is made and entered into this 9th day of September by and between the CITY OF NEWARK, hereinafter called "CITY" and the COUNTY OF ALAMEDA, hereinafter called "COUNTY". This Agreement replaces the former agreement adopted by the parties on or about July 8, 2014, regarding their cooperation with respect to Community Development Block Grant funding.

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

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

WHEREAS, Title I makes available entitlement grants to:

- (1) cities whose 2010 Census population exceeds 50,000 persons; and
- (2) counties which qualify as an urban county; and

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

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

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

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

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

WHEREAS, five cities (Albany, Dublin, Emeryville, Newark and Piedmont) in Alameda County have a 2010 Census population of less than 50,000 and desire to participate in the Alameda County urban county; and,

WHEREAS, the participating cities, combined with the unincorporated portions of the County of Alameda, form a combined 2010 Census population of 200,000 or more persons, thereby qualifying as an urban county, and becoming eligible for an entitlement of Community Development

C-2014-128

Block Grant (CDBG) and HOME Investment Partnership (HOME) funds; and,

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

WHEREAS, the COUNTY and CITY cannot withdraw from the cooperative agreement while the Program Year 2015-2017 Agreement remains in effect.

THEREFORE, it is agreed that:

1. CITY agrees that by executing this Agreement, CITY may not apply for grants from appropriations under the Small Cities or State CDBG Program from appropriations for fiscal years during the period in which it is participating in the Urban County's CDBG program.
2. CITY agrees that by executing this Agreement, it may only receive a portion of the formula allocation under the HOME Program through the Urban County. If the Urban County does not receive a portion of the HOME formula allocation, the CITY cannot form a HOME Consortium with other local governments. An Urban County or a unit of government participating with the Urban County may apply to the State of California for HOME funds, if the State allows. CITY agrees that by executing this Agreement, it may only receive the formula allocation under the ESG Program through the Urban County. If the Urban County does not receive the ESG formula allocation, the CITY cannot form an Urban County with other local governments. An Urban County or a unit of government participating with the Urban County may apply to the State of California for ESG funds, if the State allows.
3. The Department of Housing and Urban Development, hereinafter called "HUD", has made a determination that the COUNTY has the essential powers to operate as an urban county.
4. CITY and COUNTY will cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing, hereinafter called "PROGRAM", to be carried out with annual Community Development Block Grant and HOME Investment Partnership funds, hereinafter called "CDBG/HOME FUNDS", from Federal fiscal years 2015, 2016 and 2017 appropriations and from any program income generated from the expenditure of such funds. Community renewal and lower income housing assistance activities shall be those designated or referred to within Title I of the ACT and Title II of the Cranston-Gonzalez National Affordable Housing Act and the regulations issued pursuant thereto.
5. To carry out community renewal and lower income housing activities, COUNTY shall distribute to CITY a portion of the CDBG funds received under the ACT from Federal fiscal years 2015, 2016 and 2017 appropriations. The funds distributed to CITY shall be determined in accordance with such needs, objectives, or strategies, as COUNTY shall decide. In preparing the needs, objectives or strategies, COUNTY shall consult with CITY before making its determinations.

The distribution of HOME funds to the Urban County is based on the review and recommendations of proposals received in response to an annual RFP.

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

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

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

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

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

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

10. In regard to real property that is in within the control of CITY due to being acquired or improved in whole or in part using CDBG funds, CITY must give timely notification to COUNTY

for any modification or change in the use of the real property from that planned at the time of acquisition or improvement including disposition. CITY must reimburse COUNTY in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a use which does not qualify under the CDBG regulations. Any program income generated from the disposition or transfer of property prior to or subsequent to the close-out, change of status or termination of the cooperation agreement between COUNTY and CITY shall be paid to COUNTY.

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

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

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

14. This Agreement shall go into effect immediately upon the signature of both parties and shall continue in full force and effect until all activities funded by CDBG/HOME FUNDS from Federal fiscal years 2015, 2016 and 2017 appropriations are completed. CITY will be included in the urban county for the entire three years period funded by CDBG/HOME FUNDS from Federal fiscal years 2015, 2016 and 2017. Appropriations may not be withdrawn from the urban county during this agreement period. During the three year qualification period, Federal fiscal years 2015, 2016 and 2017, CITY and any other included unit of general local government shall not withdraw from nor be removed from the Urban County and cannot terminate or withdraw from the cooperation agreement.

15. CITY agrees that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations and a policy of enforcing applicable State and locals laws against

physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.

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

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

CITY OF NEWARK

COUNTY OF ALAMEDA

Mayor



President, Board of Supervisors

ATTEST: _____
City Clerk

ATTEST: 

Clerk, Board of Supervisors

DATE: _____
APPROVED AS TO FORM:

DATE: 9/16/14
APPROVED AS TO FORM:
Donna R. Ziegler, County Counsel

City Attorney

By: 

Heather M. Littlejohn, Deputy County Counsel

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

physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.

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

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

CITY OF NEWARK

COUNTY OF ALAMEDA



Mayor

President, Board of Supervisors

ATTEST: 

City Clerk

ATTEST: _____
Clerk, Board of Supervisors

DATE: 9/18/2014
APPROVED AS TO FORM:

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



City Attorney

By: _____
Health M. Littlejohn, Deputy County Counsel

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

I.1 Declaring a vacancy on the Newark Planning Commission and authorizing the City Clerk to post a notice of vacancy – from Mayor Nagy. (MOTION)

Background/Discussion – A vacancy has occurred on the Planning Commission due to the election of Michael Hannon to the City Council. Mr. Hannon’s Planning Commission term was scheduled to expire in December 2016.

Pursuant to Government Code Section 54974, whenever an unscheduled vacancy occurs on a commission a special vacancy notice shall be posted not later than 20 days after the vacancy occurs. The vacancy notice must be posted for at least ten days before the Mayor may appoint a new commission member.

Attachment

Action - It is recommended that the City Council, by motion, declare a vacancy on the Newark Planning Commission and direct the City Clerk to post the notice of vacancy.

I.2 Appointments of City Council Members to agencies, boards, commissions, and committees – from Mayor Nagy. (RESOLUTIONS - 2)

Background/Discussion – On a yearly basis, the Mayor appoints City Council Members to various agencies, boards, commissions, and committees. The current appointments are as follows:

Alameda County Fire Advisory Commission	Council Members Apodaca and Collazo – delegate and alternate
Alameda County Library Advisory Commission	Council Members Collazo and Mayor Nagy – delegate and alternate
Alameda-Contra Costa Transit District Policy Advisory Committee	Council Members Marshall and Apodaca – delegates
Alameda County Transportation Commission	Council Members Freitas and Collazo – delegate and alternate
Alameda County Waste Management Authority Board/Stopwaste.org	Council Members Freitas and Marshall – delegate and alternate
Association of Bay Area Governments (ABAG)	Council Member Apodaca and Mayor Nagy – delegate and alternate
Community Development Advisory Committee	Mayor Nagy and Council Member Freitas – delegates
Dumbarton Rail Policy Advisory Committee	Council Members Apodaca and Freitas – delegate and alternate
Newark City Council –Board of Education Liaison Committee	Council Members Apodaca and Collazo – delegates
Tri-City Elder Coalition	Mayor Nagy - delegate
Senior Citizen Standing Advisory Committee	Mayor Nagy delegate and chairperson
Southern Alameda County Geographic Information System Authority	Mayor Nagy - delegate Vacancy - alternate
Tri-City Waste Facility Financing Authority	Mayor Nagy and Council Member Freitas – delegates

In addition to these assignments, Vice Mayor Apodaca was the City's representative to the Housing Authority of Alameda County. This four year appointment, made by the Alameda County Board of Supervisors, expires in 2015 and is usually not included on the annual assignment list. A Council Member should be appointed to the unexpired seat.

Attachment

Action - It is recommended that the City Council, by resolutions, (1) approve the appointments to the various agencies, boards, commissions, and committees; (2) approve the appointment of a Council Member to fill the unexpired seat on the Housing Authority of Alameda County.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK CONFIRMING THE MAYOR'S APPOINTMENTS
TO VARIOUS AGENCIES, BOARDS, COMMISSIONS, AND
COMMITTEES

WHEREAS, the Mayor of the City of Newark has appointed representatives to the following agencies, boards, commissions, and committees:

Alameda County Fire Advisory Commission	Council Members Apodaca and Collazo – delegate and alternate
Alameda County Library Advisory Commission	Council Members Collazo and Mayor Nagy – delegate and alternate
Alameda-Contra Costa Transit District Policy Advisory Committee	Council Members Marshall and Apodaca – delegates
Alameda County Transportation Commission	Council Members Freitas and Collazo – delegate and alternate
Alameda County Waste Management Authority Board/Stopwaste.org	Council Members Freitas and Marshall – delegate and alternate
Association of Bay Area Governments (ABAG)	Council Member Apodaca and Mayor Nagy – delegate and alternate
Community Development Advisory Committee	Mayor Nagy and Council Member Freitas – delegates
Dumbarton Rail Policy Advisory Committee	Council Members Apodaca and Freitas – delegate and alternate
Newark City Council –Board of Education Liaison Committee	Council Members Apodaca and Collazo – delegates
Tri-City Elder Coalition	Mayor Nagy - delegate
Senior Citizen Standing Advisory Committee	Mayor Nagy delegate and chairperson
Southern Alameda County Geographic Information System Authority	Mayor Nagy - delegate Vacancy - alternate

Tri-City Waste Facility Financing

Mayor Nagy and Council Member
Freitas – Authority delegates

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves the Mayor's appointments.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPOINTING COUNCIL MEMBER _____
TO FILL THE UNEXPIRED TERM ON THE HOUSING
COMMISSION

WHEREAS, on December 11, 2011, the City Council nominated Vice Mayor Ana Apodaca to serve as the City of Newark's representative to the Housing Commission; and

WHEREAS, the Alameda County Board of Supervisors appointed Vice Mayor Apodaca to a term ending on December 31, 2016; and

WHEREAS, Vice Mayor Apodaca no longer serves on the Newark City Council, creating a vacancy on the Housing Commission.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby nominates Council Member _____ to fill the unexpired term on the Housing Commission ending on December 31, 2016.