

F.1 Approval of plans and specifications, acceptance of bid and award of contract to Ghilotti Bros., Inc. for 2014 Asphalt Concrete Street Overlay Program, Project 1063 – from Associate Civil Engineer Tran. (MOTION)(RESOLUTION)

Background/Discussion – This project will provide localized patch paving, pavement grinding, surfacing paving, and re-striping on various City streets.

Bids for the project were opened on May 27, 2014 with the following results:

Bidder	Amount
Ghilotti Bros., Inc.	\$ 893,333.00
G. Bortolotto & Company, Inc.	933,444.39
Goodfellow Top Grade Construction, LLC.	942,885.00
MCK Services, Inc.	971,561.25
O'Grady Paving, Inc.	975,238.00
Gallagher & Burk, Inc.	987,654.00
C. F. Archibald Paving, Inc.	1,063,824.00
ALB, Inc.	1,149,256.50*
RGW Construction, Inc.	1,152,694.00
A. Teichert & Son, Inc. dba Teichert Construction	1,156,099.25
Interstate Grading & Paving, Inc.	1,371,126.50
Engineer's Estimate	\$ 935,000.00

**Corrected for minor mathematical error*

The 2012-2014 Biennial Budget includes funding for this project in Fiscal Year 2013-2014. This project will be funded through Alameda County Measure B Sales Tax funds, Vehicle Registration Fee funds, and the Traffic Congestion Relief Fund.

Staff recommends that this project be awarded to the lowest responsible bidder, Ghilotti Bros., Inc.

Attachment

Action – It is recommended that the City Council, by motion, approve the plans and specifications and by resolution, accept the bid and award the contract to 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 BID AND AWARDING THE
CONTRACT TO GHILOTTI BROS., INC. FOR 2014 ASPHALT
CONCRETE STREET OVERLAY PROGRAM, PROJECT 1063

BE IT RESOLVED that the City Council of the City of Newark does hereby find that Ghilotti Bros., Inc. was the lowest responsible bidder for 2014 Asphalt Concrete Street Overlay Program, Project 1063, in the City of Newark;

BE IT FURTHER RESOLVED that the City Council does hereby accept said bid of said company and does hereby authorize the Mayor of the City of Newark to sign an agreement with said company for the construction of 2014 Asphalt Concrete Street Overlay Program, Project 1063, according to the plans, specifications, and terms of said bid.

F.2 Authorization for the Police Chief to sign an amendment to the agreement with All City Management Services for the contracting of school crossing guards, extending the term of said agreement – from Police Chief Leal. (RESOLUTION)

Background/Discussion – On June 13, 2013, the City Council approved an amendment agreement for the extension of school crossing guard services through June 30, 2014. The latest amendment agreement extending their services for two years, through June 30, 2016, was received and reviewed by the City Attorney. All provisions of the original contract will remain in effect, except for a 6.65 percent increase in the crossing guards' hourly rate. Due to the upcoming California Minimum Wage increases in July 2014 and January 2016, the current rate of \$15.50/hr. will adjust to \$16.53/hr. commencing with the 2014-2015 school year.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Police Chief to sign an amendment to the agreement with All City Management Services for the contracting of school crossing guards, extending the term of said agreement.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE POLICE CHIEF TO SIGN AN
AMENDMENT TO THE AGREEMENT WITH ALL CITY
MANAGEMENT SERVICES FOR SCHOOL CROSSING
GUARDS, EXTENDING THE TERM OF SAID AGREEMENT

WHEREAS, the City of Newark has maintained an agreement with All City Management Services for school crossing guards since August 2011; and

WHEREAS, the City is satisfied with the services that have been rendered by All City Management Services and desires to extend the term of the agreement to June 30, 2016;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark authorizes the Police Chief to sign the "Amendment to Agreement between All City Management Services, Inc., and the City of Newark for providing School Crossing Guard Services" for the 2014-2015 and 2015-2016 school years.



ALL CITY MANAGEMENT SERVICES

**Amendment to Agreement between
All City Management Services, Inc. and the City of Newark
for providing School Crossing Guard Services**

The **City of Newark** hereinafter referred to as the "City", and **All City Management Services, Inc.**, located at 10440 Pioneer Blvd., Suite 5, Santa Fe Spring, CA 90670 hereinafter referred to as the "Contractor", mutually agree to amend the existing Agreement entered into on August 1, 2011 as follows:

- 1. **Item #1** This Agreement is for a period of time which commences July 1, 2014 and ends on June 30, 2016, and for such term thereafter as the parties may agree upon.
- 2. **Item #16** The City agrees to pay Contractor for services rendered pursuant to this Agreement the sum of Sixteen Dollars and Fifty-Three Cents (\$16.53) per hour, with a maximum of three (3) hours per location for each day service is provided.

Except as provided for in Item #1 and Item #16 all other terms and conditions of the original Agreement, as amended between the City and the Contractor remain in effect.

City of Newark

All City Management Services, Inc.

By _____
Signature

By 
Demetra Farwell, Corporate Secretary

Print Name Title

Date May 29, 2014

Date _____

"The Crossing Guard Company"

All City Management Services Inc.

Client Worksheet 2014 - 2015

Department: 9001

Billing Rate for 2014/2015: \$16.53

City of Newark
27101 Newark Blvd
Newark, CA 94560

KEY:

Traditional Calendar:

For sites with no regularly scheduled early release days, use 180 regular days

For sites with one regularly scheduled early release day/week, use 144 regular days and 36 minimum days

Summer School

For schools with Summer School sessions use 19 days

Sites with traditional calendar:

	21		180		\$16.53	=	\$62,483.40
7 sites with one early release:	Total Hrs/day	X	days/yr	X	Hourly Billing Rate		

Summer School Sites

No estimate for Summer School based on 2013/2014

TOTAL PROJECTED HOURS	3780	TOTAL ANNUAL PROJECTED COST	\$62,483.40
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F.3 Establishment of the Fiscal Year 2014-2015 Appropriations Limit – from Senior Accountant del Rosario. (RESOLUTION)

Background/Discussion – State law requires the adoption of the Appropriations Limit by resolution prior to the beginning of each fiscal year and a recorded vote of the Council regarding which of the annual adjustment factors have been selected to calculate the Appropriations Limit each fiscal year. On June 27, 2013, the City Council adopted Resolution No. 10114 establishing the Fiscal Year 2013-2014 Appropriations Limit to \$292,503,881.

The State Constitution specifies the annual adjustment factors that the City may choose to calculate the Appropriations Limit. These adjustment factors are comprised of: (1) either the California per capita income or the percentage change in the local assessment roll due to the addition of local nonresidential construction in the City and (2) either the city's population growth or the population growth of the entire county. The two percentage increases are multiplied together to determine the final percentage by which the prior year's limit is increased.

The City chooses to use the percentage change in California personal income for the inflationary adjustment. Local assessment roll data necessary to calculate the percentage change in the nonresidential assessed valuation is generally not available from the County Assessor's Office until well into the fiscal year. In the absence of final information on this important factor, it is recommended that the known California per capita personal income of -0.23 percent be adopted for Fiscal Year 2014-2015. For the population adjustment factor, it is recommended that the County's percentage change in population of 1.50 percent be adopted for Fiscal Year 2014-2015 since the higher percentage change in the County's population is most advantageous to the City.

Based on the above information, the proposed Fiscal Year 2014-2015 Appropriations Limit is \$296,208,589. The 2014-2015 Biennial Budget contains appropriations subject to the limit and the budget is well below that limit.

Attachment

Action - It is recommended that the City Council, by resolution, establish the Fiscal Year 2014-2015 Appropriations Limit and select the California per capita personal income and County of Alameda's population change as the annual adjustment factors.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK REVISING THE APPROPRIATIONS LIMIT AND
ANNUAL ADJUSTMENT FACTORS FOR FISCAL YEAR
2014-2015

WHEREAS, pursuant to Article XIII-B of the Constitution of the State of California, the City Council of the City of Newark has established an "Appropriations Limit" for Fiscal Year 2014-2015; and

WHEREAS, an Appropriations Limit has been determined in accordance with the Uniform Guidelines for implementation of Article XIII-B of the California Constitution prepared by the League of California Cities dated April 1980 and as revised March 1991, and pursuant to the provision of Chapter 1205 of the statutes of 1980 and modified by Proposition 111 and SB 88, Chapter 60 of the Statutes of 1990; and

WHEREAS, Proposition 111 requires a recorded vote of the Council regarding which of the annual adjustment factors have been selected;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark, establishes the County of Alameda's population change of 1.50 percent and the California per capita personal income change of -0.23 percent as the factors in calculating the Appropriations Limit for Fiscal Year 2014-2015;

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby establishes the amount of \$296,208,589 as the Appropriations Limit for Fiscal Year 2014-2015.

F.4 Establishment of amount of revenue from property taxes necessary to support City departments for Fiscal Year 2014 - 2015 – from Senior Accountant del Rosario. (RESOLUTION)

Background/Discussion – Section 51508 of the Government Code of the State of California requires that each fiscal year the City Council fixes the amount of revenue from property taxes that is necessary to support all City departments.

The resolution necessary to meet the requirement of this law has been prepared. The resolution establishes the amount allocated from property tax revenues for the support of City departments for Fiscal year 2014-2015 in the amount of \$9,853,000. This figure was derived based on information provided by the Alameda County Auditor-Controller and represents the City's share of the County tax rate, which is distributed according to legislative provisions.

Attachment

Action – It is recommended that the City Council, by resolution, establish the amount of revenue from property taxes necessary to support all City departments for Fiscal Year 2014 - 2015.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ESTABLISHING THE AMOUNT OF REVENUE
FROM PROPERTY TAXES NECESSARY TO SUPPORT ALL
CITY DEPARTMENTS FOR FISCAL YEAR 2014-2015

BE IT RESOLVED by the City Council of the City of Newark that pursuant to the provisions of Section 51508 of the Government Code of the State of California, the amount of revenue from property taxes upon the taxable property within the City of Newark, California, necessary to support all departments of the City of Newark for Fiscal Year 2014-2015, hereby is fixed as hereinafter set forth:

For the support of all departments of said City for Fiscal Year 2014-2015, the sum of	\$9,853,000
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F.5 Approval of Investment Policy – from Senior Accountant del Rosario.
(RESOLUTION)

Background/Discussion – State law requires that the City’s Investment Policy be reviewed and approved by the City Council at least annually. The City’s current Investment Policy provides for all of the standard and material issues that an Investment Policy should include. The Investment Policy’s primary objective is safety of principal with liquidity and return in investment as second and third priorities respectively. No changes are being proposed from last years adopted policy.

Attachment

Action - It is recommended that the City Council, by resolution, approve the City’s Investment Policy.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING THE CITY'S INVESTMENT POLICY

BE IT RESOLVED by the City Council of the City of Newark that the following Investment Policy is hereby set forth as follows:

1.0 PURPOSE

The purpose of this policy is to provide an overall guideline to the officers of the City of Newark (City) charged with the responsibility for the management and investment of unexpended funds under authority granted by the City Council. This policy is in compliance with the provision of the California Government Code, Sections 53600 through 53659, authority governing investments for municipal governments.

The City Treasurer, under the direction of the City Manager, is responsible for administering the City's investments and deposits.

2.0 POLICY

It is the policy of the City to invest public funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow demands of the City and conforming to all State and local statutes governing the investment of public funds.

3.0 SCOPE

The investment policy applies to all funds and investment activities under the direct authority of the City.

4.0 PRUDENCE

Investments shall be made with judgment and care - under circumstances then prevailing - which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The standard of prudence to be used by City investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. City investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

5.0 OBJECTIVE

The primary objectives, in priority order, of the City's investment activities shall be:

- 5.1 Safety: Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
- 5.2 Liquidity: The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements, which might be reasonably anticipated.
- 5.3 Yield: The City's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio.

6.0 DELEGATION OF AUTHORITY

Management responsibility for the investment program is delegated to the City Treasurer. No person may engage in an investment transaction except provided under the terms of this policy established by the City. The City Treasurer shall be responsible for all transactions undertaken and shall establish control system to regulate the activities of subordinate officials. The City may contract for the use of investment management services subject to the provisions of this policy and state law.

7.0 ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Manager any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City, particularly with regard to the time of purchases and sales.

8.0 AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

The Treasurer will maintain a list of financial institutions and dealers authorized to provide investment services to the City. Financial institutions and dealers who desire to become qualified bidders for investment transactions will be required to provide, at the Treasurer's discretion, the following:

- Most current audited financial statements
- Most current State and national certification and registration
- Certification of having read, and to recommend investments that are consistent with the City's most current investment policy.

These documents, among other factors, will be used by the Treasurer to determine whether to authorize a financial institution or dealer to provide investment services to the City.

9.0 AUTHORIZED AND SUITABLE INVESTMENTS

The City is empowered by state law to invest in the following types of securities.

- Bankers' Acceptances (BA)

These are short-term credit arrangements to enable businesses to obtain funds to finance commercial transactions. They are time drafts drawn on a bank by an exporter or importer to obtain funds to pay for specific merchandise. By its acceptance, the bank becomes primarily liable for the payment of the draft at its maturity. Bankers' acceptances may not exceed 180 days to maturity.

- Certificates of Deposit (CD)

These are issued by banks or savings and loan associations, also known as time deposits. The first \$250,000 is guaranteed by the Federal Deposit Insurance Corporation (FDIC) in the case of banks, and the Federal Savings and Loan Insurance Corporation (FSLIC) in the case of savings and loan associations. Deposits in excess of \$100,000 must meet collateral requirements as provided by law.

- Commercial Paper

An unsecured short-term promissory note issued by corporations, with maturities ranging from 2 to 270 days. Commercial paper must be rated in the highest tier (e.g., A-1, P-1, F-1, or D-1 or higher) by a nationally recognized rating agency.

- Local Agency Investment Fund (LAIF)

State law established the Local Agency Investment Fund. This fund enables local governmental agencies to remit money to the State Treasurer for the purpose of investment. The State Treasurer has elected to invest these monies with State monies as a part of the Pooled Money Investment Account. Each local governmental agency has the exclusive determination of the length of time its money will be on deposit with the State Treasurer. At the end of each calendar quarter, all earnings derived

from investments are distributed by the State Controller to the participating government agencies in proportion to each agency's respective amounts deposited in the Fund and the length of time such amounts remained therein. Prior to the distribution, the State's costs of administering the program are deducted from the earnings.

- Negotiable Certificates of Deposit (NCD)

These are unsecured obligations of the financial institution, bank, or savings and loan bought at par value with the promise to pay face value plus accrued interest at maturity. These investment instruments are traded in secondary markets, thus they have more liquidity than a CD.

- Obligations issued by the United States Government Agencies such as the Government National Mortgage Association (GNMA), the Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank Board (FHLB), the Federal National Mortgage Association (FNMA), the Student Loan Marketing Association (SLMA), and the Tennessee Valley Authority (TVA).

- Repurchase (RP or REPO) and Reverse Repurchase Agreement

Repurchase agreements are the sale by a bank or dealer of a government security with a simultaneous agreement to repurchase the security on a later date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate the buyer for this. As their name implies, reverse repurchase agreements are the mirror image of a REPO.

- Securities of the U.S. Government

Includes United States Treasury notes, bonds, bills, certificates of indebtedness, and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

Investments and deposits as a percentage of the City's total portfolio and their maximum maturities shall be within legally prescribed limits. To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than 5 years from the date of purchase.

10.0 COLLATERALIZATION

Amount of securities placed with agent of depository shall at all times be maintained as specified in California Government Code Section 53652 and pursuant to Sections 53656 and 53658.

The purchases of Certificates of Deposit require the depository to secure public funds. If the collateral is government securities, 110 percent market value to the face amount of the deposit is required. Promissory notes secured by first mortgages and first trust deeds used as collateral require 150 percent of market value to the face amount of the deposit. An irrevocable Letter of Credit issued by the Federal Home Loan Bank of San Francisco requires 105 percent of market value to the face amount of the public deposit.

Collateral is also identified as the underlying marketable securities provided by a broker/dealer under a repurchase agreement transaction of the marketable securities provided by the Governmental Agency under a reverse repurchase agreement.

Marketable securities, which are provided as collateral under a repurchase agreement with a broker/dealer, should be held by the safekeeping agent at a market value greater than 102 percent. Request for collateral substitutions and releases should always be subject to the City Treasurer's approval.

11.0 SAFEKEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the City shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by a third party custodian designated by the Treasurer and evidenced by safekeeping receipts as specified in California Government Code Section 53608.

12.0 DIVERSIFICATION

The City will diversify its investments by security type and institution. The purpose of diversification is to reduce overall portfolio risks while attaining market average rates of return.

With the exception of U.S. Treasury securities and authorized pools, no more than 50 percent of the City's total investment portfolio will be invested in a single security type or with a single financial institution.

Investments in bankers' acceptances, commercial papers, and negotiable certificates of deposits, as a percentage of City's total portfolio, shall at all times be maintained on percentage limitations specified by California Government Code Section 53601.

13.0 INTERNAL CONTROL

The City Treasurer will require independent auditors to review and perform testing of cash and investments as part of the City's annual financial audit. The review and testing are designed to ensure that there is no material misstatement of cash and investment balances in the financial statements and to provide internal control assuring compliance with the policies and procedures.

14.0 PERFORMANCE STANDARDS

The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow requirements.

15.0 INVESTMENT ALLOCATION

The City Treasurer shall allocate interest from the General Fund to other funds with average daily cash balances in excess of \$10,000. All interest earnings not otherwise allocated shall be allocated to the General Fund.

16.0 INVESTMENT REVIEW COMMITTEE

The Investment Review Committee shall be made up of the City Manager, City Treasurer, and City Clerk and shall meet as deemed necessary by the City Manager to review the execution of this Investment Policy. The Committee may determine that temporarily idle monies be invested in only certain selected securities from those permitted by state law as listed under Item 9.0 above.

17.0 REPORTING

The City Treasurer shall report monthly to the City Council and City Manager the following:

- Type of Investment
- Financial Institution Name
- Date of Investment and Maturity
- Principal Amount of Investment
- Current Market Value, where possible, for all securities with the maturity of more than 12 months
- Rate of Interest or Yield

18.0 INVESTMENT POLICY ADOPTION

The City's investment policy shall be adopted by resolution of the City Council of the City of Newark. The investment policy shall be reviewed annually and be approved by the City Council of the City of Newark.

F.6 Acceptance of contract with Pacheco Brothers Gardening, Inc., for Jerry Raber Ash Street Park Turf Renovation, Project 1067– from Maintenance Supervisor Carey. (RESOLUTION)

Background/Discussion – On December 12, 2013 the City Council awarded a contract to Pacheco Brothers Gardening, Inc., for turf renovation services. All work on this project is now complete.

Attachment

Action - It is recommended that the City Council, by resolution, accept the contract with Pacheco Brothers Gardening, Inc., for Jerry Raber Ash Street Park Turf Renovation, Project 1067.

Pa

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ACCEPTING THE CONTRACT WITH PACHECO
BROTHERS GARDENING, INC., FOR JERRY RABER ASH
STREET PARK TURF RENOVATION PROJECT 1067

WHEREAS, the City of Newark has entered into a contract with Pacheco Brothers Gardening, Inc., pursuant to Resolution No. 10,151, in accordance with plans and specifications for the contract; and

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

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

F.7 Authorization for the City Attorney to sign a Certification and Mutual Indemnification Agreement with the County of Alameda – from Senior Accountant del Rosario and City Attorney Benoun. (RESOLUTION)

Background/Discussion – The City currently has an agreement with Alameda County which authorizes the collection of various taxes, assessments, and fees on the secured property tax roll. Since the passage of Proposition 218 in 1996, the County has required that each agency or district sign an annual statement certifying that each assessment, fee, and/or special tax placed on the tax rolls meets the requirements of Proposition 218.

Staff has reviewed each of the City's taxes, assessments, and fees to ensure compliance with the proposition. It is the opinion of the City Attorney that the City's taxes, assessments, and fees are in compliance with Proposition 218 requirements and the City is able to sign the certification.

Attachment

Action – It is recommended that the City Council, by resolution, authorize the City Attorney to sign a Certification and Mutual Indemnification Agreement with the County of Alameda.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE CITY ATTORNEY TO SIGN A
CERTIFICATION AND MUTUAL INDEMNIFICATION
AGREEMENT WITH THE COUNTY OF ALAMEDA

BE IT RESOLVED by the City Council of the City of Newark that the City Attorney of the City of Newark be and is hereby authorized to sign a Certification and Mutual Indemnification Agreement for the County of Alameda, said agreement on file in the Office of the City Clerk.

Certification and Mutual Indemnification Agreement

The CITY OF NEWARK (hereafter referred to as public agency), by and through its Attorney, hereby certifies that to its best current understanding of the law, the taxes, assessments and fees placed on the 2014/15 Secured Property Tax bill by the public agency met the requirements of Proposition 218 that added Articles XIII C and XIII D to the State Constitution.

Therefore, for those taxes, assessments and fees which are subject to Proposition 218 and which are challenged in any legal proceeding on the basis that the public agency has failed to comply with the requirements of Proposition 218; the public agency agrees to defend, indemnify and hold harmless the County of Alameda, its Board of Supervisors, its Auditor-Controller/Clerk-Recorder, its officers and employees.

The public agency will pay any final judgment imposed upon the County of Alameda as a result of any act or omission on the part of the public agency in failing to comply with the requirements of Proposition 218.

The County of Alameda, by and through its duly authorized agent, hereby agrees to defend, indemnify and hold harmless the public agency, its employees, agents and elected officials from any and all actions, causes of actions, losses, liens, damages, costs and expenses resulting from the sole negligence of the County of Alameda in assessing, distributing or collecting taxes, assessments and fees on behalf of the public agency.

If a tax, assessment or fee is challenged under Proposition 218 and the proceeds are shared by both the public agency and the County of Alameda; then the parties hereby agree that their proportional share of any liability or judgment shall be equal to their proportional share of the proceeds from the tax, assessment or fee.

The above terms are accepted by the public agency and I further certify that I am authorized to sign this agreement and bind the public agency to its terms.

CITY OF NEWARK

COUNTY OF ALAMEDA

Dated: _____

Dated: _____

By: _____
(Signature)

By: _____
(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

Approved as to form:

John Thomas Seyman,
Deputy County Counsel

F.8 Authorization for the purchase of updated and supplemental geographic information system software licenses and installation support services, and to declare Environmental Systems Research Institute, Inc. as the single source vendor– from Senior Engineer Fajeau. (RESOLUTION)

Background/Discussion- The Southern Alameda County Geographic Information System Authority (SACGISA) is a collaborative effort among local jurisdictions and utility districts to provide mapping, utility, and other public asset identification services. Staff uses SACGISA’s web-based interface on a daily basis to research land-based data, develop mailing lists, assist with public inquiries, and perform a variety of other functions. Staff also uses an internal GIS software package to, among other tasks, develop new GIS data sets, prepare maps and exhibits, and help design project specifications. The original formation of SACGISA included a competitive process for selection of hardware and software for the collective GIS services, including the original purchase of the City’s existing internal software package, ArcGIS. Environmental Systems Research Institute, Inc. (ESRI) is the sole vendor who can provide the necessary updated and supplemental licenses and software support services for the ArcGIS software that is currently used by both SACGISA and the City of Newark.

For the last fifteen years, Building Inspection, Engineering, Planning, and Code Enforcement have utilized a variety custom-developed software programs to track activities related to permit issuance. The City approved a contractual software and services agreement and a software maintenance agreement with CRW Systems, Inc. for a comprehensive Building Inspection Permit Tracking Software System. It is necessary for the City to update its internal GIS in order to make existing and future land-based data available for consumption by the new permit system. ESRI will provide an updated ArcGIS Desktop Advanced Concurrent Use License, an ArcGIS for Server Enterprise Standard (Windows) up to Four Cores License, and associated installation support. This will provide all the necessary updated and supplemental licenses as well as installation support services for compatibility with the comprehensive Building Inspection Permit Tracking Software System provided by CRW Systems, Inc.

As technology continues to evolve additional compatible upgrades, subscription and maintenance costs will continue to be required through ESRI for the City’s GIS to operate.

Single Source Exemption: Per the City Purchasing Ordinance and Resolution No. 9816 which revised the Single Source Exemption in the Purchasing Rules and Regulations, formal bidding procedures are not required in the event the City Council, by resolution, makes certain findings and declarations. These are:

- a. Formal bids would work an incongruity and would be unavailing in affecting the final results; and
- b. Formal bids would not produce an advantage to the City; or,
- c. It is practically impossible to obtain what is required through the formal bidding process; or,

- d. The product sought, or a significant portion thereof, is the subject of a patent and cannot be purchased from any source other than the holder of the patent.

The single source exemption is appropriate for this purchase under paragraphs a., b., and d. There is only one vendor (ESRI) to provide the updated and supplemental licenses and necessary support services for the City's existing ArcGIS software. Since that is the case, it is incongruous, or not appropriate, to require a formal bid since only one bidder could bid and it would be useless (unavailing), failing to achieve the desired result (i.e. competitive, multiple bid assuring the best use of public funds). Because ESRI is the only software provider, normal bids would not produce an advantage to the City; rather it would be an extraneous use of public funds. The software product sought is the subject of a copyright patent held by ESRI and cannot be purchased from any source other than ESRI.

The City has received a proposal from ESRI to provide the necessary licenses and services for the upgrade of the existing ArcGIS software in the amount of \$41,429.90 (including tax). This purchase will be funded under the previously approved Citywide Geographic Information System project. Therefore, no additional funding is required.

Action - It is recommended that the City Council, by resolution, authorize the purchase of updated and supplemental geographic information systems software licenses and installation support services, and declare Environmental Systems Research Institute, Inc. as the single source vendor.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE PURCHASE OF UPDATED
AND SUPPLEMENTAL GEOGRAPHIC INFORMATION
SYSTEM SOFTWARE LICENSES AND INSTALLATION
SUPPORT SERVICES AND TO DECLARE
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
AS THE SINGLE SOURCE VENDOR

WHEREAS, the City of Newark (City) is a participant in the Southern Alameda County Geographic Information System Authority (SACGISA) for the purpose of sharing in the costs and mutual benefits of providing mapping, utility, public asset identification, and other land-based data services to the participating local jurisdictions and utility districts. SACGISA and the City previously acquired geographic information system software from Environmental Systems Research Institute, Inc. (ESRI) through a competitive process for both shared and internal (City) GIS services; and

WHEREAS, the City approved a contractual software and services agreement and a software maintenance agreement with CRW Systems, Inc for a comprehensive Building Inspection Permit Tracking Software System. Said permit tracking software system is reliant upon the City's existing land-based data. The City's current ArcGIS software package requires both upgraded and supplemental software licenses as well as software installation support services in order to be compatible with the new permit tracking software system. Necessary licenses include an ArcGIS Desktop Advanced Concurrent Use License and ArcGIS for Server Enterprise Standard (Windows) up to Four Cores; and

WHEREAS, ESRI is the sole vendor who can provide the necessary updated and supplemental licenses and software support services for the ArcGIS software that is currently used by the City and SACGISA; and

WHEREAS, per the City Purchasing Ordinance, competitive bidding is not required when it would be impossible or not in the best interest of the public; and

WHEREAS, the City Council having reviewed and considered the information in the staff report, finds and declares, as set forth below and as required by Resolution No. 9816 which modified the Single Source Exemption Regulations in Resolution No. 7053, Purchasing Rules and Regulations that:

- a. Formal bids would work an incongruity and would be unavailing in affecting the final results since there is no comparable competitive product; and
- b. Formal bids would not produce an advantage to the City since ESRI is the sole provider of the City's current ArcGIS system and any and all necessary upgraded or supplemental software licenses.

- d. The product sought, or a significant portion thereof, is the subject of a patent and cannot be purchased from any source other than the holder of the patent (ESRI).

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby authorize the purchase of updated and supplemental geographic information system software licenses and installation support services, and declares Environmental Systems Research Institute, Inc. as the single source vendor.

F.9 Authorization for the purchase of a new Street Sweeper from Municipal Maintenance Equipment, Inc. – from Maintenance Superintendent Costa. (RESOLUTION)

Background/Discussion- The City of Newark’s Street Sweeper is due for replacement through the City’s Equipment Replacement Program. Approximately 300 curb miles are swept monthly, which includes monthly residential sweeping and semi-monthly commercial/industrial sweeping. In addition, 68 hours of additional passes are built in to the sweeping schedule during the fall and winter months to reduce leaf build-up in our storm drain system.

Bids for a replacement sweeper were advertised and opened on March 18, 2014. The specification for the bid was based on a 2015 Elgin Crosswind Sweeper with provisions for a substitution of the specified sweeper upon approval of the City’s Project Manager. The proposed cost includes the sweeper, all specified attachments, license fee, shipping, California tire fee and tax.

Two bids were received for the sweeper:

Municipal Maintenance Equipment, Inc.	\$212,017.68
Owen Equipment Sales	\$245,347.00
Engineer’s Estimate	\$250,000

Owen Equipment Sales is proposing to provide the 2015 Elgin “Crosswind” Sweeper as specified. Municipal Maintenance Equipment, Inc. (MME) is proposing a substitution of “equal” materials as allowed by the specifications.

MME has successfully demonstrated that the 2014 Schwarze A7 Tornado effectively meets the requirements of the specification. Fifty two items were compared to the Elgin and references were provided to show that the sweepers appear to be equal in quality, utility, reliability, and durability. Both are six wheel regenerative street sweepers used by both private and public municipalities. The Elgin currently meets Tier 4 emission standards. Tier 4 emission standards are not required for street sweepers at this time but most likely will be required during its useful life (estimated at 10 years). The 2014 Schwarze A7 Tornado would need to be retrofitted at some point at an estimated cost of \$10,000 if the Tier 4 emission standards are mandated.

Lease: The bid proposal requested terms and conditions of lease/purchase options, if available. MME provided three options for a three, four or five year lease-purchase type of financing. The acquisition of this street sweeper will occur through a lease-purchase agreement through Leasing 2, Inc. as MME’s leasing agent. Leasing 2, Inc. has provided acceptable leasing terms and documents for a five year lease.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the purchase of a new street sweeper from Municipal Maintenance Equipment, Inc. and authorize the City Manager to enter into a five year lease agreement with Lease 2, Inc.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING PURCHASE OF A NEW STREET
SWEEPER FROM MUNICIPAL MAINTENANCE
EQUIPMENT, INC. AND AUTHORIZING THE CITY
MANAGER TO ENTER INTO A FIVE YEAR LEASE
AGREEMENT WITH LEASE 2

WHEREAS, the City of Newark Equipment Replacement List includes an item for replacement of the City's primary street sweeper that has reached the end of its useful life; and

WHEREAS, the City of Newark advertised for bids entitled "2015 Elgin Crosswind Street Sweeper" as replacement equipment; and

WHEREAS, the contract for the new street sweeper included an option for bidders to request substitution of the preferred specified materials; and

WHEREAS, the low bidder, Municipal Maintenance Equipment, Inc. demonstrated the proposed substitution of a new 2014 Schwarze A7 Tornado Street Sweeper effectively meets the requirements of the 2015 Elgin "Crosswind" Street Sweeper for the purposes of this contract; and

WHEREAS, Leasing 2, Inc. is the leasing agent of Municipal Maintenance Equipment, Inc. for the new 2014 Schwarze A7 Tornado Street Sweeper; and

WHEREAS, the City of Newark has opted to finance the new 2014 Schwarze A7 Tornado Street Sweeper through a lease-purchase agreement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby find that Municipal Maintenance Equipment, Inc. was the lowest responsible bidder for the bid entitled "2015 Elgin Crosswind Street Sweeper";

BE IT FURTHER RESOLVED that the City Council does hereby accept said bid of Municipal Maintenance Equipment, Inc. and does hereby authorize the City Manager of the City of Newark to sign a lease-purchase agreement with Leasing 2, Inc., leasing agent of Municipal Maintenance Equipment, Inc. for the purchase of a 2014 Schwarze A7 Tornado Street Sweeper, according to the bid specifications and contract documents entitled "2015 Elgin Crosswind Street Sweeper," dated March 18, 2014, and terms of said lease-purchase agreement through Leasing 2, Inc.

LEASE-PURCHASE AGREEMENT

LESSEE:
City of Newark
37101 Newark Boulevard
Newark, CA 94560

LESSOR:
Leasing 2, Inc.
1720 West Cass Street
Tampa, FL 33606-1230

Dated as of June 12, 2014

This Lease-Purchase Agreement (the "Agreement") dated as of June 12, 2014 by and between Leasing 2, Inc. ("Lessor"), and City of Newark ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of California ("State").

WITNESSETH:

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease-Purchase Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which shall be the commencement date shown on the Exhibit E Payment Schedule.

"Equipment" means the property described in Exhibit D and which is the subject of this Agreement.

"Lease Term" means the Original Term and all Renewal Terms provided for in this Agreement under Section 4.01.

"Lessee" means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement.

"Lessor" means (i) Leasing 2, Inc., acting as Lessor hereunder; (ii) any surviving resulting or transferee corporation; and (iii) except where the context requires otherwise, any assignee(s) of Lessor.

"Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Purchase Price" means the amount indicated with respect to any date after payment of all Rental Payments (defined below) due through such date, all as set forth in Exhibit E hereto, or Supplemental Exhibit E hereto, as the case may be.

"Renewal Terms" means the renewal terms of this Agreement as provided for in Article IV of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year, except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in Exhibit E to this Agreement.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to the provisions of this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in Exhibit E of this Agreement.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee has purchased or is purchasing the Equipment.

ARTICLE II COVENANTS OF LESSEE

Section 2.01 Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

(a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body, corporate and politic.

(c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder.

(d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit A, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed and delivered to Lessor an opinion of its counsel substantially in the form attached hereto as Exhibit B.

(e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee.

(f) During the period this Agreement is in force, Lessee will annually provide Lessor with such current financial statements, budgets, proof of appropriation for ensuing fiscal year or such other financial information relating to the decision of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.

(g) The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the Original Term and all Renewal Terms.

(h) The Equipment is, and during the period this Agreement is in force will remain, personal property and when subjected to use by the Lessee under this Agreement, will not be or become fixtures.

(i) Lessee shall not voluntarily or involuntarily create, incur, assume or suffer to exist any lien, security interest or other encumbrance or attachment of any kind whatsoever on, affecting or with respect to the Equipment.

(j) Lessee shall not give up possession or control of the Equipment.

(k) Lessee shall not change the location of the Equipment without giving prior written notice of the proposed new location to the Lessor and provided that Lessee shall obtain and deliver to Lessor any landlord waivers reasonably requested by Lessor so as to protect Lessor's right, title and interest in and to the Equipment and Lessor's ability to exercise its remedies with regard to the Equipment.

(l) Lessee shall not alter or modify the Equipment in any manner which would reduce the value or the marketability thereof.

(m) Lessee will take no action that will cause the interest portion of any Rental Payment to become includable in gross income of the recipient for purposes of federal income taxation under the Code, and Lessee will take, and will cause its officers, employees and agents to take, all affirmative action legally within its power to prevent such interest from being includable in gross income for purposes of federal income taxation under Section 103(a) of the United States Internal Revenue Code of 1986 as amended (the "Code"). Lessee represents and warrants that the Lease is to be treated as an obligation of a political subdivision of a state within the meaning of Section 103(c)(1) of the Code.

ARTICLE III LEASE OF EQUIPMENT

Section 3.01 Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

ARTICLE IV LEASE TERM

Section 4.01. Commencement of Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's fiscal year then in effect. Lessee may renew this Agreement beyond the expiration of the Original Term, or beyond the expiration of any Renewal Term then in effect, up to the number of additional fiscal years provided in Exhibit E of this Agreement by appropriating sufficient funds to make scheduled Rental Payments for the ensuing fiscal year (each a "Renewal Term"). Terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in Exhibit E of this Agreement.

Section 4.02. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) The expiration of the Original Term or any Renewal Term of this Agreement and the non-renewal of this Agreement in the event of non-appropriation of funds pursuant to Section 6.07;

(b) The exercise by Lessee of the option to purchase the Equipment before expiration of this Agreement granted under the provisions of Articles IX or XI of this Agreement;

(c) A default by Lessee and Lessor's election to terminate this Agreement under Article XIII; or

(d) Payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder through the full lease term.

Section 4.03. Return of Equipment on Termination. Upon expiration or earlier termination of the Original Term or any Renewal Term under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment granted under the provisions of Articles IX or XI of this Agreement, Lessee hereby agrees to deliver the Equipment

to Lessor packaged or otherwise prepared in a manner suitable for shipment by truck or rail common carrier to a location specified by Lessor. All expenses resulting from the return of Equipment on termination will be borne by Lessee.

ARTICLE V ENJOYMENT OF EQUIPMENT

Section 5.01. Provided that no default or event of default shall have occurred hereunder, Lessor hereby covenants that during the Lease Term Lessor will not interfere with Lessee's quiet use and enjoyment of the Equipment.

Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

ARTICLE VI RENTAL PAYMENTS

Section 6.01. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee.

Section 6.02. Payment of Rental Payments. During the Original Term and during each Renewal Term elected by Lessee, Lessee shall pay Rental Payments, exclusively from any and all legally available funds, in lawful money of the United States of America, exclusively to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in Exhibit E hereto. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payment amounts set forth in Exhibit E are based on the Equipment Cost to be paid by Lessor being the amount set forth in Exhibit E. Lessor shall have no obligation to pay or disburse any amount greater than the amount set forth as the Equipment Cost. Lessee shall not amend any purchase contract, purchase order, or any other agreement that would have the effect of increasing the cost of the Equipment above set forth in Exhibit E as the Equipment Cost without the prior written consent of Lessor. In the event that the actual cost of the Equipment is greater than the amount set forth in Exhibit E, Lessee shall be solely responsible for and hereby agrees to promptly pay such excess to the vendor (s), provided that Lessee may request that Lessor finance such excess, which Lessor may, in its sole discretion elect to do or decline to do. Lessee shall indemnify and hold Lessor harmless from and against any loss, damages, costs and expenses resulting from or relating to any increase in the Equipment Cost. If Lessor, in its sole discretion, elects to finance such excess the amount of each installment of rent will be increased to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the stated Equipment Cost. In such event, Lessee shall at the request of Lessor execute and deliver an amendment reflecting the increase in the Equipment Cost and the Rental Payments.

Section 6.03. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of principal. Exhibit E hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 6.04. Additional Interest in the Event the Interest is Taxable. Lessee acknowledges that Lessor's yield with respect to this Agreement is dependent upon the full amount of each Rental Payment being excluded from Lessor's income pursuant to the Code. Accordingly, if at any time, as a result of a determination that Lessee has breached a representation or covenant contained herein, or as a result of any change in the Code, any payment of either the interest component or the principal component of any Rental Payment is, in the opinion of counsel for the Lessor, subject to or affected by any income, preference, excess profits, minimum or other federal tax, Lessee shall pay, as additional interest, an amount which is necessary to provide to Lessor the same net income as Lessor would have received but for such event. Lessor's calculations of such additional interest shall be binding upon Lessee in the absence of manifest error.

Section 6.05. Rental Payments to be Unconditional. During the Original Term and during each Renewal Term elected by Lessee, the obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person, Lessee agrees to pay all Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments when required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term elected by Lessee shall not be abated through accident or unforeseen circumstances.

Section 6.06. Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of Section 6.07, to continue the Lease Term through the Original Term and all the Renewal Terms hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The officer of Lessee responsible for budget preparation shall do all things lawfully within his/her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of State law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds is within the discretion of Lessee's governing body.

Section 6.07. Termination by Nonappropriation. In the event Lessee does not appropriate sufficient funds for the payment of the Rental Payments scheduled to be paid in the next occurring Renewal Term, then Lessee may terminate this Agreement at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the end of the then current Original or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original or Renewal Term.

Section 6.08. Late Charges. If any Rental Payment is not paid in full to Lessor within fifteen (15) days after the payment first became due and payable, Lessee shall immediately pay to Lessor an additional one time late charge equal to five (5%) percent or, if less the maximum rate permitted by law, of each such amount past due along with the Rental Payment. If any Rental Payment remains unpaid beyond 45 days after it first became due and payable, or if Lessor has elected to exercise any remedies following an event or default, interest shall accrue on past due amounts at the rate of 1% per month or the highest rate allowed by law, whichever is less. Partial payments by Lessee shall be applied first to the accrued interest component of past due Rental Payments and the balance to the remaining principal component of past due Rental Payments.

Section 6.09. Prepayment. Lessee shall have the right to prepay principal components of Rental Payments in whole on any date set forth in Exhibit E by paying the then applicable Purchase Price set forth in Exhibit E on such date.

ARTICLE VII TITLE TO EQUIPMENT

Section 7.01. Title to the Equipment. During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of default as set forth in Section 13.01 or nonappropriation as set forth in Section 6.07, title to Equipment, shall immediately vest in Lessor, and Lessee will immediately surrender possession of the Equipment to Lessor.

Section 7.02. Security Interest. To secure the payment of all Lessee's obligations under this agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions and substitutions thereto, and on any proceeds therefrom. Lessee hereby authorizes Lessor to prepare and file such financing statements, any amendments thereto and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee hereby acknowledges the receipt of copies of the financing statements prepared by Lessor and hereby confirms the accuracy of the information contained therein. Lessee further agrees to execute such additional documents, including affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security interest of any assignee of Lessor, in the Equipment.

ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the time this Agreement is in effect.

Section 8.03. Provisions Regarding Insurance. At its own expense, Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment, and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other properties. If Lessee insures similar properties by self-insurance and upon approval by Lessor, Lessee may insure the Equipment by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment.

Any insurance policy pursuant to this Section 8.03 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 9.01) of the insurance required in this Section 8.03 shall be applied as provided in Article IX hereof. Each insurance policy provided for in this Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation.

Section 8.04. Advances. In the event Lessee shall fail to perform any of its obligations hereunder Lessor may (but shall be under no obligation to) take such action as may be necessary to cure such failure, including, without limitation, the advancement of money; and all amounts so advanced by Lessor shall become additional rent for the then current Original Term or Renewal Term, which amounts, together with interest thereon at the rate of 12% per annum, or if less the maximum rate permitted by law, Lessee agrees to pay.

ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If prior to the termination of the Lease Term (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

Section 9.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any payments pursuant to the provisions of this Section 9.02, Lessee shall not be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof or (b) if Lessee is not in default hereunder, Lessee shall pay to Lessor the amount of the then applicable Purchase Price, and, upon such payment, the Lease Term shall terminate and Lessor's interest in the Equipment shall terminate as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

ARTICLE X DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF EQUIPMENT

Section 10.01. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item of Equipment.

Section 10.02. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, if any which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

Section 10.03. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

ARTICLE XI OPTION TO PURCHASE

Section 11.01 At the request of Lessee, Lessor's interest in the Equipment and additional Rental Payments will be terminated and this Agreement shall terminate:

- (a) At the end of the final Renewal Term, upon payment by Lessee of all Rental Payments scheduled as set forth in Exhibit E to this Agreement; or
- (b) if the Lease Term is terminated pursuant to Article IX of this Agreement, in the event of total damage, destruction or condemnation of the Equipment; or
- (c) any time when Lessee is not on such date in default under this Agreement, upon payment by Lessee of the then applicable Purchase Price to Lessor.

Upon the occurrence of any of such events, Lessor shall, if requested by Lessee, deliver a Bill of Sale of its remaining interest in the Equipment to Lessee "AS IS - WHERE IS" without additional cost or payment by Lessee.

ARTICLE XII ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING

Section 12.01. Assignment by Lessor. This Agreement, and the rights of Lessor hereunder, may be assigned and reassigned in whole or in part to one or more assignees and subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee; provided, however, that no such assignment or reassignment shall be effective unless and until (i) Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, and (ii) in the event that such assignment is made to a bank or trust company as trustee for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of names and addresses of such holders as of any particular time is kept and agrees, upon request of the Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to keep a written record thereof, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the assignee. Lessee agrees to execute all documents which may be reasonably requested by Lessor or its assignee to protect their interests in this Agreement.

Section 12.02. No Sale, Assignment or Subleasing by Lessee. This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

Section 12.03. Lessee Negligence. To the extent permitted by the laws and Constitution of the State, Lessee shall protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death of any person, to the extent that such liability, obligation, loss, claim or damage arises out of or is proximately caused by the negligent conduct of Lessee, its officers, employees or agents. The obligation of Lessee arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Agreement or the termination of the Lease Term for any reason.

ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to the expiration, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
- (c) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of Lessee to carry on its governmental function or adjudication of Lessee as a bankrupt or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.07 hereof with respect to nonappropriation; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other employee relations disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority, insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

Section 13.02. Remedies on Default. Whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing, Lessor shall have the right at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Declare all Rental Payments due or to become due during the Original Term or Renewal Term then in effect to be immediately due and payable, whereupon such Rental Payments shall be immediately due and payable;
- (b) With or without terminating this Agreement, retake possession of the Equipment and sell, lease or sublease the Equipment for the account of Lessee, and apply the proceeds of such sale, lease or sublease to pay the following items in the following order: (i) all cost and expenses of Lessor relating to the implementation of remedies under this Agreement as further provided herein, (ii) the applicable Purchase Price of the Equipment and (iii) the Rental Payments due during the Original Term or Renewal Term then in effect; and
- (c) Take whatever action under the Uniform Commercial Code or under other law or in equity as may appear necessary or desirable to enforce its rights as the owner or secured creditor of the Equipment.

Lessee further agrees that Lessee shall pay to Lessor such further amounts as may be sufficient to reimburse Lessor fully for its costs and expenses as incurred as a result of Lessee's default including, without limitation, Lessor's costs and expenses in enforcing, or endeavoring to enforce, its rights and remedies under the Agreement or incident thereto, including without limitation and to the extent not prohibited by applicable law, the Lessor's reasonable attorney's fees and expenses for enforcing Lessee's obligations hereunder.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy give under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver hereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE XIV MISCELLANEOUS

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 14.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.04. Amendments. The terms of the Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

Section 14.05. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.06. Delayed Closing. In the event of a delayed closing, Lessor shall receive as additional compensation any amount that accrues between the Commencement Date and the Closing Date.

Section 14.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 14.08. Captions. The captions or headings in this Agreement are for convenience only and do not define, limit or describe the scope or intent of any provisions of sections of this Agreement.

Section 14.09. Entire Agreement. This Agreement and the executed Exhibits attached hereto constitute the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein, regarding this Agreement or the equipment leased hereunder.

Section 14.10. Execution of Facsimile. In the interest of time, each party agrees that execution of signature pages of this Agreement by such party followed by transmission of such pages by facsimile/Telecopier will be legally binding upon such party. After each party has executed and transmitted such signature pages, each party agrees to execute hard copies of this Agreement and to promptly forward originals to the other party hereto.

Section 14.11. Correction of Documents. Lessee agrees to execute and deliver, or provide, as required by Lessor, any documents and information, from time to time, that may be necessary for the purpose of correcting any errors or omissions in this Lease or to reflect the true intent of Lessor in this transaction. All such documents and information must be satisfactory to Lessor.

Section 14.12 WAIVER OF JURY TRIAL. Lessee and Lessor hereby irrevocably waive any right to a jury trial with respect to any matter arising under or in connection with this Lease and agree that any dispute shall be determined by a court sitting without a jury.

Section 14.13. Performance Bonds. If requested by Lessor to facilitate payments to vendors in advance of delivery and acceptance, Lessee agrees to require the Equipment manufacturer, and all other contractors and/or subcontractors (collectively, "Contractors") with whom Lessee has contracted for the acquisition of the Equipment, to provide performance bond satisfactory to Lessor conditioned upon the construction of the Equipment as expeditiously as reasonably possible from the date of execution of such Lease and also conditioned upon delivery of possession of the Equipment to the Lessee free and clear of all liens and encumbrances, except the security interest granted to Lessor under the Lease-Purchase Agreement. Each such bond shall be in a form and with a surety acceptable to Lessor and shall name Lessor as a dual obligee. The Lessee shall proceed promptly to pursue diligently any remedies available against a Contractor that is in default under any agreement relating to the acquisition and construction of the Equipment and/or against each surety on any bond securing the performance of such Contractor's obligations with respect to the acquisition and construction of the Equipment. The Lessee and Lessor shall cause the net proceeds recovered by way of the foregoing to be applied, at Lessor's option, to (i) the completion of the Equipment, or (ii) the payment of all rent payments then due plus the then applicable Termination Balance. Any balance of net proceeds remaining after completion of Equipment construction or payment of the outstanding balance owed under the applicable Lease shall be paid promptly to Lessee.

Section 14.14. Time is of the Essence. Lessor and Lessee agree that time is of the essence of all provisions of each Lease entered into under this Agreement.

Any terms and conditions of any purchase order or other document submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name and by its duly authorized officer, and Lessee has caused this Agreement to be executed in its corporate name and by its duly authorized officer. All of the above occurred as of the date first written below; this Agreement shall be binding on Lessee beginning on the date it is accepted and executed by Lessor.

LESSOR: Leasing 2, Inc.

Execute:

By: _____

Title: _____

Date: _____

LESSEE: City of Newark

Execute:

By: _____

John Becker

Title: _____

City Manager

Date: _____



CITY OF NEWARK, CALIFORNIA

37101 Newark Boulevard • Newark, California 94560-3796 • (510) 578-4000 • FAX (510) 578-4306

Date: June __, 2014
Lessee: City of Newark
Date of Agreement: June __, 2014

Leasing 2, Inc.
1720 West Cass Street
Tampa, FL 33606-1230

Re: Opinion of Counsel

Ladies/Gentlemen:

As counsel for **City of Newark** ("Lessee"), I have examined duly executed originals of the Lease-Purchase Agreement (the "Agreement"), between Lessee and Leasing 2, Inc. ("Lessor"), dated June __, 2014, and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon such examination, I am of the opinion that:

1. Lessee is a political subdivision of the State of California and legally existing as such.
2. The Agreement has been duly authorized and executed by Lessee pursuant to Resolution No. ___ and in accordance with applicable law.
3. To the best of my knowledge, the Agreement is a valid and binding contract of Lessee enforceable in accordance with its terms.
4. To the best of my knowledge, applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, which questions or affects the validity of the Agreement.
6. To the best of my knowledge, the signature of the officer of Lessee which appears on the Agreement is true and genuine; I know said officer and know him/her to hold the office set forth below his/her names.

7. To the best of my knowledge, the Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Lease, but only with regard to the matters specifically set forth herein.

Nothing contained herein shall be construed as a waiver of the attorney-client privilege.

Very truly yours,

DAVID J. BENOUN
City Attorney

EXHIBIT C

CERTIFICATE AS TO ARBITRAGE

I, **John Becker**, hereby certify that I am duly qualified and acting **City Manager**, of **City of Newark** (the "Lessee"), and that in my official capacity as such officer, I am responsible for executing and delivering, on behalf of the Lessee, the Lease-Purchase Agreement dated **June 12, 2014** (the "Agreement"), by and between Leasing 2, Inc. ("Lessor") and the Lessee. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Lease provides for the acquisition and financing of certain equipment described therein (the "Equipment") Pursuant to the Agreement, the Lessor is required to lease the Equipment to the Lessee and the Lessee is required to make rental payments with respect thereto, comprising principal and interest, on the dates and in the amounts set forth therein (the "Rental Payments").

2. On the date hereof, Lessor will deposit into escrow to be held for the benefit of Lessee the amount of **\$212,018.00**, which, together with interest earned thereon until disbursed if necessary, will be used to pay the costs of the Equipment in the amount of **\$212,018.00**. In the event any interest income remains in escrow after payment of such Equipment cost, such amount shall be retained by Lessor as additional fee income.

3. The Lessee has entered into or will within six (6) months of the date hereof enter into contracts for the acquisition of the Equipment, which contracts will obligate the payment of all amounts held in escrow.

4. The Equipment will be acquired with due diligence and will be fully acquired on or before _____.

5. In any event, all of the spendable proceeds of the Agreement will be expended on the Equipment within three (3) years from the date of execution of the Agreement. No proceeds of the Agreement will be used to reimburse the Lessee for expenditures made prior to the date of the issuance of the Agreement, unless Lessee shall have complied with the requirements of Section 1.150-2 of the Regulations. If applicable, a copy of Lessee's official intent with respect to such reimbursement is attached hereto as attachment 1.

6. The original proceeds of the Agreement, and the interest to be earned thereon, do not exceed the amount necessary for the governmental purpose for which the Agreement is issued.

7. The interest of the Lessee in the Equipment has not been, and is not expected during the term of the Agreement, to be sold or otherwise disposed of by the Lessee.

8. No sinking fund will be maintained by the Lessee with respect to the Rental Payments.

9. The Agreement is not a "hedge bond" within the meaning of Section 149(g) of the Code. The Lessee expects to spend not less than 85% of the spendable proceeds of the Agreement within three years after the date hereof and less than 50% of the proceeds of the Agreement is invested in Nonpurpose investments having a substantially guaranteed yield for four years or more.

10. In the Agreement the Lessee has covenanted to take all actions necessary to ensure that the interest paid under the Agreement remains excludable from gross income under the Code. Such covenant includes, without limitation, the requirement to comply with the requirements of the Code relating to the rebate of arbitrage profit to the United States Government.

11. To the best of the knowledge and belief of the undersigned, the expectations of the Lessee as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would damage the foregoing expectations.

WITNESS, my hands this _____ day of _____, 20_____.

LESSEE: **City of Newark**

By: _____
John Becker

Title: _____
City Manager

EXHIBIT D
DESCRIPTION OF EQUIPMENT

The Equipment which is the subject of the attached Lease-Purchase Agreement is as follows:

Schwarze A7 Street Sweeper, VIN: _____

together with all additions, accessions and replacements thereto.

Lessee hereby certifies that the description of the personal property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Lease-Purchase Agreement.

LOCATION OF THE EQUIPMENT:

37440 Filbert Street

Newark, CA 94560

After Lessee signs this Agreement, Lessee authorizes Lessor to insert any missing information or change any inaccurate information (such as the model year of the Equipment or its serial number or VIN) into the Description of Equipment.

LESSEE: **City of Newark**

By: _____
John Becker

Title: _____
City Manager

Date: _____

EXHIBIT E
PAYMENT SCHEDULE

LESSEE: City of Newark
 EQUIPMENT COST: \$212,018.00
 COMMENCEMENT DATE: June 12, 2014
 INTEREST RATE: 3.15%

PAYMENT					PURCHASE
<u>NO.</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>PRICE*</u>
1	6/12/2015	\$46,497.01	\$6,684.09	\$39,812.92	\$176,192.05
2	6/12/2016	\$46,497.01	\$5,428.95	\$41,068.06	\$133,571.27
3	6/12/2017	\$46,497.01	\$4,134.23	\$42,362.78	\$90,012.83
4	6/12/2018	\$46,497.01	\$2,798.70	\$43,698.31	\$45,496.10
5	6/12/2019	\$46,497.01	\$1,421.08	\$45,075.93	\$0.00
Grand Totals		\$232,485.05	\$20,467.05	\$212,018.00	

LESSEE: **City of Newark**

By: _____
 John Becker

Title: City Manager

Date: _____

* After payment of Rental Payment due on such date.

EXHIBIT F

ACCEPTANCE CERTIFICATE

The undersigned, as Lessee under the Lease-Purchase Agreement (the "Agreement") dated June 12, 2014, with Leasing 2, Inc. ("Lessor"), hereby acknowledges:

1. Equipment delivered and accepted: Lessee has received in good condition all of the Equipment described in the Agreement and in Exhibit D thereto and accepts the Equipment for all purposes this _____ day of _____, 20____.
2. Equipment delivery has not yet taken place: The Equipment described in the Agreement and in Exhibit D thereto, has not been delivered, but is scheduled to be delivered on/or before _____ Lessor has agreed to deposit into an escrow account an amount sufficient to pay the total cost of the Equipment identified in Exhibit D of the Agreement. Exhibit E accurately reflects the Lease Amount. Lessee agrees to execute an Acceptance Certificate and Payment Request Form authorizing payment of the cost of the Equipment, or a portion thereof, for each withdrawal of funds from the Escrow Account. Lessee's obligation to commence Rental Payments as set forth in Exhibit E-Payment Schedule is absolute and unconditional as of the Commencement Date, subject to the terms and conditions of the Agreement. Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.
3. Vendor will be paid in full prior to delivery of equipment: A 100% pre-funding will be made by Lessor to Vendor of the lease amount identified as "Equipment Cost" on the Exhibit E - Payment Schedule of the Agreement. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, costs and expenses incurred (including Lessor's attorneys' fees). Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.

Lessee certifies that Lessor has fully and satisfactorily performed all of its covenants and obligations required under the Agreement, and confirms that the Agreement will commence as defined by "Commencement Date" in the attached Agreement, and it will commence payments in accordance with Article VI of the Agreement.

The undersigned officer of the Lessee hereby reaffirms on behalf of the Lessee in all respects the covenants of the Lessee set forth in Article II of the Agreement and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the Commencement Date, and that there were, and are as of the date on which they were made, and are reasonable as of the Commencement Date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

LESSEE: **City of Newark**

By: _____
John Becker

Title: _____
City Manager

Date: _____

EXHIBIT G

ESSENTIAL USE/SOURCE OF FUNDS LETTER

TO: Leasing 2, Inc.

RE: Lease-Purchase Agreement Dated June 12, 2014.

Gentlemen:

Reference is made to certain Lease-Purchase Agreement dated June 12, 2014, between Leasing 2, Inc. and City of Newark, leasing the personal property described in Exhibit D to such Lease. This confirms and affirms that such equipment is essential to the functions of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, the Equipment was selected by us to be used as follows:

Please describe USE of equipment:

Sincerely,

John Becker, City Manager

Date

EXHIBIT H

DESIGNATION OF BANK QUALIFICATION

In consideration of the mutual covenants of the Lessor and Lessee pursuant to the Lease-Purchase Agreement dated June 12, 2014, (the "Agreement") between Leasing 2, Inc. ("Lessor") and City of Newark ("Lessee"), such Agreement is modified as follows:

Lessee certifies that it reasonably anticipates that it and all of its subordinate entities will not issue more than \$10,000,000 of "qualified tax-exempt obligations" (as that term is defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986 ("the Code") during the current calendar year .

Further, lessee hereby designates the Agreement as a "qualified tax-exempt obligation" in accordance with Section 265 (b)(3)(B) of the Code so that it is eligible for the exception contained in Section 265 (b)(3) of the Code and further certifies for the purpose of the overall limitation of Section 265 (b)(3)(D) of the Code that it and its subordinate entities have not as of this calendar year issued more than \$10,000,000 of obligations which it has designated for these purposes.

All terms contained herein not otherwise defined shall have the same meaning as such terms are used and defined in the Lease.

Attached hereto is a completed Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Bond Issues, completed on behalf of the Lessee (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC).

IN WITNESS WHEREOF, the Lessee has caused this Agreement to be executed by its duly authorized officer on this the _____ day of _____, 20_____.

LESSEE: **City of Newark**

By: _____

Printed Name: John Becker, City Manager

EXHIBIT I

NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT

Leasing 2, Inc. ("Lessor") hereby gives notice to the City of Newark ("Lessee") that Lessor has assigned all rights to payments under the Lease-Purchase Agreement, dated as of June 12, 2014, between Leasing 2, Inc. ("Lessor") and City of Newark ("Lessee"). Leasing 2, Inc. ("Lessor") hereby requests, gives notice and instructs City of Newark ("Lessee") that payments that hereafter come due pursuant to the Lease-Purchase Agreement be paid to Santander Bank, N.A. or its Assignee.

Santander Bank, N.A.
P. O. Box 14565
Reading, PA 19612

LESSEE: City of Newark

By: _____
John Becker

Title: _____
City Manager

Date: _____

EXHIBIT J
VENDOR TERMS

LESSEE: City of Newark

Lessor shall have funds not immediately paid to vendor(s) at closing deposited in an "Escrow Account" in order to facilitate payment to vendors for equipment deliveries that are scheduled to occur according to the following schedule:

EQUIPMENT DESCRIPTION	AMOUNT	PAYMENT NO EARLIER THAN
Schwarze A7 Street Sweeper	\$212,018.00	Delivery & Acceptance

Lessee acknowledges and is in agreement with this schedule and the "Payment No Earlier Than" dates as indicated.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20_____.

LESSEE: City of Newark

By: _____
John Becker

Title: _____
City Manager

INSURANCE COVERAGE REQUIREMENT

TO: **Leasing 2, Inc. and/or its Assigns**
 1720 West Cass Street
 Tampa, FL 33606-1230

FROM: **City of Newark**
 37101 Newark Boulevard
 Newark, CA 94560

RE: INSURANCE COVERAGE REQUIREMENTS (Check one):

_____ 1. In accordance with Section 8.03 of the Agreement, we have instructed the insurance agent named below (please fill in name, address and telephone number)

NAME: _____

ADDRESS: _____

CITY/ ST/ ZIP: _____

TELEPHONE: _____

to issue:

a. All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming **Leasing 2, Inc. and/or its Assigns** as Loss Payee.

Coverage Required: Full Replacement Value

b. Public Liability Insurance evidenced by a Certificate of Insurance naming **Leasing 2, Inc. and/or its Assigns** as an Additional Insured.

Minimum Coverage Required:
\$500,000.00 per person
\$1,000,000.00 aggregate bodily injury liability
\$1,000,000.00 property damage liability

_____ 2. Pursuant to Section 8.03 of the Agreement, we are self insured for all risk, physical damage, and public liability and will provide proof of such self insurance in letterform together with a copy of the statute authorizing this form of insurance.

By: _____
 John Becker

Title: _____
 City Manager

Date: _____

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME City of Newark					
OR	1b. INDIVIDUAL'S LAST NAME				
1c. MAILING ADDRESS 37101 Newark Boulevard		CITY Newark	STATE CA	POSTAL CODE 94560	COUNTRY
1d. TAX ID #: SSN OR EIN 94-6027360	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION California		1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME				
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION		2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Santander Bank, N.A.					
OR	3b. INDIVIDUAL'S LAST NAME				
3c. MAILING ADDRESS 3 Huntington Quadrangle, Ste 101N		CITY Melville	STATE NY	POSTAL CODE 11747	COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

Schwarze A7 Street Sweeper, VIN: _____

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

BILLING INFORMATION

Please indicate below how you would like us to bill you for the lease payments due under this Agreement, including a contact name, if applicable:

Contact Name: _____

Company: _____

Street Address or Box #: _____

City, State, Zip: _____

County: _____

Telephone: _____ () _____

Fax: _____ () _____

**CUSTOMER IDENTIFICATION PROGRAM
ORGANIZED ENTITY**

Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account. **What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents.**

CUSTOMER NAME: City of Newark

CUSTOMER IDENTIFICATION

Taxpayer ID Number: **94-6027360**

Business Structure (check one): City Government: County Government: Tax District: Corporation:

Other, description: _____

We may request certified copies of your organizational documents as part of the identification procedure.

PRIMARY ADDRESS AND REGISTRATION

Address: _____

Address: _____

City: _____

State: _____

Zip Code: _____

State of Registration/Organization: _____

MAILING ADDRESS (if different from above)

Address: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Acknowledgment: The information contained herein is true and correct.

City of Newark

By: _____
John Becker

Its: _____
City Manager

Internal Escrow Letter

June 12, 2014

Santander Bank, N. A.
3 Huntington Quadrangle, Suite 101N
Melville, NY 11747

Re: Lease Purchase Agreement dated **June 12, 2014** (the "Lease") by and between **City of Newark** ("Lessee") and Leasing 2, Inc. ("Lessor"), concurrently assigned to Santander Bank, N.A.. ("Assignee").

Ladies and Gentlemen:

We have entered into the above referenced Lease for the purpose of financing a **Schwarze A7 Street Sweeper** (the "Equipment") in the amount of **\$212,018.00** (the "Financed Amount"). Lessee hereby requests that Assignee retain **\$212,018.00** (the "Retained Amount"). Lessee further requests that Assignee hold the Retained Amount in an internal escrow pending Assignee's receipt of confirmation from Lessee that the Equipment has been delivered, inspected and accepted for all purposes by the Lessee and that payment can be remitted to the vendor of such Equipment. There will be no separate escrow fee charged Lessee for internally escrowing the Retained Amount.

Lessee understands and agrees that interest shall accrue on the entire Financed Amount as of the date hereof, and further understands and agrees that any interest earned on the Retained Amount shall be paid to Assignee in consideration of managing the internal escrow account.

Lessee acknowledges that Assignee may commingle the Retained Amount held by Assignee for the benefit of Lessee with other funds held by Assignee for its own account, so long as Assignee maintains segregation of such amounts on the books and records of Assignee.

Sincerely,

LESSEE: **City of Newark**

By: _____
John Becker

Title: _____
City Manager

Date: _____

**F.10 Authorization for the Mayor to sign an agreement with *The Argus* for legal advertising services for Fiscal Year 2014-2015 – from City Clerk Harrington.
(RESOLUTION)**

Background/Discussion – California Government Code requires the City of Newark (City) to print legal notices in an adjudicated newspaper of general circulation. An adjudicated newspaper of general circulation does not exist in the City and the City is legally required to use an adjudicated newspaper that is published nearest the City.

The Argus is the only newspaper that currently meets the legal requirements for publishing legal notices. *The Argus* submitted a proposal for the publication of legal advertising for Fiscal Year 2014-2015. *The Argus* quoted \$.78 per line with a column size of .937 inches. This new proposal calls for a modest increase of \$.02 per line. Additionally, the *Argus* is no longer charging the \$10 fee to post legal ads on their website.

The *Tri City Voice* recently started the process to seek adjudication for the City of Fremont. Staff contacted the *Tri City Voice* and requested a proposal if they were adjudicated for the City of Fremont. The *Tri-City Voice* submitted a proposal; however, as of the writing of this staff report, they have not received the legal adjudication necessary through the courts and their proposal is considered non responsive.

Staff recommends awarding the contract to *The Argus*.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Mayor to sign an agreement with *The Argus* for legal advertising services for Fiscal Year 2014-2015.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE MAYOR TO SIGN AN
AGREEMENT WITH *THE ARGUS* FOR LEGAL
ADVERTISING SERVICES FOR FISCAL YEAR 2014-2015

WHEREAS, California Government Code requires the City of Newark to print legal notices in an adjudicated newspaper of general circulation; and

WHEREAS, *The Argus* is the only newspaper that currently meets the legal requirements for publishing legal notices.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby awards the agreement for legal advertising services for Fiscal Year 2014-2015 to *The Argus* and authorizes the Mayor to sign the agreement;

BE IT FURTHER RESOLVED that this resolution supersedes previous resolutions awarding legal advertising services.

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 12th day of June, 2014 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **THE ARGUS/BAY AREA NEWS GROUP**, a ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: **LEGAL ADVERTISING FOR FISCAL YEAR 2014-2015** (the "Project").

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

WHEREAS, in reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "A", the 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 the services described, and in the time, place, and manner specified in Exhibit "A" in accordance with the terms and conditions of this Agreement.

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 the 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. PAYMENT

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

B. **Method of Billing.** To request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges therefore (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant’s billing rates (set forth on Exhibit “A” hereto). Upon receipt of billing, the City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit “A”, for services, which are performed in accordance with this Agreement to the satisfaction of the City.

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

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

C. **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 the City, re-perform the services (without additional compensation to the Consultant). If Consultant’s failure to perform in accordance with this Agreement causes damages to the City, Consultant shall reimburse the 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 the services described in Exhibit “A”, 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 rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplished services rendered pursuant to this Agreement.

6. **PERSONNEL.** Consultant understands that, in entering into this Agreement, the City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of the Consultant, including the qualifications of its Authorized Representative, its designated personnel, and its subconsultants, if any, identified in Exhibit "A". Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in Exhibit "A", without the prior written consent of the City. All services under this Agreement 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 the Consultant's designated personnel, 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 pursuant to this Agreement.

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 under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City and the 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 the City and shall be given to the City at the completion of Consultant's services, or upon demand of the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the 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 the 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 the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the 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, or age.

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 under this Agreement 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 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 hereunder by the Consultant, his agents, representatives, or employees.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- | | |
|--|---|
| 1. General Liability:
(including operations, products and completed operations, as applicable.) | \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. Employer's Liability: | \$1,000,000 per accident for bodily injury or disease. |
| 4. Errors and Omissions Liability: | \$1,000,000 per occurrence. |

C. Deductibles and Self-Insured Retentions

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

D. 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.

E. Verification of Coverage

Consultant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

F. Other Insurance Provisions

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

1. Additional Insureds. The City, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

2. Primary Insurance. For any claims related to this project, the Consultant's insurance coverage 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 be contribute with it.

3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to 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 Civil Code.

5. Qualifications. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

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

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

9. Variation. The Risk Manager of City may approve a variation in those insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that the City's interest are otherwise fully protected.

13. REPORTING DAMAGES. If any damage (including 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 17, hereinbelow) a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Contractor shall (1) immediately defend, and (2) indemnify the City, and its directors, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from Contractor's performance of services under this contract, or any negligent or wrongful act or omission of the Contractor or Contractor's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Contractor'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, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify. The Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon tender to the Contractor 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 Contractor 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 the Contractor 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, Contractor may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

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

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

16. TERM/TERMINATION.

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

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

Consultant

Address: Elizabeth Naughton
The Argus
6086 Stewart Avenue
Fremont, CA 94538

Administrator

Sheila Harrington
City of Newark
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

27. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. 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 the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

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

CITY OF NEWARK,
a municipal corporation

THE ARGUS

By _____
City of Newark

By _____
Consultant

Date _____

Date _____

Elizabeth Naughton
Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

See attached

**PROPOSAL
City Of Newark
Legal Advertising Fiscal Year 2014-2015**

The Argus

Company Name/Newspaper

6086 Stewart Avenue

Address

Fremont, CA 94538

ARLegals@bayareanewsgroup.com

City, State and Zip Code

Email

510-403-4483

510-293-2697 (email preferred)

Phone Number

Fax Number

Cost of advertising per line per column \$.78 Column Size .937"

Cost of advertising per column inch \$8.58 (11 lines to the inch)

Cost for second publication of same ad (same week) \$.62

Cost for second publication of same ad (following week) \$.78

Cost to post notice on your newspaper's website \$ 0.00

Day(s) of week newspaper is published Tues. through Sunday
(Legals do not print on Sundays)

Required lead time for publication: See Attached

Lead time for retractions or corrections: See Attached

Approximate City of Newark Approximate total
Circulation 3116 Circulation 16,565 Daily; 21,365 Sunday*

*Legal advertising not available on Sundays or Mondays.

LIST OF SUBVENDORS

The bidder shall list the name and address of each subvendor to whom the bidder proposes to subcontract portions of the work, as required by law.

Wave2, 114 Turnpike Rd., Westborough, MA 01581

Wave2 is the vendor that will be used for electronic entry of notices. The Argus' and Bay Area News Group use the vendor's set up but administrate the process.

Name and address	Description of portion of work subcontracted
------------------	--

Name and address	Description of portion of work subcontracted
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I certify that the foregoing is true and correct:

<i>Elizabeth A. Naughton</i>	<i>Community Information Manager</i>	<i>Elizabeth Naughton</i>
Authorized Signature	Title	Name Printed

