



CITY OF NEWARK CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4266 • E-mail: city.clerk@Newark.org

City Administration Building
7:30 p.m.
City Council Chambers

AGENDA

Thursday, May 22, 2014

CITY COUNCIL:

Alan L. Nagy, Mayor
Ana M. Apodaca, Vice Mayor
Luis L. Freitas
Sucy Collazo
Robert Marshall

CITY STAFF:

John Becker
City Manager

Terrence Grindall
Assistant City Manager

Susie Woodstock
Administrative Services Director

Sandy Abe
Human Resources Director

Peggy A. Claassen
Public Works Director

Jim Leal
Police Chief

David Zehnder
Recreation and Community
Services Director

David J. Benoun
City Attorney

Sheila Harrington
City Clerk

Welcome to the Newark City Council meeting. The following information will help you understand the City Council Agenda and what occurs during a City Council meeting. Your participation in your City government is encouraged, and we hope this information will enable you to become more involved. The Order of Business for Council meetings is as follows:

- | | |
|-------------------------------------|-------------------------|
| A. ROLL CALL | I. COUNCIL MATTERS |
| B. MINUTES | J. SUCCESSOR AGENCY |
| C. PRESENTATIONS AND PROCLAMATIONS | TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | K. ORAL COMMUNICATIONS |
| E. PUBLIC HEARINGS | L. APPROPRIATIONS |
| F. CITY MANAGER REPORTS | M. CLOSED SESSION |
| G. CITY ATTORNEY REPORTS | N. ADJOURNMENT |
| H. ECONOMIC DEVELOPMENT CORPORATION | |

Items listed on the agenda may be approved, disapproved, or continued to a future meeting. Many items require an action by motion or the adoption of a resolution or an ordinance. When this is required, the words **MOTION**, **RESOLUTION**, or **ORDINANCE** appear in parenthesis at the end of the item. If one of these words does not appear, the item is an informational item.

The attached *Agenda* gives the *Background/Discussion* of agenda items. Following this section is the word *Attachment*. Unless "none" follows *Attachment*, there is more documentation which is available for public review at the Newark Library, the City Clerk's office or at www.newark.org. Those items on the Agenda which are coming from the Planning Commission will also include a section entitled *Update*, which will state what the Planning Commission's action was on that particular item. *Action* indicates what staff's recommendation is and what action(s) the Council may take.

Addressing the City Council: You may speak once and submit written materials on any listed item at the appropriate time. You may speak once and submit written materials on any item **not** on the agenda during **Oral Communications**. To address the Council, please seek the recognition of the Mayor by raising your hand. Once recognized, come forward to the lectern and you may, but you are not required to, state your name and address for the record. Public comments are limited to five (5) minutes per speaker, subject to adjustment by the Mayor. Matters brought before the Council which require an action may be either referred to staff or placed on a future Council agenda.

No question shall be asked of a council member, city staff, or an audience member except through the presiding officer. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the presiding officer for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.



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City Administration Building
7:30 p.m.
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AGENDA

Thursday, May 22, 2014

- A. ROLL CALL

- B. MINUTES
 - B.1 Approval of Minutes of the regular City Council meeting of Thursday, May 8, 2014. (MOTION)

- C. PRESENTATIONS AND PROCLAMATIONS
 - C.1 Proclaiming June as Celebrating Business Month in Newark. (PROCLAMATION)

 - C.2 Presentation of Students of the Year Awards. (PRESENTATION)

- D. WRITTEN COMMUNICATIONS

- E. PUBLIC HEARINGS

- F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.4 be acted on simultaneously unless separate discussion and/or action is requested by a Council Member or a member of the audience.)

CONSENT

- F.1 Authorization for the Mayor to sign a Lease Agreement with Alameda County for lease of the Newark library facility – from City Attorney Benoun. (RESOLUTION)

- F.2 Approval of plans and specifications, acceptance of bid and award of contract to United Storm Water, Inc., for Storm Drain Trash Capture Devices, Project 1059 – from Senior Civil Engineer Fajeau. (MOTION)(RESOLUTION)

F.3 Approval of plans and specifications, acceptance of bid and award of contract to AJW Construction for 2013 and 2014 Citywide Wheelchair Accessible Ramps, Projects 1022 and 1048 – from Senior Civil Engineer Fajeau. (MOTION)(RESOLUTION)

F.4 Authorization for the Mayor to sign two agreements with Alameda County for participation in the Alameda County Urban County Community Development Block Grant (CDBG) Program for Fiscal Year 2014-2015; and participation in the Alameda County Urban County for Fiscal Years 2015-2017 – from Assistant Planner Jimenez. (RESOLUTIONS - 2)

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

M. CLOSED SESSION

N. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and at the City Clerk's Office located at 37101 Newark Boulevard, 5th Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

For those persons requiring hearing assistance, please make your request to the City Clerk two days prior to the meeting.



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City Administration Building
7:30 p.m.
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Minutes

Thursday, May 8, 2014

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:35 p.m. Present were Council Members Collazo, Freitas, and Marshall. Vice Mayor Apodaca was noted absent.

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, April 24, 2014.

Council Member Freitas moved, Council Member Collazo seconded, to approve the Minutes of the regular City Council meeting. The motion passed, 4 AYES, 1 ABSENT.

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employees.

Mayor Nagy introduced recently hired General Laborer Brandon Gordon and recently promoted Building Mechanic I Jose Rodriguez.

C.2 Proclaiming May 18-24, 2014, as National Public Works Week in Newark.

Mayor Nagy presented the proclamation to Public Works Director Peggy Claassen.

C.3 Proclaiming May 18-24, 2014, as National Emergency Medical Services Week in Newark.

Mayor Nagy presented the proclamation to Alameda County Fire Department Division Chief Brian Caminada and Battalion Chief Stephanie Radecke.

C.4 Proclaiming May 18-24, 2014, as National Police Week in Newark.

Mayor Nagy presented the proclamation to Police Commander Renny Lawson.

C.5 Presentation by Assemblymember Bob Wieckowski on the “State of the State.”

Assemblymember Bob Wieckowski gave a presentation on the “State of the State”. He highlighted the State budget process, drought legislation, transportation funding, affordable housing, and the potential for infrastructure financing districts to be used in place of redevelopment agencies.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Hearing to consider P-14-2, a planned unit development, U-14-3, a conditional use permit, and E-14-4, an environmental determination, for a one-day carnival to be held on August 9, 2014 at NewPark Mall (APN 901-0111-025) in conjunction with the Halal Food & Eid Festival; and authorization to waive the application fee. MOTIONS-2 APPROVED

City Manager Becker gave the staff report recommending approval.

Mayor Nagy opened the public hearing at 8:00 p.m.

Irfan Rydhan said that he read Planning Commission Resolution No. 1866 and agreed to the conditions in the resolution. In response to City Council questions, he stated that he hoped to make this an annual event.

Mayor Nagy closed the public hearing at 8:02 p.m.

Council Member Freitas moved, Council Member Marshall seconded to, by motions: (1) approve Planning Commission Resolution No. 1866, with Exhibit A, for P-14-2, a planned unit development, U-14-3, a conditional use permit, and E-14-4, an environmental determination, for a one-day carnival to be held on August 9, 2014 at NewPark Mall (APN 901-0111-025) in conjunction with the Halal Festival; and (2) authorize a waiver of the application fee. The motion passed, 4 AYES, 1 ABSENT.

E.2 Hearing to consider the development of approximately 217 residential units (Trumark Homes) on an approximately 21.4 acre project site (Jones Hamilton property) located on the south side of Enterprise Drive east of Willow Street: (1) Resolution making certain findings and adopting the Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development Specific Plan; (2) Introduction of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010, “Zoning Map” by rezoning all that real property shown on Vesting Tentative Map 8098 from ML (Limited

Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and authorizing the mayor to sign the Affordable Housing Implementation Agreement; (4) Resolution authorizing the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) Resolution authorizing the Mayor to sign a Park Agreement with Newark Enterprise Joint Venture, LLC; (6) Resolution approving TM-12-32, Vesting Tentative Map 8098; (7) By Motion, approving an Architectural and Site Plan Review; and (8) By motion, approving the Schedule of Impact Fees.

MOTION APPROVED TO CONTINUE

City Manager Becker requested that the City Council consider public hearings E.2 (Trumark Homes, Jones Hamilton property) and E.3 (Trumark Homes, Enterprise property) concurrently. Both public hearings have Trumark Homes as the applicant, are within the Dumbarton Transit Oriented Development Specific Plan, and are adjacent to each other.

Assistant City Manager Grindall suggested that the City Council continue both public hearings to allow the applicant time to work out a few issues. These projects would convert industrial land into residential uses. All toxic contamination would be cleaned up prior to the housing development. This developer will pay a fee, in lieu of inclusionary housing, in the amount of \$25,000 per unit. The developer, the City and Gallade Chemicals are currently negotiating to develop the Gallade parcel into a public park.

At 8:14 p.m. Mayor Nagy opened the public hearings for E.2 and E.3.

Veronica Vargas, Trumark Homes stated that she agreed to the conditions in E.2 and E.3. She requested that the City Council not take action until Trumark's negotiations with Gallade Chemicals concluded.

Margaret Lewis stated her concern with the improvement at Willow Street and Enterprise Drive which is a truck route. She questioned the ability of emergency vehicles and buses to travel over the traffic calming devices. She noted that similar developments in Sunnyvale and Mountain View have ongoing environmental issues that require monitoring.

Dean Lewis stated that the toxins will need to be disclosed to the homebuyers because he thought they would get into the homes. He stated that the road width would put the fire department and residents lives at risk. He suggested focusing on the area near the post office for development.

John Henneberry stated that he was against this development and agreed with the previous speakers. He stated that the city needed open space more than residential

development. He stated that only the out of town developers would benefit from this project.

Tim Taylor on behalf of Gallade Chemicals stated they were making progress in their discussions and need additional time to work through the issues.

Barry Shotts stated that he was speaking on behalf of Ashland which owns 10 acres within Dumbarton Transit Oriented Development Specific Plan. He stated that the properties can be remediated and redeveloped. He noted that the Sunnyvale and Mountain View projects have led to new vapor intrusion guidelines.

Tamara Bennett stated that she has lived in that neighborhood since 1999. She stated that the Alameda County Water District has been trying to clean it up for years. There are a number of plumes being monitored. She stated that she was concerned with the air when they disturb the dirt. She thought that rezoning to higher density would devalue her property.

Assistant City Manager Grindall stated that the roads were designed to calm traffic and that the Alameda County Fire Department was consulted to ensure the roads were wide enough. He stated that based on conversations with the School District, there would be adequate capacity for students.

Council Member Collazo moved, Council Member Marshall seconded to continue public hearings E.2 and E.3 to a future City Council meeting. The motion passed, 4 AYES, 1 ABSENT.

- E.3 Hearing to consider the development of approximately 27 residential units (Trumark Homes) on an approximately 2.14-acre project site (Enterprise Property) located on the north side of Enterprise Drive east of Willow Street: (1) Resolution making certain findings and adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development Specific Plan; (2) Introduction of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 "Zoning Map" by rezoning all that real property shown on vesting tentative map 8110 from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approving the Affordable Housing Implementation Agreement; (4) Resolution approving Vesting Tentative Map 8110; (5) Resolution authorizing the Mayor to sign a Community Financing Agreement with Enterprise Joint Venture, LLC; (6) By motion, approving an Architectural and Site Plan Review; and (7) By motion, approving the Schedule of Impact Fees. MOTION APPROVED TO CONTINUE**

F. CITY MANAGER REPORTS

Council Member Collazo moved, Council Member Marshall seconded, to approve Consent Calendar Items F.1 through F.6, that the resolutions and ordinance be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 4 AYES, 1 ABSENT.

CONSENT

- F.1 Accepting the bid of Cyber Computers Inc. for the purchase of two Hewlett-Packard DL160 Servers for Public Works Department's CRW Trakit permitting software system, Project No. CIP1043. RESOLUTION NO. 10203**
- F.2 Acceptance of work with Rosas Brothers Construction for 2013 Curb, Gutter and Sidewalk Replacement, Project 1042. RESOLUTION NO. 10204**
- F.3 Acceptance of work with VSS International, Inc. for 2013 Street Microsurfacing Program, Project 1041. RESOLUTION NO. 10205**
- F.4 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code by rezoning all that real property shown on Vesting Tentative Map 8157 (APN 092-0115-11, 12 & 13) from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes), HDR-FBC (High Density Residential – Form Based Code), and R-FBC (Commercial Retail – Form Based Code). ORDINANCE NO. 474**
- F.5 Endorsement of Measure AA the Alameda County Healthcare Services Tax on the June 3, 2014 ballot. RESOLUTION NO. 10206**
- F.6 Approval of an agreement for participation in the Alameda County Operational Area Emergency Management Organization. RESOLUTION NO. 10207**

NONCONSENT

- F.7 Direction to file Annual Reports and intention to order improvements for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7 and 10 and setting date of public hearing. RESOLUTION NO. 10208-10209**

Council Member Collazo announced that she would recuse herself from this item since she owns property in Landscaping and Lighting District No. 10. She left the City Council Chamber.

City Manager Becker gave the staff report recommending approval.

Council Member Marshall moved, Council Member Freitas seconded by resolutions to, direct the filing of annual reports for Landscaping and Lighting District Nos. 1, 2, 4, 6, 7 and 10 in accordance with the provisions in the Landscaping and Lighting Act of 1972 and confirm the intent to order the improvements by setting the date for the annual public hearings for these districts for June 26, 2014. The motion passed, 3 AYES, 1 RECUSED (Collazo), 1 ABSENT (Apodaca).

Council Member Collazo returned to the City Council Chamber.

F.8 Direction to file Annual Reports and intention to order improvements for Landscaping and Lighting District Nos. 11, 13, 15, 16, and 17 and setting date of public hearing.

City Manager Becker stated that Council Members Collazo and Marshall would need to recuse from this item because they each owned property within Landscaping and Lighting District No. 11. The recusals combined with Vice Mayor Apodaca's absence would result in a lack of quorum to consider the item. He stated that staff would reschedule the item for the next City Council meeting.

F.9 Presentation by Godbe Research on the results of public opinion sampling and evaluation of possible public support for an extension of the existing City of Newark Utility User Tax. MOTION APPROVED

City Manager Becker highlighted the history of the Utility User Tax (UUT). He noted there will be significant operating budget deficits in the years following the expiration of the UUT. He introduced Bryan Godbe of Godbe Research who shared the results of the Utility User Tax Renewal Survey. The survey indicated strong voter support for the UUT renewal. Mr. Godbe recommended placing the renewal measure on the November 2014 ballot.

Dean Lewis stated that he warned everyone that the UUT would not be temporary. He noted that he did not see any reference to how long the extension would last. He stated that new revenue would be generated by the Amazon distribution building and the changes to the NewPark mall. He did not see a need for the extension.

John Henneberry spoke against the renewal of the UUT. He referenced City Council fiscal approvals that he did not think were necessary.

Frankie Addiego stated that he was not in favor of the UUT and suggested adding an expiration date to the tax. He stated that the tax may not be needed when the current economic development projects comes to fruition.

Council Member Marshall moved, Council Member Collazo seconded to by motion, accept the results of the public opinion polling. The motion passed, 4 AYES, 1 ABSENT.

City Manager Becker requested that the City Council provide direction to staff on next steps.

Council Member Collazo moved, Council Member Marshall seconded to by motion direct staff to return at a future city council meeting with a staff report to place the extension of the Utility Users Tax on the November Ballot, including a recommendation for the length of time for the UUT and tax rate. The motion passed, 4 AYES, 1 ABSENT.

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

- I.1 The entire City Council extended their condolences to Vice Mayor Apodaca on the loss of her father. Mayor Nagy stated that he would adjourn a future City Council meeting in memory of Dan Apodaca.
- I.2 Mayor Nagy stated that he would adjourn the meeting in memory of Harry Martin.

J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

K. ORAL COMMUNICATIONS

- K.1 John Henneberry shared his thoughts on city salaries, placing his survey on the agenda, the city manager's schedule, the 2011 Comprehensive Annual Financial Report, the Newark Betterment Corporation, Council Member Marshall and Police Officer Neithercutt.
- K.2 Frankie Addiego explained the open primary process for the June 3 election. He highlighted the types of electioneering that would not be allowed at the polling locations.

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 101303 to 101405.

Council Member Freitas moved, Council Member Collazo seconded, to approve the Register of Audited Demands. The motion passed, 4 AYES, 1 ABSENT.

M. CLOSED SESSION

N. ADJOURNMENT

At 9:33 p.m. Mayor Nagy adjourned the City Council meeting in memory of Harry Martin.

C.1 Proclaiming June as Celebrating Business Month in Newark. (PROCLAMATION)

Background/Discussion – June is Celebrating Business Month in the City of Newark. Chamber President/CEO Valerie Boyle and members of the Newark Chamber of Commerce will accept the proclamation at the meeting.

C.2 Presentation of Students of the Year Awards.

(PRESENTATION)

Background/Discussion – The Newark Unified School District has selected a Student of the Year from each of our local schools. The Newark Rotary Club will present each individual with a certificate. Each Student of the Year has been invited to attend the City Council meeting.

F.1 Authorization for the Mayor to sign a Lease Agreement with Alameda County for lease of the Newark library facility – from City Attorney Benoun.

(RESOLUTION)

Background/Discussion – The one-year Lease Agreement with Alameda County for the library facility will expire on June 30, 2014. The County wishes to enter into a new one-year Agreement. A new Lease Agreement has been prepared, the conditions of which remain the same as in the past.

The rent for the library facility will remain at \$1 per year in addition to monthly payments of \$2,405.06 to cover the full cost of janitorial services (including contract administration) to be provided for that building.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Mayor to sign a Lease Agreement with the County of Alameda to provide a public library facility.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE MAYOR TO SIGN A LEASE
AGREEMENT WITH THE COUNTY OF ALAMEDA TO
PROVIDE A PUBLIC LIBRARY FACILITY

WHEREAS, the current lease agreement with the Alameda County Library for use of city owned library facility located at 6300 Civic Terrace Avenue, will expire on June 30, 2014; and,

WHEREAS, it is recommended that an extension be authorized for an additional year, through June 30, 2015, and for a rental fee of \$1 per year;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark be and is hereby authorized to sign a lease agreement with the County of Alameda, to provide space for the operation of a Public Library for the period of July 1, 2014, through June 30, 2015, said agreement on file in the Office of the City Clerk

LEASE AGREEMENT

THIS LEASE, made and entered into this _____ day of _____, 2014, by and between the CITY OF NEWARK, CALIFORNIA, a municipal corporation hereinafter referred to as "CITY," and the COUNTY OF ALAMEDA, a body corporate and politic and a political subdivision of the State of California, acting by and through its Board of Supervisors, hereinafter referred to as "COUNTY";

WHEREAS, the CITY has constructed a Library facility at the City Administration Civic Center Complex; and

WHEREAS, the CITY and the COUNTY wish to continue their cooperation for the purpose of providing public library services.

THEREFORE, it is mutually agreed, as follows:

That the CITY, for and in consideration of the mutual covenants and conditions herein set forth, does by these presents let, lease, assign, and demise unto said COUNTY, and COUNTY, in consideration thereof, does lease, hire, accept, and take from CITY the following described premises, to wit:

- Approximately 15,000 square feet of space and improvements in that building commonly known as Newark Public Library, 6300 Civic Terrace Avenue, Newark, California.

It is further agreed between the parties as follows:

1. TERM

Said lease shall be for a period of one (1) year commencing July 1, 2014 and continuing until June 30, 2015, unless terminated earlier as provided in this lease.

2. RENTAL

Tenant agrees to pay Landlord as rent, One Dollar (\$1.00) per year payable on the first day of July of each lease year.

3. HOLD OVER

Should COUNTY hold over said premises after this lease has expired in any manner, such holding over shall be deemed merely a tenancy from month to month. County shall continue to pay for janitorial services during any holdover period of time as specified in paragraph 15 of this lease.

4. USE

The premises are hereby leased to COUNTY upon the express condition that COUNTY shall use said premises for providing Library services, and for no other purposes, without

the written consent of the CITY, during the term of this lease; and upon the further condition that no goods, merchandise, or materials shall be kept, stored, or sold by COUNTY on said premises which are in any way hazardous, or which will increase the present rate of fire insurance upon the building of which said premises form a part.

5. FLOOR LOAD

COUNTY will not overload the floors, nor install any heavy business machines or any heavy equipment of any kind, without prior written approval of CITY which, if granted, may be conditioned upon moving said loads by skilled licensed handlers and installation and maintenance at tenant's expense of special reinforcing and settings adequate to absorb and prevent noise and vibration. In no event will COUNTY be allowed to place a load exceeding fifty (50) pounds per square foot on any floor of the building without prior written consent from CITY.

6. ASSIGNMENT AND SUBLETTING

COUNTY shall not assign this lease, or any interest therein, and shall not sublet said premises, or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of COUNTY excepted) to occupy or use the said premises, or any portion thereof without the written consent of CITY first had and obtained. A consent to one assignment, subletting, occupation, or use by any one person shall not be deemed to be a consent to any subsequent assignments, subletting, occupation, or use by any other person. Any such assignment or subletting without such prior written consent from CITY shall be void, and shall constitute a breach of this lease.

7. INSURANCE

CITY shall carry and maintain during the entire term fire insurance, insuring the premises and the building of which they are part, and further agrees to waive any claims against COUNTY for losses payable under said insurance, including deductibles. CITY shall carry a minimum of \$1 million for comprehensive general liability covering bodily injury and property damage in respect to premises.

COUNTY will be self-insured for Workers' Compensation, Automobile, Comprehensive General Liability. Any deductible for self-insured retentions must be declared to CITY.

8. HOLD HARMLESS: INDEMNIFY

COUNTY shall indemnify CITY insofar as permitted, by law against and hold CITY harmless from any and all loss, damage, and liability for damages whether for damage to or loss of property, or injury to or death of person, including loss of or damage to property of CITY or injury to or death of employees of CITY, which shall proximately arise out of or be connected with COUNTY'S use hereunder, unless such damage, loss, injury, or death shall be caused by negligence of CITY.

CITY shall indemnify COUNTY insofar as permitted by law against and hold COUNTY harmless from any and all loss, damage, and liability for damages whether for damage to

or loss of property, or injury to or death of person, including loss of or damage to property of COUNTY or injury to or death of employees of COUNTY, which shall proximately arise out of or be connected with CITY'S use hereunder, unless such damage, loss, injury or death shall be caused by negligence of COUNTY.

CITY shall procure and maintain in full force and effect during the term of this lease insurance coverage for fire, extended coverage and special form. CITY further agrees to waive any claim against the COUNTY for losses payable under said insurance and said insurance shall contain a waiver of subrogation against the COUNTY.

9. COUNTY EMPLOYEES

Neither the COUNTY nor any of its employees shall by virtue of this agreement be an employee of the CITY for any purpose whatsoever nor shall it or they be entitled to any of the rights, privileges, or benefits of CITY employees.

10. RIGHT TO TERMINATE

If, through any cause, either party fails to fulfill in a timely and proper manner its obligations under this agreement, or if the either party shall violate any of the covenants, agreements or stipulations of this agreement, the other party, upon written notification to the other party of the violation, shall have the right to terminate this agreement by giving to the other party at least thirty (30) days written notice of such termination, specifying the effective date, unless the other party timely cures the violations. Either party may terminate this agreement, without cause, provided that the party provides at least six (6) months written notice of termination.

11. RIGHT TO CANCEL

CITY or COUNTY has the right and privilege to cancellation of this lease at least one hundred twenty (120) days prior written notice.

12. ACCEPTANCE

COUNTY acknowledges that it has been in sole and exclusive possession of the premises since 1983. By continuing in possession of the premises, COUNTY agrees and hereby stipulates with CITY that said premises are in good order and repair and in tenantable condition on the effective date of this lease and that the improvements on said premises have been maintained by CITY in good and tenantable condition.

13. ALTERATIONS

A. COUNTY shall not make or suffer to be made any alterations of said premises or any part thereof except to move furniture and trade fixtures without the written consent of the CITY. Any alterations and improvements that may be required by COUNTY and approved by CITY shall be done at the cost, charge, and expense of COUNTY. Any such alterations and improvements shall remain the property of COUNTY and may be removed from the premises upon the expiration of this lease or any renewal thereof or

any sooner termination thereof, and COUNTY agrees to make any repairs to the premises for damage occasioned by such removal. No alterations of any kind and no structural modifications may be made without a City of Newark building permit.

B. Any improvements installed or provided by CITY shall remain the property of CITY, and COUNTY shall not be required nor have the right to remove any such improvements.

14. UTILITIES

COUNTY shall pay all utility charges including PG&E (electric and natural gas), sewage (if any), telephone, and water (if any).

15. MAINTENANCE AND REPAIRS

A. Exterior Maintenance and Repairs: The CITY shall, at the CITY's own cost and expense during the term of this lease or any renewal or extension of the term of this lease, keep and maintain the exterior of said premises and appurtenances in good order and repair. The CITY shall, at CITY'S expense, maintain the landscaping, paving, sidewalks, and parking lot. The CITY shall not be liable for any damages resulting from the CITY'S failure to make any repairs required by this section to be made by the CITY unless the COUNTY gives written notice to the CITY specifying the need for repairs and the CITY fails to make the repairs with reasonable dispatch after the giving of the notice.

B. Janitorial Services: Tenant agrees to pay Landlord for janitorial services for the Leased Space, the sum of Twenty eight thousand, eight hundred sixty dollars and seventy two (\$28,860.72) per year. The first installment due is Two thousand four hundred six dollars and six cents (\$2,406.06) which includes annual rent, and the following eleven equal installments due are Two thousand four hundred five dollars and six cents (\$2,405.06). Each of the twelve installments is payable on the first day of each and every month commencing July 1, 2014, and continuing through the term of this lease. All payments for janitorial services shall be paid by Tenant at the office of Landlord at 37101 Newark Blvd., Newark, CA 94560 or any other place or places that Landlord may from time to time designate by written notice given to Tenant. CITY agrees to provide janitorial services at the same standard as for other City buildings that are open to the public.

C. Interior Maintenance and Repairs: The COUNTY shall, at the COUNTY'S own cost and expense during the term of this lease or any renewal or extension of the term of this lease, keep and maintain the interior of said premises and appurtenances in good order and repair. In the event an interior plumbing problem (plugged toilet, etc.) arises during normal City working hours, the City shall endeavor to repair the problem with its own forces. If such a problem occurs outside of the City's usual working hours, County may call its plumber at its own expense or wait until the City's next working day. The City shall not be obligated to perform emergency repairs or do emergency, evening, or weekend "call outs".

D. HVAC Maintenance and Repairs: The CITY shall regularly employ a heating and air conditioning maintenance firm to service and maintain the heating and air conditioning

system on said premises in good working order and/or accomplish said regular maintenance with CITY personnel.

16. REPORTING DAMAGES

COUNTY agrees to report to the CITY'S Maintenance Supervisor at 37440 Filbert Street, Newark, California, telephone (510) 578-4802 in a timely manner, all damage, breakage, leaks and notice of repairs to be made. COUNTY shall be responsible for any and all repairs or maintenance to the premises caused by the negligent, careless, or willful acts of COUNTY, its employees, servants, or business visitors.

17. SURRENDER

COUNTY agrees to surrender said premises at the expiration of the time herein specified, or any extension thereof, or any sooner termination thereof in the same condition as received, except for reasonable use and wear as provided in this agreement.

18. COMPLIANCE WITH ORDINANCES AND STATUTES

COUNTY at its sole cost and expense will comply with all applicable requirements of the municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the said premises and shall faithfully observe in the use of the premises all applicable municipal ordinances and state and federal statutes now in force or which may hereafter be in force. The COUNTY shall not use the premises in any manner which constitutes a public or private nuisance by statute.

19. ENTRY

CITY, or its duly authorized representatives or agents, may enter upon said premises at any and all reasonable times during the term of this lease for the purpose of determining whether COUNTY is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the CITY.

20. NON-DISCRIMINATION

COUNTY agrees that no person shall on the grounds of race, color, religion, national origin, sex, age, or handicapping condition, or any other basis, as defined in California Civil Code Section 51, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried out in whole or in part within the premises. COUNTY shall not, on the grounds of any unlawful discriminatory basis:

A. Deny any service or other benefit provided by the program or activity; or

B. Provide any service or other benefit which is different or is provided in a different form from that provided to others under the program activity; or

C. Subject to segregated or separate treatment in any facility or in any manner or process related to receipt of any service or benefit under the program or activity; or

D. Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program or activity; or

E. Treat an individual differently from others in determining the admission, enrollment, eligibility, membership, or other requirements or conditions which individuals must meet in order to be provided any service or other benefits provided under the program or activity.

21. AMENDMENTS

This agreement shall be amended only by written agreement of the parties hereto.

22. ENTIRE AGREEMENT

This instrument constitutes the entire agreement between CITY and COUNTY relative to the premises and this agreement, and may be altered only by an instrument in writing signed by both CITY and COUNTY. CITY and COUNTY agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the premises are merged in or revoked by this Agreement.

23. SEVERABILITY

If any term or provision of the lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the lease shall not be affected thereby, and each term and provision of the lease shall be valid and be enforceable to the fullest extent permitted by law.

24. ACTS CONSTITUTING BREACH BY TENANT

The following shall constitute a default under and a breach of this lease by Tenant:

A. The nonpayment of rent when due, when the nonpayment continues for ten (10) days after written notice to pay rent or surrender possession of the Leased Space has been given by landlord to Tenant; or

B. A failure to perform any provision, covenant, or condition of this lease other than one for the payment of rent, when that failure is not cured within ten (10) days after written notice of the specific failure is given by Landlord to Tenant; or

C. The breach of this lease and abandonment of the Leased Space before expiration of the term of this lease; or

D. A receiver is appointed to take possession of all or substantially all of Tenant's property located at the Leased Space or of Tenant's interest in this lease, when possession is not restored to Tenant within thirty (30) days; or

E. Tenant makes a general assignment for the benefit of creditors; or

F. The execution, attachment, or other judicial seizure of substantially all of Tenant's assets located at the Leased Space or of Tenant's interest in this lease when the seizure is not discharged within ten (10) days.

The notices provided for in subsections A and B of this Paragraph 24 are not intended to replace, but rather are in addition to, any required statutory notices for unlawful detainer proceedings under Code of Civil Procedure Section 1161 *et seq.*

25. LANDLORD'S REMEDIES

If Tenant breaches or is in default under this lease, Landlord, in addition to any other remedies given Landlord by law or equity, may:

A. Continue this lease in effect by not terminating Tenant's right to possession of the Leased Space and thereby be entitled to enforce all Landlord's rights and remedies under this lease including the right to recover the rent specified in this lease as it becomes due under this lease; or

B. Terminate this lease and all rights of Tenant under the lease and recover from Tenant:

(1) The worth at the time of award of the unpaid rent that had been earned at the time of termination of the lease; and

(2) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided; and

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonable avoided; and

(4) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this lease; or

C. In lieu of, or in addition to, bringing action for any or all of the recoveries described in subparagraph B of this Paragraph 25, bring an action to recover and regain possession of the Leased Space in the manner provided by the California law or unlawful detainer then in effect.

26. TERMINATION NOTICE

No act of Landlord, including but not limited to Landlord's entry on the Leased Space or efforts to re-let the Leased Space, or the giving by Landlord to Tenant of a notice of default, shall be construed as an election to terminate this lease unless a written notice of Landlord's election to terminate this lease is given to Tenant.

27. WAIVER OF BREACH

The waiver by Landlord of any breach by Tenant of any of the provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent default or breach by Tenant either of the same or a different provision of this lease.

28. NOTICES

Any demand or notice which either party shall be required or may desire to make upon or give to the other shall be in writing and shall be delivered personally upon the other or be sent by prepaid certified mail addressed to the respective parties as follows:

CITY:

City Manager
City of Newark
37101 Newark Boulevard
Newark, CA 94560

and City Attorney
City of Newark
37101 Newark Boulevard
Newark, CA 94560

COUNTY:

Chairperson, Board of Supervisors
County of Alameda
1221 Oak Street
Oakland, CA 94612

and County Librarian
County of Alameda
2450 Stevenson Boulevard
Fremont, CA 94538

Said addresses may be changed by either party upon serving notice as set forth herein.

29. HEADINGS

The headings used in this lease are not a part of this lease and shall have no effect upon the construction or interpretation of any part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written, and COUNTY has hereunto caused its corporate name to be signed by its Chairperson of the Board of Supervisors who is hereunto duly authorized the day and year first above written.

COUNTY OF ALAMEDA

CITY OF NEWARK

By _____
Chairperson of the Board of Supervisors
County of Alameda, State of California

By _____
Mayor, City of Newark

By _____
Clerk of the Board of Supervisors

Attest _____
City Clerk, City of Newark

Approved as to form:

Approved as to form:

County Counsel

City Attorney, City of Newark

F.2 Approval of plans and specifications, acceptance of bid and award of contract to United Storm Water, Inc., for Storm Drain Trash Capture Devices, Project 1059 – from Senior Civil Engineer Fajeau. (MOTION)(RESOLUTION)

Background/Discussion – Project 1059 will provide for the installation of 118 trash capture devices in various storm drain inlets. These devices represent part of the City’s efforts to reduce the amount of trash that enters the public storm drain system and addresses requirements of the Municipal Regional Stormwater Permit. All installations are scheduled to be completed in June 2014.

Bids for the project were opened on May 12, 2014 with the following results:

Bidder	Amount
United Storm Water, Inc.	\$ 62,186.00
Engineer’s Estimate	\$ 70,000.00

The 2012-2014 Biennial Budget includes full funding for the project with the use of Capital Funds.

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 United Storm Water, Inc., for Storm Drain Trash Capture Devices, Project 1059.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ACCEPTING THE BID AND AWARDING THE
CONTRACT TO UNITED STORM WATER, INC. FOR STORM
DRAIN TRASH CAPTURE DEVICES, PROJECT 1059

BE IT RESOLVED that the City Council does hereby find that United Storm Water, Inc. was the lowest responsible bidder for Storm Drain Trash Capture Devices, Project 1059, 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 Storm Drain Trash Capture Devices, Project 1059, according to the plans, specifications, and terms of said bid.

**F.3 Approval of plans and specifications, acceptance of bid and award of contract to AJW Construction for 2013 and 2014 Citywide Wheelchair Accessible Ramps, Projects 1022 and 1048 – from Senior Civil Engineer Fajeau.
(MOTION)(RESOLUTION)**

Background/Discussion – Projects 1022 and 1048 will provide for the installation of 57 additional wheelchair accessible ramps at various Citywide locations.

Bids for the project were opened on May 13, 2014 with the following results:

Bidder	Amount
AJW Construction	\$ 125,400.00
Breneman Inc.	134,976.00
Rosas Brothers Construction	142,500.00
J.J.R. Construction, Inc.	165,300.00
Sposeto Engineering Inc.	169,461.00
FBD Vanguard Construction Inc.	207,936.00
Engineer's Estimate	\$ 115,000.00

Although the apparent low bid exceeded the Engineer's Estimate and includes a bid unit price more than 25% higher than a similar project undertaken two years ago, the quantity and range of bids received demonstrates that the bid is competitive with current market conditions. The 2012-2014 Biennial Budget includes full funding for these projects with the use of Measure B Local Streets and Roads funds, Measure Bicycle and Pedestrian funds, and Transportation Development Act (TDA) Article 3 special grant funds.

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 AJW Construction for 2013 and 2014 Citywide Wheelchair Accessible Ramps, Projects 1022 and 1048.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ACCEPTING THE BID AND AWARDING THE
CONTRACT TO AJW CONSTRUCTION FOR 2013 AND 2014
CITYWIDE WHEELCHAIR ACCESSIBLE RAMPS, PROJECTS
1022 AND 1048

BE IT RESOLVED that the City Council does hereby find that AJW Construction was the lowest responsible bidder for 2013 and 2014 Citywide Wheelchair Accessible Ramps, Projects 1022 and 1048, 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 2013 and 2014 Citywide Wheelchair Accessible Ramps, Projects 1022 and 1048, according to the plans, specifications, and terms of said bid.

F.4 Authorization for the Mayor to sign two agreements with Alameda County for participation in the Alameda County Urban County Community Development Block Grant (CDBG) Program for Fiscal Year 2014-2015; and participation in the Alameda County Urban County for Fiscal Years 2015-2017 – from Assistant Planner Jimenez. (RESOLUTIONS - 2)

Background/Discussion – Each year the City of Newark receives funding under the United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program. This grant provides funding for activities benefiting low- and moderate-income persons, including public works projects, planning studies, and housing rehabilitation and repair.

Newark’s funds are disbursed through Alameda County. The County oversees Newark’s use of the funds in order to ensure that all appropriate federal government requirements are met. This arrangement is established and governed each year by a pair of agreements, one between Alameda County and HUD, and one between the City and Alameda County. A copy of the agreement between Newark and Alameda County is attached. By approving this resolution, the City Council will authorize the Mayor to sign the agreement between the City of Newark and Alameda County, thereby continuing the City’s participation in the CDBG program.

Alameda County specifically administers CDBG funds for the City of Newark because it is a federal government requirement that community development grants be made available to cities whose 2010 census population exceeds 50,000 persons. The City of Newark population falls below this target. However, the federal government allows smaller cities, such as Newark, to combine together and form an “urban county” with a combined population of 200,000 persons or more, as an alternative method of receiving CDBG funding. Newark has joined together with Albany, Dublin, Emeryville, Piedmont and the unincorporated county of Alameda County to form the Alameda County Urban County. Every three years, Alameda County must re-qualify as an Urban County to receive its Community Development Block Grant allocation. By approving this resolution, the City Council will authorize the Mayor to sign a three-year agreement between the City of Newark and Alameda County for fiscal years 2015, 2016, and 2017, and continue its participation in the Alameda County Urban County.

Attachment

Action - It is recommended that the City Council, by resolutions: 1) authorize the Mayor to sign an agreement with Alameda County for participation in the Alameda County Urban County Community Development Block Grant (CDBG) Program for the 2014-2015 fiscal year; and 2) authorize the Mayor to sign an agreement with Alameda County for participation in the Alameda County Urban County for Fiscal Years 2015-2017.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE MAYOR TO SIGN AN
AGREEMENT WITH ALAMEDA COUNTY FOR
PARTICIPATION IN THE ALAMEDA COUNTY URBAN
COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT
(CDBG) PROGRAM FOR FISCAL YEAR 2014-2015

BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark is hereby authorized to sign an agreement with Alameda County for participation in the Alameda County Urban County Community Development Block Grant (CDBG) Program for Fiscal Year 2014-2015, said agreement on file in the Office of the City Clerk.

AGREEMENT BY AND BETWEEN
THE CITY OF NEWARK
AND
THE COUNTY OF ALAMEDA

THIS AGREEMENT is made and entered into this 1st day of July, 2014, by and between the County of Alameda (hereinafter referred to as "County"), and the City of Newark, located in the County of Alameda, State of California, (hereafter referred to as "City").

WHEREAS, the County has entered into a Grant Agreement with the United States Department of Housing and Urban Development (HUD), for a Community Development Block Grant (CDBG) under the Housing and Community Act of 1974, said funds to be used for Community Development block Grant Programs and its eligible activities; and

WHEREAS, the activities of the City under this Agreement with the County shall be governed by the conditions of the Grant Agreement between the County and the United States Department of Housing and Urban Development;

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE PROMISES HEREINAFTER MADE, COUNTY AND CITY DO MUTUALLY AGREE AS FOLLOWS:

I. STATEMENT OF WORK AND COMPENSATION

- A. City will perform or arrange for the performance of the work under this Agreement in the manner and time provided herein and in accordance with: the budget; the scope of work and any specifications and drawings; and all related documents and provisions attached hereto as Exhibit A and incorporated herein by reference.
- B. The maximum amount of fiscal year 2014 CDBG funds covered by this agreement shall be \$148,827. In the event that HUD reduces the Urban County CDBG allocation, the City's allocation will be reduced proportionately.

II. COMMENCEMENT AND COMPLETION REQUIREMENTS

- A. This Agreement shall be in effect until June 30, 2016 or until all fiscal year 2014 Urban County CDBG funds allocated to City are disbursed to City, or for the duration of any regulatory agreement or contract executed in conjunction with a project financed with fiscal year 2014 CDBG funds, or when all of the contract terms have been completed whichever shall first occur.
- B. It shall be the responsibility of the City to coordinate and schedule the work to be performed so that commencement and completion will take place in accordance with the provisions of this Agreement. The County may extend the time for completion of the work to be performed under this Agreement in writing, if it determines that delay in the progress of work is not attributable to the negligence of the City and that such delay was due to causes beyond the control of the City, and if such extension will not cause the County to be out of compliance with CDBG rules and regulations for timely commitment and expenditure of funds.
- C. Any time extension granted to the City to enable the City to complete the work shall not constitute a waiver of rights the County may have under this Agreement.

- D. Should the City not complete the work by the scheduled date or by an extended date, granted by the County in writing, pursuant to previously stated conditions, the County shall be released from all conditions of this Agreement.
- E. Upon completion of performance under this Agreement and a determination of final costs, City shall submit to the County a certificate of completion for construction projects and a requisition for final payment for service projects, unless otherwise provided in this Agreement.
- F. As a part of this Agreement, City will provide the County with a Certificate of Insurance as outlined in Exhibit B.

III. SUBCONTRACTS

- A. Any subcontract funding under this Agreement shall be submitted to County for review and approval prior to its execution.
- B. In the event subcontractor is a private non-profit or neighborhood-based non-profit organization, or a local development or small business investment corporation, contractor is required to comply with the procurement procedures of Office of Management and Budget (OMB) Circular A-110 and A-122 (incorporated herein by reference) for the procurement of supplies and services in connection with activities funded under this Agreement.
- C. Any subcontract funded under this Agreement shall be subject to the terms and conditions of this Agreement.

IV. BUDGET

Any requested modification to the Budget attached to this Agreement and incorporated as part of this Agreement, shall be reviewed and approved by the Alameda County Housing Director on behalf of the County. Any budget modifications require the prior written approval of Alameda County Housing Director on behalf of the County. Budget modifications shall not alter: 1) The basic scope of services (Exhibit A) required to be performed under this Agreement; 2) the time period for the services to be performed under this Agreement; and, 3) the total amount of the authorized budget of this Agreement (Exhibit A), subject to future amendments as approved by the Alameda County Housing Director. Any of the cost categories shown in the Agreement Budget, except administration, may be exceeded by ten percent of the indicated figure, provided that the total approved amount of allowable costs is not exceeded and stays under the 15% Urban County Public Services cap.

V. RECORDS AND REPORTS

- A. All original documents prepared by City in connection with the work to be performed under this Agreement shall be the property of the County.
- B. City's records shall be made available for review by the County prior to the release of funds. City shall be responsible for maintaining all records pertaining to this Agreement, including subcontracts and expenditures, and all other financial and property records in conformance with OMB circular A-110.

- C. Records must be kept accurate and up-to-date. Failure of City to comply with this provision could result in termination of this Agreement or City's repayment of funds previously awarded under this Agreement.

VI. PROGRAM MONITORING AND EVALUATION

- A. City shall be monitored and evaluated in terms of its effectiveness and timely compliance with the provisions of this Agreement and the effective and efficient achievement of the Program Objectives.
- B. City shall undertake continuous quantitative and qualitative evaluation of the Scope of Services as specified in this Agreement and shall make quarterly written reports to County.
 - 1. The quarterly written reports shall be submitted in the format approved and distributed by the County.
 - 2. The quarterly report shall be due on the fifteenth day of the month immediately following the report quarter, except for the end of the program year report which is due within thirty days.
- C. The County shall have ultimate responsibility for project monitoring oversight and evaluation, to assist City in complying with the scope and contents of this Agreement, and to provide management information which will assist the County's policy and decision-making and managers.
- D. The City shall follow audit requirements of the Single Audit Act and OMB Circular A-128.

VII. PROGRAM INCOME

- A. Program income shall be recorded as part of the financial transactions of the grant program and disbursed in accordance with OMB Circular A-110.
- B. Program income received by City shall be returned to County for future application to City projects.
- C. Program income from Urban County program activities undertaken by or within City which thereafter terminates its participation in the Urban County shall continue to be program income of the County. County may transfer the program income to City, upon its termination of Urban County participation, provided that City has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

VIII. UNIFORM ADMINISTRATIVE REQUIREMENTS

- A. City shall comply with Uniform Administrative Requirements as described in Federal Regulations, Section 570.502 as applicable to governmental entities.
- B. City shall comply with Executive Order 13166 to improve access to services for persons with Limited English Proficiency (LEP) including developing a Language Access Plan.

IX. RELIGIOUS ACTIVITY PROHIBITION

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of this Agreement.

X. REVERSION OF ASSETS

A. Upon the expiration of this Agreement, City shall transfer to County any CDBG funds on hand at time of expiration and any accounts receivable attributable to the use of CDBG funds.

B. Real property in excess of \$25,000, obtained in whole or in part with CDBG funds must be used to meet one of the national objectives for a minimum of ten years after the expiration of this Agreement or disposed of in a manner that results in County being reimbursed at fair market value less value attributable to non-CDBG expenditures.

XI. OTHER PROGRAM REQUIREMENTS

A. City certifies that it will carry out each activity in compliance with all Federal laws and regulations described in 24 CFR, Part 570, Sub-part K (570.600-570-612) and related to a) Non-discrimination, b) Fair Housing, c) Labor Standards, d) Environmental Standards, e) National Flood Insurance Program, f) Relocation and Acquisition, g) Employment and Contracting Opportunities, h) Lead-based paint, i) Use of Debarred, Suspended or Ineligible Contractors or Sub-recipients, j) Uniform Administrative Requirements and Cost Principles, k) Conflict of Interest, and l) Displacement.

B. Activities and programs under this Agreement shall be governed by the policies and procedures of the Alameda County Urban County or as directed by the County as grantee in order to ensure that compliance with all applicable laws and regulations.

XII. TERMINATION OF THIS AGREEMENT

County may terminate this Agreement in whole or in part immediately for cause, which shall include as example but not as a limitation:

A. Failure, for any reason, of City to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with City, State and Federal laws and regulations and applicable directives;

B. Failure to meet the performance standards contained in other sections of this Agreement;

C. Improper use or reporting of funds provided under this Agreement; and

D. Suspension or termination by HUD of the grant to the County under which Agreement is made, or the portion thereof delegated by this Agreement.

E. Any and all notices, writings, correspondences, etc., as required by this Agreement shall be directed to the City and County as follows:

City

County

Housing Director
Alameda County HCD
224 W. Winton Avenue, Room 108
Hayward, CA 94544

XIII. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, City shall hold harmless, defend and indemnify the County, its Board of Supervisors, officers, employees and agents (collectively Indemnities) from and against any and all claims, losses, damages, liabilities or expenses, including reasonable attorney fees, incurred in the defense thereof, for the death or injury to any person or persons (including employees of City or County) or damage of any property (including property of City or County) which arises out of any way connected with performance of this agreement (collectively Liabilities) except where such liabilities are proximately caused solely by the negligence or willful misconduct of any Indemnitee.

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

Approved as to form:

Approved as to form: Donna R. Ziegler
County Counsel

By: _____
City Attorney

By: _____
William M. Fleishhacker
Deputy County Counsel

Date: _____

Date: _____

* * * * *

CITY OF NEWARK

COUNTY OF ALAMEDA

By: _____
Mayor

By: _____
President, Board of Supervisors

Attest: _____
City Clerk

Date: _____

Date: _____

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

AGREEMENT BY AND BETWEEN
THE CITY OF NEWARK
AND
THE COUNTY OF ALAMEDA

EXHIBIT A

03 – Public Facilities and Improvements	
ADA ramps, accessible parking spaces, etc.	\$102,898
14A Rehabilitation – Single Unit Residential	
Minor Home Repair and Owner Rehab Programs which promote the maintenance of homes.	\$36,179
20 - Planning	
City’s share of the cost of Consultant for the Analysis of Impediments to Fair Housing	\$1,950
21A Administration	
Provide overall CDBG program administration.	\$7,800
TOTAL - CITY OF NEWARK	\$148,827
<i>Anticipated Program Income*</i>	<i>\$15,000</i>

** Based on an estimate of prior years’ program income received; only actual program income received will be available to the City for its Revolving Loan Fund (Housing Rehabilitation Programs).*

EXHIBIT B
COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<p>Endorsements and Conditions:</p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance affected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: <ul style="list-style-type: none"> - Department/Agency issuing the contract - With a copy to Risk Management Unit (125 – 12th Street, 3rd Floor, Oakland, CA 94607) 	

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE MAYOR TO SIGN AN
AGREEMENT WITH ALAMEDA COUNTY FOR
PARTICIPATION IN THE ALAMEDA COUNTY URBAN
COUNTY FOR FISCAL YEARS 2015-2017

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

AGREEMENT

An Agreement by and between the CITY OF NEWARK, hereinafter called "CITY" and the COUNTY OF ALAMEDA, hereinafter called "COUNTY".

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

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

WHEREAS, Title I makes available entitlement grants to:

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

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

- (1) is authorized under state law to undertake essential community development and housing assistance activities in its incorporated areas which are not units of general local government; and,
- (2) has a combined population of 200,000 or more in such unincorporated areas and in its included units of local government:
 - (A) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded; or,
 - (B) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities; and,

WHEREAS, five cities in Alameda County have a 2010 Census population of less than 50,000; and,

WHEREAS, these same five cities may join with the County of Alameda to form a combined 2010 Census population of 200,000 or more persons, thereby qualifying as an urban county, and be eligible for an entitlement of Community Development Block Grant and HOME Investment Partnership funds; and,

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

WHEREAS, these same five cities agree that by executing this Agreement they may not participate in a HOME Consortium except through the Urban County, regardless of whether the Urban County receives a HOME formula allocation; and,

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

THEREFORE, it is agreed that:

1. CITY and COUNTY will cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing, hereinafter called "PROGRAM", to be carried out with annual Community Development Block Grant and HOME Investment Partnership funds, hereinafter called "CDBG/HOME FUNDS", from Federal fiscal years 2015, 2016 and 2017 appropriations and from any program income generated from the expenditure of such funds. Community renewal and lower income housing assistance activities shall be those designated or referred to within Title I of the ACT and the regulations issued pursuant thereto.
2. To carry out community renewal and lower income housing activities, COUNTY shall distribute to CITY a portion of the CDBG funds received under the ACT from Federal fiscal years 2015, 2016 and 2017 appropriations. The funds distributed to CITY shall be determined in accordance with such needs, objectives, or strategies, as COUNTY shall decide. In preparing the needs, objectives or strategies, COUNTY shall consult with CITY before making its determinations. The distribution of HOME funds to the Urban County is based on the review and recommendations of proposals received in response to an annual RFP.
3. It is expressly understood that as a recipient of the CDBG/HOME FUNDS from HUD, COUNTY and CITY must take all actions necessary to assure compliance with the Urban County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, The Fair Housing Act, Section 109 of Title I of the Housing and Community Development Act of 1974 and other applicable laws, and all regulations issued pursuant thereto. Further, urban county funding for activities in or in support of any city that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with its fair housing certification is prohibited.
4. CITY may not sell, trade, or otherwise transfer all or any portion of the CDBG/HOME FUNDS to a metropolitan city, urban county, unit of general local government, or Indian tribe or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-federal considerations, CITY must use the CDBG/HOME FUNDS for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

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

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

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

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

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

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

or any of CITY's employees or volunteers in the performance of the contract or PROGRAM and CITY shall hold COUNTY harmless from any and all loss occasioned in the performance of, or otherwise arising out of, this Agreement or PROGRAM.

11. This Agreement shall go into effect immediately upon the signature of both parties and shall continue in full force and effect until all activities funded by CDBG/HOME FUNDS from Federal fiscal years 2015, 2016 and 2017 appropriations are completed. CITY will be included in the urban county for the entire three years period funded by CDBG/HOME FUNDS from Federal fiscal years 2015, 2016 and 2017. Appropriations may not be withdrawn from the urban county during this agreement period.

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

13. CITY agrees that COUNTY has final responsibility for selecting CDBG and HOME activities and annually filing the Annual Action Plan with HUD.

CITY OF NEWARK

COUNTY OF ALAMEDA

City Administrator

President, Board of Supervisors

ATTEST: _____
City Clerk

ATTEST: _____
Clerk, Board of Supervisors

DATE: _____

DATE: _____

APPROVED AS TO FORM:

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

City Attorney

By: _____
William M. Fleishhacker, Deputy County Counsel

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