



# CITY OF NEWARK CITY COUNCIL

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

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

## AGENDA

Thursday, September 25, 2014

### CITY COUNCIL:

Alan L. Nagy, Mayor  
Ana M. Apodaca, Vice Mayor  
Luis L. Freitas  
Suky 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](http://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.  
City Council Chambers

## AGENDA

Thursday, September 25, 2014

- A. ROLL CALL
  
- B. MINUTES
  - B.1 Approval of Minutes of the regular City Council meeting of Thursday, September 11, 2014. (MOTION)
  
- C. PRESENTATIONS AND PROCLAMATIONS
  - C.1 Commending Newark Sister City Advisory Committee. (COMMENDATION)
  
- D. WRITTEN COMMUNICATIONS
  
- E. PUBLIC HEARINGS
  
- F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.7 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 Amendment to Resolution No. 2505, Employee Classification Plan, to create one new class specification entitled Recycling Assistant; Amendment to Resolution No. 10127, the 2013-2015 Memorandum of Understanding between the City of Newark and the Newark Association of Miscellaneous Employees to add one new classification entitled Recycling Assistant; Amendment to Resolution No. 10235, the 2014-2016 Biennial Budget to add and delete certain classifications – from Human Resources Director Abe. (RESOLUTIONS-3)
  
- F.2 Confirmation of the use of Measure B Bicycle and Pedestrian Local Pass-Through funds for the repair and replacement of sidewalk, curb, and

**gutter as adopted as part of the 2014-2016 Capital Improvement Plan – from Associate Civil Engineer Tran. (RESOLUTION)**

- F.3 Amendment of the 2014-2016 Biennial Budget and Capital Improvement Plan for Fiscal Year 2014-2015 Capital Budget Rollover – from Administrative Services Director Woodstock. (RESOLUTION)**
- F.4 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability) – from City Clerk Harrington. (ORDINANCE)**
- F.5 Amendment to the Conflict of Interest Code for Nonelected Officials and Designated Employees – from City Clerk Harrington. (RESOLUTION)**
- F.6 Approval of Amendment to Agreement with Ray Morgan, LLC for Multifunction Device Services – from Administrative Services Director Woodstock. (RESOLUTION)**
- F.7 Accepting the bid of Mooring Tech for the purchase of eight Panasonic Toughbooks to replace the public safety mobile data computers, Project No. ERB01B14 – from Information Systems Manager Towne. (RESOLUTION)**

#### **NONCONSENT**

- F.8 Authorizing the Mayor to sign the First Amended Agreement for Restriction on use of Real Property for Development of Affordable Housing with SHH, LLC – from Assistant City Manager Grindall. (RESOLUTION)**
- F.9 Authorizing the Mayor to sign the First Amendment to the Grocery Store Agreement with the SHH Project Owner – from Assistant City Manager Grindall. (RESOLUTION)**

#### **G. CITY ATTORNEY REPORTS**

- G.1 Claim of Pacific Gas & Electric – from City Clerk Harrington. (MOTION)**
- G.2 Claim of Myron H. Reece – from City Clerk Harrington. (MOTION)**

- 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**
  - M.1 Closed session pursuant to Government Code Section 54957  
Public Employee Performance Evaluation  
Title: City Attorney.**
- 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, 5<sup>th</sup> 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.



# CITY OF NEWARK CITY COUNCIL

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

## MINUTES

Thursday, September 11, 2014

### A. ROLL CALL

Mayor Nagy called the meeting to order at 7:30 p.m. Present were Council Members Collazo, Freitas, Marshall, and Vice Mayor Apodaca.

Mayor Nagy requested a moment of silence for the 13<sup>th</sup> anniversary of 9/11.

### B. MINUTES

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

Council Member Freitas moved, Council Member Collazo seconded, to approve the Minutes of the regular City Council meeting. The motion passed, 5 AYES.

### C. PRESENTATIONS AND PROCLAMATIONS

#### C.1 Introduction of employees.

Mayor Nagy introduced newly hired Public Works employees: Landscape Parks Maintenance Worker I Warren Antida and Administrative Analyst Myvan Khuu-Seeman.

#### C.2 Commending Jennifer Chung.

Mayor Nagy presented a commendation to Jennifer Chung who was recently named 2014 Miss Vietnam of Northern California and Miss Asian America 2014.

#### C.3 Proclaiming September 18-21, 2014, as Newark Days.

Mayor Nagy presented the commendation to members of the Newark Days Committee.

### D. WRITTEN COMMUNICATIONS

#### D.1 Planning Commission referral of an Architectural and Site Plan Review for a 75 unit senior housing project (Gateway at Newark) located on Willow Street within the Dumbarton Transit Oriented Development.

MOTION APPROVED

Assistant City Manager Grindall stated that this project will meet the affordable housing obligation for the Torian/SHH properties and the Integral Cedar Townhomes projects. He stated that the housing will be marketed to Newark residents first; however it will be open to those in the general public who qualify.

Vice Mayor Apodaca requested that a sidewalk or safe path be evaluated from this building to the supermarket that is planned for the area.

Margaret Lewis stated that the Gallade Chemical Company has given the City 90-day notice that they intend to sue regarding the Jones Hamilton property across the street from this project. She stated it was premature to vote on this project until it was known what would happen with the lawsuit.

Council Member Freitas moved, Council Member Collazo seconded to, by motion, approve Planning Commission Resolution No. 1885, with Exhibit A, pages 1 through 6, for ASR-14-35, an Architectural and Site Plan Review for a 75 unit senior housing project (Gateway at Newark) located on Willow Street. The motion passed, 5 AYES.

## **E. PUBLIC HEARINGS**

- E.1 Cancellation of Public Hearing to consider: (1) A General Plan Amendment to change the land use designation from S-I (Special Industrial) to P-I (Public and Institutional); and (2) approving Planning Commission Resolution No. 1884, for a planned unit development and a conditional use permit for a private school (Stratford School) to be located at 39201 Cherry Street (APNs: 901-110-68 & 69). The project includes temporary modular school rooms and offices for the 2014/15 school year.**
- MOTION TO CANCEL HEARING**

City Manager Becker requested that the City Council cancel the public hearing at this time to allow additional traffic analysis to be completed. The matter will be renoticed for a future meeting.

Mayor Nagy asked if anyone in the audience wanted to speak on this item. No one came forward.

Vice Mayor Apodaca moved, Council Member Marshall seconded to cancel the public hearing. The motion passed, 5 AYES.

- E.2 Hearing to consider Z-14-32, a text amendment to Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability).**

**INTRODUCTION OF ORDINANCE**

Assistant City Manager Grindall stated that when the Form Based Codes were approved, it was inadvertently restricted to the the Dumbarton Transit-Oriented Development (TOD) Specific Plan Area. He recommended this text amendment to allow the Form Based Codes to be applied across the City.

At 8:15 p.m. Mayor Nagy opened the public hearing.

No one came forward to speak.

At 8:16 p.m. Mayor Nagy closed the public hearing.

Council Member Marshall moved, Vice Mayor Apodaca seconded to introduce an ordinance for a text amendment to Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability). The motion passed, 5 AYES.

## **F. CITY MANAGER REPORTS**

Council Member Collazo moved, Council Member Marshall seconded, to approve Consent Calendar Items F.1 through F.4, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption of the resolutions. The motion passed, 5 AYES.

## **CONSENT**

- F.1 Report on administrative actions during August recess. MOTION APPROVED**
  
- F.2 Acceptance of work with AJW Construction for 2013 and 2014 Citywide Wheelchair Accessible Ramps, Projects 1022 and 1048. RESOLUTION NO. 10266**
  
- F.3 Acceptance of work with United Storm Water, Inc. for Storm Drain Trash Capture Devices, Project 1059. RESOLUTION NO. 10267**
  
- F.4 Authorization for the Mayor to sign a cooperative funding agreement with the East Bay Regional Park District for the demolition of the Mowry's Landing School. RESOLUTION NO. 10268**

**G. CITY ATTORNEY REPORTS****H. ECONOMIC DEVELOPMENT CORPORATION****I. CITY COUNCIL MATTERS**

- I.1 Declaring a vacancy on the Senior Citizen Standing Advisory Committee and the Tri City Elder Coalition Volunteer Community Board and authorizing the City Clerk to post a notice of vacancy. MOTION APPROVED**

Mayor Nagy stated that Carol McCarty has submitted her resignation from the Senior Citizen Standing Advisory Committee and the Tri City Elder Coalition Volunteer Community Board.

Council Member Collazo moved, Council Member Freitas seconded to, by motion, declare a vacancy on the Senior Citizen Standing Advisory Committee and the Tri City Elder Coalition Volunteer Community Board and direct the City Clerk to post the notice of vacancy. The motion passed, 5 AYES.

- I.2** Mayor Nagy stated that he would adjourn the meeting in memory of Charlotte M. Ornellas, Fred Jueneman, and Dr. Alejandrino Lola. The entire City Council extended their condolences.
- I.3** The City Council commented on the 9/11 anniversary.
- I.4** Council Member Collazo encouraged the public to be prepared for emergency situations.
- I.5** Vice Mayor Apodaca invited the public to attend the Safe Alternatives to Violent Environments Breakfast Eye Opener on September 26.

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

- J.1 Resolution of the City of Newark acting as the Successor Agency to the Newark Redevelopment Agency adopt and endorse the Recognized Obligation Payment Schedule for the period of January to June 2015.**

**RESOLUTION NO. SA 2014-3**

Administrative Services Director Woodstock stated that the payment received for ROPS 14-15A used the full allocation available from the Redevelopment Property Tax

Trust Fund for Fiscal Year 2014-2015. ROPS 14-15B is being submitted to the State to recognize the outstanding debt balance on the loan.

Council Member Freitas moved, Council Member Collazo seconded, acting as the Successor Agency to the Newark Redevelopment Agency, by resolution, adopt and endorse the Recognized Obligation Payment for the period of January to June 2015. The motion passed, 5 AYES.

**K. ORAL COMMUNICATIONS**

- K.1** Frankie Addiego stated that 9/11 begat a resurgence of appreciation for emergency responders. He stated his appreciation for all emergency responders.

**L. APPROPRIATIONS**

City Clerk Harrington read the Register of Audited Demands: Check numbers 102090 to 102537.

Council Member Freitas moved, Council Member Collazo seconded, to approve the Register of Audited Demands. The motion passed, 5 AYES.

**M. CLOSED SESSION**

**N. ADJOURNMENT**

Mayor Nagy adjourned the City Council meeting at 8:30 p.m. in memory of Fred Jueneman, Charlotte M. Ornellas, and Dr. Alejandrino Lola.

**C.1 Commending Newark Sister City Advisory Committee. (COMMENDATION)**

**Background/Discussion** – A commendation has been prepared to thank the members of the Newark Sister City Advisory Committee for their service. The commendation will be presented at the City Council meeting.

**F.1 Amendment to Resolution No. 2505, Employee Classification Plan, to create one new class specification entitled Recycling Assistant; Amendment to Resolution No. 10127, the 2013-2015 Memorandum of Understanding between the City of Newark and the Newark Association of Miscellaneous Employees to add one new classification entitled Recycling Assistant; Amendment to Resolution No. 10235, the 2014-2016 Biennial Budget to add and delete certain classifications – from Human Resources Director Abe. (RESOLUTIONS-3)**

**Background/Discussion** - The responsibility for oversight of the City's recycling program was recently transferred from the Community Development Department to the Administrative Services Department. Recycling requirements were previously administered with the assistance of an outside consultant.

As a result of 2012 Alameda County ordinances, requirements for City recycling and diversion programs are changing. The Administrative Services Department believes that the new requirements can be best implemented by an existing staff member rather than a consultant. Staffing this function internally provides coordination between recycling efforts and related waste disposal contract requirements which are also overseen by Administrative Services. As proposed, recycling program functions will be assigned to the Cashier position in addition to the incumbent's existing responsibilities. With the preponderance of the position's duties and responsibilities shifting from cashiering to recycling, Human Resources is recommending the reallocation of the Cashier position to a newly established classification of Recycling Assistant.

The Recycling Assistant's duties, responsibilities and job requirements are comparable to the Accounting Assistant II level and the recommended salary range is set accordingly. As proposed, the total cost to reallocate the existing Cashier position to Recycling Assistant is \$7,772 per year. The full cost of the Recycling Assistant is covered by existing Cashier position funding along with Measure D monies previously expended on outside consulting services.

**Attachment**

**Action** - It is recommended that the City Council, by resolutions, approve an amendment to Resolution No. 2505, Employee Classification Plan, to create one new class specification entitled Recycling Assistant; an amendment to Resolution No. 10127, the 2013-2015 Memorandum of Understanding Between the City of Newark and the Newark Association of Miscellaneous Employees to add one new classification entitled Recycling Assistant; and an amendment to Resolution No. 10235, the 2014-2016 Biennial Budget to add and delete certain classifications.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING RESOLUTION NO. 2505, EMPLOYEE CLASSIFICATION PLAN, TO CREATE ONE NEW CLASS SPECIFICATION, ENTITLED RECYCLING ASSISTANT

BE IT RESOLVED by the City Council of the City of Newark that Resolution No. 2505, adopting an Employee Classification Plan, is amended as set forth in the following, effective October 1, 2014:

**ADD**

New Classification Code	New Classification Title
67	Recycling Assistant



Class Code: 67  
WP Code: Recycling Asst.  
Established: 10/2014  
Revised:  
EEO Code: PARAPROF.

## CLASS SPECIFICATION

City of Newark, California

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### RECYCLING ASSISTANT

#### DEFINITION

Under general supervision, provides a variety of routine to moderate reporting, outreach and coordination related to waste diversion, recycling programs and assigned accounting functions; performs general office support duties and other duties as assigned.

#### DISTINGUISHING CHARACTERISTICS

The Recycling Assistant is a journey level class, fully competent to independently perform a variety of duties related to reporting, outreach and coordination of waste diversion and recycling programs in addition to accounting office support duties. This single position classification is characterized by the presence of guidelines from which to make decisions; however, some independent judgment must be used, particularly when dealing with a variety of City staff or representatives of the public or other organizations.

#### EXAMPLES OF ESSENTIAL DUTIES – Duties may include, but are not limited to, the following:

Performs office support work for accounts receivable and payable, purchasing, and records maintenance.

Extends figures and verifies authorizations.

Reconciles daily cash receipts and prepares deposit forms.

Reviews and reconciles varied reports and related data.

Computes and collects fees.

Researches and assembles information from a variety of sources for the completion of forms, spreadsheets and the preparation of reports.

Makes arithmetic, financial or statistical calculations.

Provides factual information to the public or to City staff.

Organizes and maintains various files, prepares correspondence, reports, forms and specialized documents, and proofreads materials for accuracy.

Operates standard office equipment including a personal computer.

Organizes work and follows up to ensure timely completion of assignments.

In cooperation with the Franchise Recycling Coordinator:

Develops and implements citywide recycling programs.

Interacts with residents and commercial customers regarding recycling needs.

Assists the Franchise Contract Manager in ongoing development of diversion programs and oversight of the Franchisee related to diversion.

Prepares position papers on changes in laws related to diversion and the impact on City programs.

Reads, interprets and understands City contracts and ordinances, and County and State laws as related to diversion.

MINIMUM QUALIFICATIONS

Knowledge of:

County and State laws governing the recycling industry.

Basic principles and practices of contract administration.

Basic governmental accounting principles and practices.

Office practices and procedures, including filing and the operation of standard office equipment and computer systems.

Business arithmetic, including percentages and decimals.

Correct business English usage.

Ability to:

Prepare, maintain and reconcile various financial, accounting, statistical, auditing and numerical records.

Prepare a variety of reports.

Read, interpret and apply rules and procedures.

Organize, research, and maintain office files.

Make arithmetic calculations with speed and accuracy.

Use sound independent judgment within established procedures.

Operate standard office equipment, including a personal computer.

Establish and maintain effective working relationships with those contacted in the course of work.

Experience and Training

Any combination of experience and training that would provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education:

Equivalent to completion of the twelfth grade.

Experience:

One year of experience with diversion, waste management or recycling. Specialized business or college level coursework in environmental studies and experience in a governmental or municipal setting are desirable.

License or Certificate:

Possession of, or ability to obtain, a Class C California Driver's License.

Special Requirements:

Ability to lift up to 40 pounds.

**Probationary Period: 6 Months**

**FLSA: Non-Exempt**

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING RESOLUTION NO. 10,127, THE 2013-2015 MEMORANDUM OF UNDERSTANDING FOR THE NEWARK ASSOCIATION OF MISCELLANEOUS EMPLOYEES (N.A.M.E.) TO ADD A CERTAIN CLASSIFICATION, ENTITLED RECYCLING ASSISTANT

BE IT RESOLVED by the City Council of the City of Newark that Resolution No. 10,127, the 2013-2015 Memorandum Of Understanding for the Newark Association Of Miscellaneous Employees (N.A.M.E), is amended as follows effective October 1, 2014:

**ADD**

<b>Add Classification Title</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
Recycling Assistant	\$30.53	\$31.88	\$33.30	\$34.77	\$36.37

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK AMENDING RESOLUTION NO. 10,235, THE 2014-  
2016 BIENNIAL BUDGET TO ADD AND DELETE CERTAIN  
CLASSIFICATIONS

BE IT RESOLVED by the City Council of the City of Newark that the certain document entitled 2014-2016 Biennial Budget was adopted by Resolution No. 10,235 on June 12, 2014, and is amended as set forth in the following, effective October 1, 2014:

**DELETIONS/ADDITIONS**

<b>Delete Current Classification Title</b>	<b>Delete Current Allocation (Activity Code/%)</b>	<b>Add New Classification Title</b>	<b>Add New Allocation (Activity Code/%)</b>
(1.0) – Cashier	1025 – 90% Financial Services  9120 – 10% Office Support	(1.0) – Recycling Assistant	1025 – 72% Financial Services  9120 – 8% Office Support  2011 – 20% Waste Management / Measure D

**F.2 Confirmation of the use of Measure B Bicycle and Pedestrian Local Pass-Through funds for the repair and replacement of sidewalk, curb, and gutter as adopted as part of the 2014-2016 Capital Improvement Plan – from Associate Civil Engineer Tran. (RESOLUTION)**

**Background/Discussion** – In November 2000, a 20-year extension to the one-half cent sales tax for transportation was approved by the voters in Alameda County (Measure B). The extension continued many of the programs included in the original Measure B as well as funding for a number of new programs and projects. The average annual funding for the City of Newark’s Bicycle and Pedestrian Local Pass-Through funds is \$120,000, but varies depending on the amount of sales tax collected.

In accordance with the Master Program Agreement between the City of Newark and the Alameda County Transportation Commission, a list of locally prioritized bicycle and pedestrian projects must be developed and adopted by the City. This is a prerequisite for the City to receive its Bicycle and Pedestrian Local Pass-Through funds. Bicycle and pedestrian safety improvements were reviewed as part of the 2014-2016 Capital Improvement Plan and this funding source will be used for Citywide sidewalk, curb, and gutter repair and replacement.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, confirm the use of Measure B Bicycle and Pedestrian Local Pass-Through funds for the repair and replacement of sidewalk, curb, and gutter as adopted as part of the 2014-2016 Capital Improvement Plan.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK CONFIRMING THE USE OF MEASURE B  
BICYCLE AND PEDESTRIAN LOCAL PASS-THROUGH  
FUNDS FOR THE REPAIR AND REPLACEMENT OF  
SIDEWALK, CURB, AND GUTTER

WHEREAS, in November 2000, a 20-year extension to the one-half cent sales tax for transportation was approved by the voters in Alameda County (Measure B); and

WHEREAS, in accordance with the Master Program Agreement between the City of Newark and the Alameda County Transportation Commission, a list of locally prioritized bicycle and pedestrian projects must be developed and adopted by the City, which is a prerequisite for the City to receive the Bicycle and Pedestrian Local Pass-Through funds; and

WHEREAS, the proposed bicycle and pedestrian safety improvements were reviewed as part of the 2014-2016 Capital Improvement Plan and will be used for sidewalk, curb, and gutter repair and replacement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark confirms the use of Measure B Bicycle and Pedestrian Local Pass-Through funds for the repair and replacement of sidewalk, curb, and gutter as adopted as part of the 2014-2016 Capital Improvement Plan.

**F.3 Amendment of the 2014-2016 Biennial Budget and Capital Improvement Plan for Fiscal Year 2014-2015 Capital Budget Rollover – from Administrative Services Director Woodstock. (RESOLUTION)**

**Background/Discussion** – During the annual review of capital projects for Fiscal Year 2014-2015, a need has been identified to amend the 2014-2016 Biennial Budget and Capital Improvement Plan. The Fiscal Year 2013-2014 appropriations have lapsed at year-end and projects that are ongoing or works in progress need to be re-appropriated for the Fiscal Year 2014-2015.

The capital budget amendments include rolling over \$8,479,183 of previously approved capital projects appropriations, including streets and roadway projects, and street trees and landscape maintenance projects. This amount is projected based on the estimated costs to complete the approved projects.

Exhibit A outlines all capital projects that require rollover of appropriations from Fiscal Year 2013-2014 to Fiscal Year 2014-2015.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, amend the 2014-2016 Biennial Budget and Capital Improvement Plan for Fiscal Year 2014-2015 Capital Budget Rollover.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK AMENDING THE 2014-2016 BIENNIAL BUDGET  
AND CAPITAL IMPROVEMENT PLAN OF THE CITY OF  
NEWARK FOR FISCAL YEAR 2014-2015 CAPITAL BUDGET  
ROLLOVER

BE IT RESOLVED by the City Council of the City of Newark that the certain document entitled "2014-2016 Biennial Budget and Capital Improvement Plan of the City of Newark" for Fiscal Year 2014-2015 was adopted by Resolution No. 10,235 on June 12, 2014, and is hereby amended for capital budget rollover as set forth in Exhibit A attached.

**City of Newark  
Capital Projects Budget Rollover  
Fiscal Year 2014-15**

Exhibit A

<b>Fund</b>	<b>Fund/Project Description</b>	<b>Project</b>	<b>FY14/15 Capital Rollovers</b>
<b>Park Construction (104-5400-5280)</b>			
<b>104</b>	2009 Citywide Parks Irrigation System Upgrade/Modification	900	40,000
	2010 Citywide Parks Furniture Installation/Replacement	926	5,400
	2010 Citywide Parks Turf Renovation	928	15,900
	Citywide Parks Irrigation System Upgrade/Modification	1024	29,600
<b>Street Construction (XXX-5000-5280)</b>			
<b>202</b>	Cast Iron Storm Water Grate Replacement Program	<b>890</b>	15,000
<b>203</b>	Lindsay Tract Storm Drainage Study	766	66,300
	2012 Traffic Calming Measure	996	4,100
<b>204</b>	Pedestrian and Bicycle Master Plan	953	<b>20,700</b>
	2014 Street Asphalt Overlay	1063	<b>9,000</b>
	2014 Curb, Gutter, Sidewalk Replacement	1065	<b>32,518</b>
<b>206</b>	Citywide Traffic Signs	931	208
	Park and Landscape Maintenance Services	1004	175,000
	Tree Maintenance Services	1009	9,800
	2013 Thermoplastic Street Striping	1036	21,000
	2014 Traffic Calming Measures	1060	15,000
	2014 Traffic Signal - LED Lamp and Accessory Replacement	1061	25,000
	2014 Street Asphalt Overlay	1063	4,000
	Enterprise Drive Pavement Rehabilitation	1066	150,280
<b>207</b>	Central Avenue Overpass	600	630,000
	Geese Deterrent Landscaping at Lakeshore Park	1027	40,000
	2014 Street Asphalt Overlay	1063	15,300
<b>208</b>	Citywide Geographic Information System (GIS)	<b>456</b>	61,324
<b>210</b>	2011 Traffic Signals - LED Lamp and Accessory Replacement	975	15,200
	2012 Traffic Signals - LED Lamp and Accessory Replacement	997	25,000
	2013 Traffic Signals - LED Lamp and Accessory Replacement	1037	25,000
<b>211</b>	Enterprise Drive Pavement Rehabilitation	1066	155,720
<b>212</b>	2014 Curb, Gutter, Sidewalk Replacement	1065	69,300
<b>213</b>	2013 Curb, Gutter, Sidewalk Replacement	<b>1042</b>	18,400
<b>214</b>	Enterprise Drive Pavement Rehabilitation	1066	454,000
<b>215</b>	2014 Street Asphalt Overlay	<b>1063</b>	25,792
	2014 Street Slurry Seal Program	<b>1064</b>	226,198
<b>216</b>	2014 Street Asphalt Overlay	<b>1063</b>	5,000
<b>217</b>	Central Avenue Overpass Project Development Phase I	1014	2,765,000
<b>Capital Improvements (XXX-5600-5280)</b>			
<b>401</b>	Thornton Avenue Widening	662	405,000
	Disaster Recovery Infrastructure	747	100,000
	Lakeshore Park Pavers Repair/Replacement	754	60,000
	Lakeshore Park Seawall Removal and Replacement - Phase 1	755	90,900
	Public Works Approach Databases Conversion	759	9,563
	Lakeshore Park Seawall Removal and Replacement - Phase 2	833	650,000

**City of Newark  
Capital Projects Budget Rollover  
Fiscal Year 2014-15**

Exhibit A

<b>Fund</b>	<b>Fund/Project Description</b>	<b>Project</b>	<b>FY14/15 Capital Rollovers</b>
<b>401</b>	Surplus Property Disposal - Old Fire Station No. 1	<b>845</b>	16,800
	Old Town Thornton Avenue Street Light Replacement	868	180,000
	Document Conversion	884	47,600
	Citywide Parks Furniture	899	3,321
	Housing Element Update	908	30,100
	2009 Park Pathway Repair and Resealing	910	28,980
	2010 Citywide Building Painting	920	5,000
	2010 Citywide Parking Lot Repair and Resealing	925	9,100
	Citywide Storm Water Treatment Improvements	930	39,300
	Crystal Springs Storm Drain Pump Repairs	933	25,000
	Lakeshore Park Lake Dredging Needs Scoping Analysis	935	25,000
	2010 Park Pathway Repair and Resealing	937	30,000
	2011 Citywide Building Painting	957	1,690
	2011 Citywide Building Roof Repairs	958	10,622
	2011 Citywide Parking Lot Repair and Resealing	961	50,000
	2011 Citywide Parks Irrigation System Upgrade/Modification	<b>963</b>	34,400
	General Plan Tune-up (Impact Fees)	968	42,500
	2011 Park Pathway Repair and Resealing	969	28,607
	2012 Citywide Building Painting	982	4,154
	2012 Citywide Building Roof Repairs	983	20,000
	2012 Citywide Building Upgrades	984	775
	2012 Citywide Parking Lot Repair and Resealing	986	50,000
	Citywide Parks Furniture Installation Replacement	987	13,031
	2012 Citywide Parks Irrigation System Upgrade/Modification	988	26,839
	Zoning Code Update	998	250,000
	Lakeshore Park Seawall Design Consultant	1006	11,500
	2013 Park Tree Pruning	1013	2,940
	City Administration Building Lobby Repairs	1015	95,300
	City Administration Building Roof Beam Repairs	1016	60,000
	2013 Citywide Building Floor Covering Replacement	1018	6,000
	2013 Citywide Building Painting	1019	10,000
	2013 Citywide Building Roof Repairs	1020	20,000
	2013 Citywide Building Upgrades	1021	49,200
	2013 Citywide Parking Lot Repair and Resealing	1023	50,000
	2013 Citywide Parks Irrigation System Upgrade/Modification	1024	20,400
	2013 Citywide Parks/City Facilities Fence Repairs	1025	2,149
	Mowry School Building Demolition	1029	26,000
	2013 Park Pathway Repair and Resealing	1030	30,000
	Underground Electrical Wiring Security Devices	1038	27,900
	Building Inspection Permit Software	1043	200,000
	Citywide Building Floor Covering Replacement	1044	10,000
	Citywide Building Painting	1045	10,000
	Citywide Building Roof Repairs	1046	20,000
	Citywide Building Upgrades	1047	50,000
	Citywide Parking Lot Accessibility Upgrades	1049	10,100
	Citywide Parking Lot Repair and Resealing	1050	50,000
	Citywide Parks Furniture Installation/Replacment	1051	5,000
	Citywide Parks Irrigation System Upgrade/Modification	1052	50,000
	Citywide Parks/City Facilities	1053	5,000
	Citywide Workstation Replacment	1054	2,765
	Park Renovation	1056	1,809
	Park Tree Pruning	1057	4,270
	Service Center Clean Water Requirements	1058	95,000
	Storm Drain Trash Capture Devices	1059	60,000
	<b>Capital Improvements (401-5600-7052)</b>		
<b>401</b>	Two Police Interceptor Utility Vehicles, Including Safety Equipment	-	35,528

**TOTAL \$ 8,479,183**

**F.4 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability) – from City Clerk Harrington. (ORDINANCE)**

**Background/Discussion** – On September 11, 2014, the City Council introduced an ordinance for a text amendment to Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability). This amendment would allow the applicability of the Form Base Codes be expanded to other areas of Newark beyond the Transit- Oriented Development Specific Plan Area.

**Attachment**

**Action** - It is recommended that the City Council adopt the ordinance for a text amendment to Title 17 (Zoning) of the Newark Municipal Code to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area in Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability).

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
NEWARK AMENDING TITLE 17 (ZONING) OF THE  
NEWARK MUNICIPAL CODE TO REVISE CHAPTER 17.37  
(FORM BASED CODES) BY AMENDING SECTION 17.37.010

The City Council of the City of Newark does ordain as follows:

Section 1: Pursuant to Section 17.80.070 of Title 17 (Zoning) of the City of Newark Municipal Code, the City Council of the City of Newark does hereby find that the zoning text amendments embodied in this ordinance as set forth in Exhibit A, attached hereto and made a part hereof by reference, is necessary and desirable to achieve the purposes of Title 17 (Zoning) of the Newark Municipal Code, which seeks to remove the reference to the Dumbarton Transit-Oriented Development Specific Plan Area from Section 17.37.010 (Applicability).

Section 2: The City Council of the City of Newark does hereby find and declare that the zoning text amendment embodied in this ordinance as set forth in Exhibit A, attached hereto and made a part hereof by reference, is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), which provides that where it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment, the activity is not subject to CEQA.

Section 3: Title 17 (Zoning) of the Newark Municipal Code is hereby amended as shown in Exhibit A, with strikeouts denoting deletions.

Section 4: Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The Argus, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

## EXHIBIT A

Chapter 17.37 (Form Based Codes), Section 17.37.010 (Applicability) of Title 17 (Zoning) of the Newark Municipal Code is hereby amended to read as follows (strikeout denotes deletions):

### 17.37.010      Applicability

“The regulations for form based codes are set forth in this chapter, ~~and are applicable to the Dumbarton Transit Oriented Development (TOD) Specific Plan Area.~~ Form based code guidelines can be used for clarification and explanation of this code section.”

**F.5 Amendment to the Conflict of Interest Code for Nonelected Officials and Designated Employees – from City Clerk Harrington. (RESOLUTION)**

**Background/Discussion** – The Political Reform Act of 1974 requires local government agencies to review its Conflict of Interest Code biennially. On July 24, 2014, the City Council, as the Code reviewing body, notified nonelected officials and designated employees to review their Conflict of Interest Code.

The Conflict of Interest Code lists each employee position that makes or participates in the making of governmental decisions. Employees in these positions are identified as “designated employees.” Consultants that make or participate in making governmental decisions on behalf of the City must also file disclosure forms.

The review has been completed and there is a need to amend Appendix A, Designated Positions and Disclosure Categories, because of organizational changes that have occurred since the 2010 review. In addition to the organizational changes, Governor Brown signed into law Assembly Bill 1x26 which suspended operations for all Redevelopment Agencies in California. The City Council has designated itself the Successor Agency to the former Redevelopment Agency. As prescribed by AB 1x26 a seven member Oversight Board has been established to assist in the close out of the redevelopment agency. The Fair Political Practices Commission has concluded that the City Council may be the code reviewing body for the Successor Agency and Oversight Board and may update the Conflict of Interest Code to add these agencies.

Appendix A to the Code shows the recommended changes with strikeout formatting for deletions and underscore formatting for additions.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, amend the City’s Conflict of Interest Code for Nonelected Officials and Designated Employees.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK AMENDING THE CONFLICT OF INTEREST CODE  
OF NONELECTED OFFICIALS AND DESIGNATED  
EMPLOYEES OF THE CITY OF NEWARK

WHEREAS, the Political Reform Act, Government Code Section 87306.5, requires local government agencies to review their Conflict of Interest Codes biennially and, if a change in the Conflict of Interest Code is necessitated by changed circumstances, to prepare and submit an amended Conflict of Interest Code to the City Council; and

WHEREAS, the nonelected officials and designated employees of the City of Newark have reviewed their Conflict of Interest Code and find that there is a need to amend Appendix A, Designated Positions and Disclosure Categories;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby amend the Conflict of Interest Code of the Nonelected Officials and Designated Employees of the City of Newark.

## APPENDIX A

### DESIGNATED POSITIONS

### DISCLOSURE CATEGORY

#### CITY MANAGER'S OFFICE

Administrative Services Director	1, 2, 3, 4, 5, 6, 7, 8
<del>Assistant City Manager</del>	<del>1, 2, 3, 4, 5, 6, 7, 8</del>
City Clerk	1, 2, 5, 7
Administrative Analyst	1, 2, 5, 7
Executive Assistant	1, 2, 5, 7

#### DESIGNATED COMMITTEE MEMBERS/EMPLOYEES

<del>Newark Industrial Development Authority</del>	<del>1, 2, 3, 4, 5, 6, 7, 8</del>
Economic Development Corporation	1, 2, 3, 4, 5, 6, 7, 8
Oversight Board of the Successor Agency	1, 2, 3, 4, 5, 6, 7, 8
Successor Agency to Redevelopment Agency	1, 2, 3, 4, 5, 6, 7, 8

#### COMMUNITY DEVELOPMENT

<del>Community Development Director</del>	<del>1, 2, 3, 4, 5, 6, 7, 8</del>
Planning Manager	1, 2, 3, 4, 5, 6, 7, 8
<del>Senior Planner</del>	<del>1, 2, 3, 4, 5, 6, 7, 8</del>
<del>Associate Planner</del>	<del>1, 2, 5, 7</del>
Assistant Planner	1, 2, 5, 7

#### FINANCE INFORMATION SYSTEMS DIVISIONS

Information Systems Manager	1, 2, 5, 7
Senior Accountant	1, 2, 3, 4, 5, 6, 7, 8
Accountant	1, 2, 3, 4, 5, 6, 7, 8

#### HUMAN RESOURCES DEPARTMENT

Human Resources Director	1, 2, 5, 7
<del>Senior Administrative Analyst</del>	<del>1, 2, 5, 7</del>

#### POLICE DEPARTMENT

Police Chief	1, 2, 3, 4, 5, 6, 7, 8
Police Commander	1, 2, 5, 7
<del>Police Lieutenant</del>	<del>1, 2, 5, 7</del>
Senior Administrative Analyst	1, 2, 5, 7

#### PUBLIC WORKS

<del>Senior Civil Engineer</del>	<del>1, 2, 3, 4, 5, 6, 7, 8</del>
<del>Assistant City Engineer</del>	<del>1, 2, 3, 4, 5, 6, 7, 8</del>
Associate Civil Engineer	1, 2, 4, 5, 7
Bldg. Insp./Zoning Enforcement	1, 2, 3, 4, 5, 7
Chief Building Official/City Architect	1, 2, 3, 4, 5, 7
Assistant Engineer-Civil	1, 2, 4, 5, 7
Maintenance Supervisor	1, 2, 5, 7
Maintenance Superintendent	1, 2, 4, 5, 6, 7
Public Works Director	1, 2, 3, 4, 5, 6, 7, 8
Public Works Inspector	1, 2, 4, 5, 7
<del>Administrative Analyst</del>	<del>1, 2, 5, 7</del>

## RECREATION AND COMMUNITY SERVICES

Senior Administrative Analyst	1, 2, 5, 7
Child Care Supervisor	1, 2, 5, 7
Recreation & Community Services Dir.	1, 2, 3, 4, 5, 6, 7, 8
Recreation Supervisor	1, 2, 5, 7
<del>Senior Center Supervisor</del>	<del>1, 2, 5, 7</del>
Senior Recreation Supervisor	1, 2, 5, 7

## CONSULTANTS

Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

**The following positions are not covered by the code because they must file under Government Code Section 87200 and are listed for informational purposes only:**

- City Attorney
- City Council Members
- City Manager
- City Treasurer
- Mayor
- Planning Commissioners

# **City of Newark**

## **Conflict of Interest Code**

**CONFLICT OF INTEREST CODE  
CITY OF NEWARK**

**Table of Contents**

Article I	Statutory Provisions
Article II	Provisions of Conflict of Interest Code
Section 1	Definitions
Section 2	Designated Employees
Section 3	Disclosure Categories
Section 4	Statement of Economic Interests: Place of Filing
Section 5	Statement of Economic Interests: Time of Filing
Section 6	Contents of and Period Covered by Statements of Economic Interests
Appendix A	Schedule of Designated Positions and Their Disclosure Categories
Appendix B	General Provisions and List of Disclosure Categories

**CONFLICT OF INTEREST CODE  
OF THE CITY OF NEWARK  
NON-ELECTED OFFICIALS AND EMPLOYEES**

*ARTICLE I. STATUTORY PROVISIONS.*

In compliance with the Political Reform Act of 1974, California Government Code Section 81000 et seq., and specifically with Section 87307 et seq., the City of Newark hereby amends its Conflict of Interest Code for non-elected officials and employees of the City. The requirements of this amended Code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code Section 87100, and are in addition to any other state or local laws pertaining to conflicts of interest.

Incorporation by reference of the terms of 2 California Administration Code Section 18730 along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the amendment of a Conflict of Interest Code within the meaning of Government Code Section 87307 if the terms of this regulation are substituted for terms of a Conflict of Interest Code already in effect. A code so amended requires the reporting of reportable items in a manner substantially equivalent to the requirement of Article 2 of Chapter 7 of the Political Reform Act, Government Code Section 81000, et seq.

*ARTICLE II. PROVISIONS OF CONFLICT OF INTEREST CODE.*

Section 1. Definitions. The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2CaI.Adm.Code Sections 18100 et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

Section 2. Designated Employees. The persons holding positions listed in Appendix A are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

Section 3. Disclosure Categories. This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code Section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of this City is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 87200 et seq.<sup>1</sup>

Such persons are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in Appendix B specify which kinds of financial interests are reportable. Such a designated employee

shall disclose in his or her statement of economic interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in Appendix A. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

Section 4. Statement of Economic Interests: Place of Filing. All designated employees required to submit a statement of economic interest shall file such statements with the City Clerk, who shall be the filing officer.<sup>2</sup>

Section 5. Statement of Economic Interests: Time of Filing.

- (a) Initial Statements. All designated employees employed by the City on the effective date of this Code, as originally adopted, promulgated and approved by the City Council, shall file statements within thirty days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within thirty days after the effective date of the amendment.
- (b) Assuming Office Statements. All persons assuming designated positions after the effective date of this Code shall file statements within thirty days after assuming the designated positions.
- (c) Annual Statements. All designated employees shall file statements no later than April 1.
- (d) Leaving Office Statements. All persons who leave designated positions shall file statements within thirty days after leaving office.

Section 6. Contents of and Period Covered by Statements of Economic Interests.

- (a) Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code.
- (b) Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office.
- (c) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office whichever is later.

- (d) Contents of Leaving Office Statements. Leaving office statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

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<sup>1</sup>Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under Article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Govt. Code Section 81004.

<sup>2</sup>See Govt. Code Section 81010 and 2 Cal. Admin. Code Section 18115 for the duties of filing officers and persons in agencies who make and return copies of statements and forward the originals to the filing officer.

## APPENDIX A

### DESIGNATED POSITIONS

### DISCLOSURE CATEGORY

#### CITY MANAGER'S OFFICE

Administrative Services Director	1, 2, 3, 4, 5, 6, 7, 8
Assistant City Manager	1, 2, 3, 4, 5, 6, 7, 8
City Clerk	1, 2, 5, 7
Administrative Analyst	1, 2, 5, 7
Executive Assistant	1, 2, 5, 7

#### DESIGNATED COMMITTEE MEMBERS/EMPLOYEES

Economic Development Corporation	1, 2, 3, 4, 5, 6, 7, 8
Oversight Board of the Successor Agency	1, 2, 3, 4, 5, 6, 7, 8
Successor Agency to Redevelopment Agency	1, 2, 3, 4, 5, 6, 7, 8

#### COMMUNITY DEVELOPMENT

Planning Manager	1, 2, 3, 4, 5, 6, 7, 8
Assistant Planner	1, 2, 5, 7

#### FINANCE INFORMATION SYSTEMS DIVISIONS

Information Systems Manager	1, 2, 5, 7
Senior Accountant	1, 2, 3, 4, 5, 6, 7, 8
Accountant	1, 2, 3, 4, 5, 6, 7, 8

#### HUMAN RESOURCES DEPARTMENT

Human Resources Director	1, 2, 5, 7
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#### POLICE DEPARTMENT

Police Chief	1, 2, 3, 4, 5, 6, 7, 8
Police Commander	1, 2, 5, 7
Police Lieutenant	1, 2, 5, 7
Senior Administrative Analyst	1, 2, 5, 7

#### PUBLIC WORKS

Assistant City Engineer	1, 2, 3, 4, 5, 6, 7, 8
Associate Civil Engineer	1, 2, 4, 5, 7
Bldg. Insp./Zoning Enforcement	1, 2, 3, 4, 5, 7
Chief Building Official/City Architect	1, 2, 3, 4, 5, 7
Assistant Engineer	1, 2, 4, 5, 7
Maintenance Supervisor	1, 2, 5, 7
Maintenance Superintendent	1, 2, 4, 5, 6, 7
Public Works Director	1, 2, 3, 4, 5, 6, 7, 8
Public Works Inspector	1, 2, 4, 5, 7
Administrative Analyst	1, 2, 5, 7

#### RECREATION AND COMMUNITY SERVICES

Senior Administrative Analyst	1, 2, 5, 7
Child Care Supervisor	1, 2, 5, 7
Recreation & Community Services Dir.	1, 2, 3, 4, 5, 6, 7, 8
Recreation Supervisor	1, 2, 5, 7
Senior Recreation Supervisor	1, 2, 5, 7

## CONSULTANTS

Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

**The following positions are not covered by the code because they must file under Government Code Section 87200 and are listed for informational purposes only:**

City Attorney  
City Council Members  
City Manager  
City Treasurer  
Mayor  
Planning Commissioners

## APPENDIX B

### GENERAL PROVISIONS

When a designated employee is required to disclose investments and sources of income, he or she need only disclose investments in business entities and sources of income which do business in the jurisdiction, plan to do business in the jurisdiction or have done business in the jurisdiction within the past two years. In addition to other activities, a business entity is doing business within the jurisdiction if it owns real property within the jurisdiction. When a designated employee is required to disclose interests in real property, he or she need only disclose real property which is located in whole or in part within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in Appendix A.

### DISCLOSURE CATEGORIES

- Category 1: All investments and sources of income.
- Category 2: All interests in real property.
- Category 3: All investments, interests in real property and sources of income subject to the regulatory, permit or licensing authority of the department.
- Category 4: Positions held and investments in business entities and sources of income which engage in land development, construction or the acquisition or sale of real property.
- Category 5: Positions held and investments in business entities and sources of income of the type which, within the past two years, have contracted with the City of Newark to provide services, supplies, materials, machinery or equipment.
- Category 6: Positions held and investments in business entities and sources of income of the type which, within the past two years, have contracted with the designated employee's department to provide services, supplies, materials, machinery or equipment.
- Category 7: Positions held and investments in business entities located in the City of Newark proper or in any land or facilities used, owned, or operated by the City of Newark.
- Category 8: Positions held and investments in business entities or investments with natural persons that have contractual obligations or privileges with the City of Newark.

## 2014 Local Agency Biennial Notice

Name of Agency: City of Newark

Mailing Address: 37101 Newark Boulevard, Newark, CA 94560

Contact Person: Sheila Harrington Phone No: 510-578-4266

E-Mail: sheila.harrington@newark.org

**Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.**

This agency has reviewed its conflict of interest code and has determined that (check one box):

**An amendment is required. The following amendments are necessary:**

*(Mark all that apply.)*

Include new positions (including consultants) that must be designated

Revise disclosure categories

Revise the titles of existing positions

Delete positions that no longer make or participate in making governmental decisions

Other *(describe)* \_\_\_\_\_

**The code is currently under review by the code reviewing body.**

**No amendment is required.** (If your code is more than five years old, amendments may be necessary.)

---

### Verification

*This agency's conflict of interest code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions. The code includes all other provisions required by Government Code Section 87302.*

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Date

Complete and return this notice regardless of how recently your code was approved or amended. Please return this notice no later than **October 1, 2014**, or by the date specified by your agency, if earlier, to:

*(PLACE RETURN ADDRESS OF THE CODE REVIEWING BODY HERE)*

**PLEASE DO NOT RETURN THIS FORM TO THE FPPC**

**F.6 Approval of Amendment to Agreement with Ray Morgan, LLC for Multifunction Device Services – from Administrative Services Director Woodstock.  
(RESOLUTION)**

**Background/Discussion** – The Agreement for Multifunction Device Service was awarded on July 24, 2014 to supply multifunctional copier/scanner/printers and provide maintenance and repair services for the equipment. The approved agreement mistakenly omitted the term of the contract. The attached amendment to that Agreement adds the term of three (3) years with the option to extend up to four (4) more years. The amendment also adds language that allows the City Manager to approve any future minor amendments.

**Attachment**

**Action** – It is recommended that the City Council, by resolution, approve the First Amendment to the Agreement with Ray Morgan, LLC for Multifunction Device and Services.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK APPROVING THE FIRST AMENDMENT TO THE  
AGREEMENT WITH RAY MORGAN, LLC FOR  
MULTIFUNCTIONAL DEVICE SERVICES

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newark approves the First Amendment to the Agreement with Ray Morgan, LLC for Multifunctional Device Services. Said Amendment is on file with City Clerk in Contract Number C14028.

## **First Amendment to Contractual Services Agreement for Multifunction Device Services**

This First Amendment to the Agreement is made as of \_\_\_\_\_, 2014, by and between Ray Morgan, LLC ("Consultant"), and the City of Newark, a political subdivision of the State of California ("City"), collectively referred to as "Parties".

### **RECITALS**

- A. Consultant and City are parties to that certain Contractual Services Agreement between the City of Newark and Ray Morgan Company, LLC, to supply multifunctional copier/scanner/printers and provide maintenance and repair services on said equipment, dated July 24, 2014 ("Agreement"); and
- B. The Parties wish to amend the Agreement so as to clarify the Term of the Agreement as was stated in the Request for Proposal and the report that was presented to City Council at the time of the award of the Agreement, but was mistakenly omitted from the signed version of the Agreement.
- C. The Parties also wish to amend the Agreement so as to authorize the City Manager to sign amendments to the Agreement that do not increase the costs of services above twenty percent (20%) of the price schedule approved in the Agreement.

### **AGREEMENT**

NOW, THEREFORE, Consultant and City hereby agree as follows:

1. Effective July 24, 2014, Section 16 TERM/TERMINATION Paragraphs A and B of the Agreement are hereby deleted in their entirety and replaced with the following:

#### **16. TERM/TERMINATION**

- a. The term of this Agreement shall be for a period of three (3) years, commencing on July 24, 2014, and terminating three years thereafter. The Parties may, in writing, execute four (4) one (1) year extensions of this Agreement. The City Manager, or designee, is hereby authorized to enter into any extensions of this Agreement on behalf of the City.
  - b. Item g of Attachment A to the Agreement indicates the procedure for removal of equipment upon completion of the Agreement.
2. Effective with the date herein above, paragraph 25 is hereby deleted in its entirety and replaced with the following:

25. MODIFICATIONS.

This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties. The City Manager is hereby authorized to sign any and all non-substantive modifications to this Agreement on behalf of the City. Further, the City Manager is authorized to sign amendments to this Agreement that do not increase the costs above twenty percent (20%) of the approved price schedules as shown in Exhibit B of the Agreement. The City Manager is also authorized to execute any Amendment to extend the Term as provided in paragraph 16 "TERM/TERMINATION" above.

3. All other terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the first date written above.

**CONSULTANT:**

Ray Morgan Company , LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Sam  
Pulino**

Digitally signed by: Sam Pulino  
DN: CN = Sam Pulino email  
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C = US O = RMC, A Ray Morgan Company OU = RMC  
Date: 2014.09.16 13:18:47 - 08'00'

**CITY OF NEWARK**

By: \_\_\_\_\_

Name: Alan L. Nagy

Title: Mayor, City of Newark

Attest:

\_\_\_\_\_  
City Clerk

Date \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**F.7 Accepting the bid of Mooring Tech for the purchase of eight Panasonic Toughbooks to replace the public safety mobile data computers, Project No. ERB01B14 – from Information Systems Manager Towne. (RESOLUTION)**

**Background/Discussion** – As part of the City’s ongoing equipment replacement process eight (8) ruggedized public safety mobile data computers (MDCs) were found to be in need of replacement due to one or more of the following reasons: inadequate performance; lack of parts availability, inability to upgrade; or failure.

In August Information Systems staff developed a Request for Quotes (RFQ), Project No. ERB01B14, with a specification for the replacement equipment desired. This RFQ was distributed to a number of Panasonic Toughbook (MDC) resellers. As of the deadline of September 9, 2014, two vendors had responded with quotes – Mooring Tech and Rugged Depot.

The total cost of each quote is reflected in the table below.

RUGGED DEPOT		MOORING TECH
\$30,721		\$26,030

It is recommended that the lowest total cost bid, provided by Mooring Tech for the Panasonic Toughbook equipment, be accepted as the lowest responsible bid. The Mooring Tech quote was for \$26,030, which is available through the City’s existing equipment replacement budget.

**Attachment**

**Action** - It is recommended that the City Council, by resolution, accept the bid of Mooring Tech for the purchase of eight Panasonic Toughbooks, Project No. ERB01B14.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK ACCEPTING THE BID OF MOORING TECH FOR  
THE PURCHASE OF EIGHT PANASONIC TOUGHBOOKS,  
PROJECT NO. ERB01B14.

BE IT RESOLVED that the City Council of the City of Newark does hereby find that Mooring Tech was the lowest responsible bidder for provision of Panasonic Toughbooks, Project No. ERB01B14, 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 Administrative Services Director of Newark to purchase the eight Panasonic Toughbooks, Project No. ERB01B14, according to the plans, specifications, and terms of said bid.

**F.8 Authorizing the Mayor to sign the First Amended Agreement for Restriction on use of Real Property for Development of Affordable Housing with SHH, LLC – from Assistant City Manager Grindall. (RESOLUTION)**

**Background/Discussion-** As a part of the development of the Dumbarton Transit Oriented Development and other development in Newark, developers have agreed to meet their affordable housing obligation through the provision of senior housing in the area. An agreement to develop senior affordable housing was entered into in November of 2012 as a part of the approvals of the Torian project. At that time, since the site of the affordable housing was undefined, the restriction was placed on the entire SHH property to guarantee performance of the agreement.

The City Council has since approved development on the SSH project for residential townhomes and senior apartments with a defined site for each. This logical progression of development in the area requires that the Agreement for Restriction and Use of Real Property be amended to account for the division of property that is necessary to develop the senior affordable units and townhomes. Under the terms of the amendment, the actual approved site of the affordable units will include the restriction. This change will allow for the development of the SSH project and maintain the requirement that the developer provide for affordable senior housing in the area.

This agreement must reference a parcel that is in the process of being formally created through a lot line adjustment. As a result, there are blanks in the agreement where the property information is indicated. Staff is recommending that the Mayor be authorized to sign the agreement when the appropriate description of the parcel is included in the document.

**Attachment**

**Action –** It is recommended that the City Council, approve a resolution authorizing the Mayor to sign the First Amended Agreement for Restriction on use of Real Property for Development of Affordable Housing with SHH, LLC.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK AUTHORIZING THE MAYOR TO SIGN THE FIRST  
AMENDED AGREEMENT FOR RESTRICTION ON USE OF  
REAL PROPERTY FOR DEVELOPMENT OF AFFORDABLE  
HOUSING WITH SSH, LLC

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 the First Amended Agreement For Restriction On Use Of Real Property For Development Of Affordable Housing with SSH, LLC said agreement on file in the Office of the City Clerk.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Newark  
City Clerk  
37101 Newark Blvd  
Newark, CA 94560

**No fee due per Gov. Code § 6103**

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City Clerk

Assessor's Parcel Nos.092-0115-012 & 092-0115-013

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(SPACE ABOVE RESERVED FOR RECORDER'S USE)

**FIRST AMENDED AGREEMENT FOR RESTRICTION ON USE OF REAL  
PROPERTY FOR DEVELOPMENT OF AFFORDABLE HOUSING**

This FIRST AMENDED AGREEMENT FOR RESTRICTION ON USE OF REAL PROPERTY FOR DEVELOPMENT OF AFFORDABLE HOUSING ("FIRST AMENDMENT") is made and entered into by and between SHH, LLC, a California limited liability company ("Owner"), and the City of Newark ("City"), a California municipal corporation, with reference to the following:

RECITALS

A. Owner is the owner of record of the real property ("SHH Property") described on Exhibit "A" hereto.

B. Owner has previously agreed to restrict the use of the SHH Property for the development of up to 120 Affordable Senior housing units, until such time as a portion of the SHH Property was made a legal lot by map or lot line adjustment.

C. A portion of the SHH Property will be developed with at least 72 Affordable Senior Housing Units, as described more fully in that certain (i) Affordable Housing Obligation Satisfaction Agreement by and between the City of Newark, a California municipal corporation, and Newark Residential Project, LLC, a Delaware limited liability company, and The SHH Project Owner, LLC a Delaware limited liability company dated November 29, 2012 (the "Torian Affordable Agreement"), and (ii) Affordable Housing Obligation Satisfaction Agreement by and between the City of Newark, a California municipal corporation, and The SHH Project Owner, LLC, a Delaware limited liability company, and The Newark Atrium Project Owner, LLC, a

Delaware limited liability company dated April 24, 2014, (the “SHH Affordable Agreement”)(collectively, the “Satisfaction Agreements”).

D. On April 4, 2013, Owner recorded the Agreement for Restriction on Use of Real Property for Development of Affordable Housing, Doc. No. 20131222213 (hereinafter the “Restrictive Covenant”), pursuant to the Torian Affordable Agreement.

E. The SHH Affordable Agreement provides that an amended restrictive covenant be recorded to recite the obligation to provide a minimum of seventy-two (72) Senior Affordable Dwelling Units on a portion of the SHH Property.

G. The Satisfaction Agreements require a subsequent amendment when the “Affordable Housing Site” is created by map or lot line adjustment.

H. On \_\_\_\_\_, 2014, Owner caused to be recorded Lot Line Adjustment No. \_\_\_\_\_, Doc. No. \_\_\_\_\_ modifying the lot lines on the SHH Property. Lot 2 of Lot Line Adjustment No. \_\_\_\_ is the “Affordable Housing Site” and is described on Exhibit “B” hereto. Lot 1 of Lot Line Adjustment No. \_\_\_ is the “Market Rate Site” and is described on Exhibit “B” hereto.

I. This First Amendment is intended to satisfy the requirements of the Satisfaction Agreements to encumber the Affordable Housing Site with the obligation to provide a minimum of seventy-two (72) Senior Affordable Dwelling Units and release the remainder of the SHH Property (the Market Rate Site) from the Restrictive Covenant and hereby amends the Restrictive Covenant.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, Owner and the City agree as follows:

1. The Affordable Housing Site shall be restricted for the development of at least 72 Senior Affordable Dwelling Units (as defined in the Satisfaction Agreements). Nothing herein is intended to restrict the ability to construct other facilities normally associated with senior residential housing (for example, common areas, recreational facilities, on-site medical facilities) in conjunction with the development of the Senior Affordable Dwelling Units. Approval of the City of the development of the Subject Property will be conclusive evidence that the proposed development is consistent with this First Amendment.

2. The terms and conditions of this First Amendment shall constitute a covenant running with and binding the land in accordance with the provisions of California Civil Code section 1468. Accordingly, the Affordable Housing Site shall be held, sold, conveyed, mortgaged, encumbered, leased, rented, used, occupied and

improved subject to this First Amendment, which shall run with the Affordable Housing Site, and shall be binding on all parties having any right, title or fee interest in the Affordable Housing Site, and their heirs, successors and assigns. Upon the sale of the Affordable Housing Site to a new owner and recordation of the deed conveying the fee interest in the Affordable Housing Site, selling Owner (and in the case of subsequent owners, the owner then selling the Affordable Housing Site) shall be automatically released and discharged from any and all obligations under this First Amendment, which obligations shall be assumed by the new owner, who shall be deemed "Owner" hereunder.

3. Upon recordation of this First Amendment, the Market Rate Site shall be deemed released from the Restrictive Covenant.

4. This First Amendment amends the Restrictive Covenant, and to the extent of a conflict between this First Amendment and the Restrictive Covenant, this First Amendment shall control. This First Amendment and its validity, construction and effect shall be governed by the laws of the State of California applicable to contracts wholly to be performed therein. This First Amendment shall not be deemed to give any right or remedy to any third party whatsoever.

5. This First Amendment shall not be amended in any manner or terminated without the prior written approval of all parties nor without the recordation of any such approval. The City agrees to execute and record a termination of this First Amendment in its entirety upon recordation of an affordable housing regulatory agreement or the City's approval of a substitute location or method of compliance with the City's affordable housing obligation.

6. Notwithstanding any other provision of the Satisfaction Agreements or the Restrictive Covenant, each party shall be responsible for and bear its own costs, including attorneys' fees, incurred in the event of any action or proceeding to enforce the provisions of the Satisfaction Agreements, the Restrictive Covenant or this First Amendment.

IN WITNESS WHEREOF, Owner and the City have executed this First Amendment as of the dates set forth below.

SHH, LLC,  
a California limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF NEWARK,  
a California municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**F.9 Authorizing the Mayor to sign the First Amendment to the Grocery Store Agreement with the SHH Project Owner – from Assistant City Manager Grindall.  
(RESOLUTION)**

**Background/Discussion-** As a part of the Development of the Dumbarton Transit Oriented Development, developers have agreed to provide for the development of a grocery store in the area. An agreement to develop a grocery store was entered into in November of 2012 as a part of the approvals of the Torian project. The SHH parcel was designated as the guarantee of performance under the agreement.

The City Council has since approved development of residential townhomes and senior apartments on the SHH project. This logical progression of development in the area does require that the Grocery Store Agreement be amended to adjust for the progress that is being made. Under the terms of the amendment, a bond for \$1.6 million dollars will be provided, by the developer, in place of the land security. This change will allow for the development of the SHH project and maintain the requirement that the developer provide for a grocery store in the area.

**Attachments**

**Action –** It is recommended that the City Council, approve a resolution authorizing the Mayor to execute the attached First Amendment to Grocery Store Agreement with the SHH Project Owner.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK AUTHORIZING THE MAYOR TO SIGN A FIRST  
AMENDMENT TO GROCERY STORE AGREEMENT WITH  
THE SHH PROJECT OWNER

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 the First Amendment to the Grocery  
Store Agreement with SSH Project Owner said agreement on file in the Office of the City Clerk.

## FIRST AMENDMENT TO GROCERY STORE AGREEMENT

THIS FIRST AMENDMENT TO GROCERY STORE AGREEMENT (“**Amendment**”) is made as of \_\_\_\_\_, 2014, by and between the **CITY OF NEWARK**, a California municipal corporation (the “**City**”), and **THE SHH PROJECT OWNER, LLC** a Delaware limited liability company (“**SHH**”) (sometimes referred to as “**Developer**”).

### RECITALS

A. The City and NRP entered into that certain Grocery Store Agreement, dated as of November 29, 2012, providing for the terms and circumstances under which NRP, or its assignee, would meet NRP’s obligation to build the Grocery Store Space (as defined therein).

B. NRP assigned its right, title and interest to the Grocery Store Agreement on or about December 21, 2012, to SHH Torian Project Owner, LLC (“STPO”), and STPO subsequently assigned its right, title, and interest therein to SHH and SHH has assumed the obligations under the Grocery Store Agreement and is now the “Developer” under the Grocery Store Agreement.

C. The City and Developer now desire to amend the terms of the Grocery Store Agreement, as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

#### 1. Definitions.

All terms shall have the same meanings herein as set forth in the Grocery Store Agreement.

#### 2. New Section 6 added.

A new Section 6 is added as follows:

##### “6. Site Preparation

6.1. Site Preparation. Developer shall cause to be included in any contract of sale with any buyer of the SHH property that grading of the SHH property shall include the concurrent grading of the FMC property to prepare it for construction of the Grocery Store Space, if Developer, Developer’s affiliate, or Developer’s assignee has acquired title to the FMC property at the time of grading. If Developer, Developer’s Affiliate, or Developer’s assignee acquires title to the FMC property after the grading of the SHH property is completed, such party shall cause the FMC property to be graded to prepare it for construction of the Grocery Store Space, and such grading shall commence no later than June 1, 2017. Immediately at or before

completion of grading, Developer, Developer's Affiliate, or Developer's assignee shall actively market the FMC property to grocery store developers.

3. **New Section 7 added.**

A new Section 7 is added as follows:

“7. **Security.**

**7.1 Security for Grocery Site Delivery.** In the event Developer, Developer's affiliate, or Developer's assignee has not closed escrow on the FMC property or received Regional Board approval to develop the FMC property with a grocery store by December 31, 2015, Developer shall post security in a form approved by the City Attorney in the total amount of \$1,600,000.00, which amount shall be payable upon demand to the City in satisfaction of Developer's obligation if Developer or an affiliate does not (i) acquire the FMC property (or a replacement site approved by the City), (ii) receive Regional Board approval (if building on the FMC property), and (iii) begin construction of the Grocery Store Space, all by June 30, 2017 (construction shall be deemed to “begin” upon the trenching of footings for the foundation of the building for the grocery store). If Developer, Developer's affiliate, or Developer's assignee closes on the FMC property and receives the Regional Board approval, the required security shall be reduced to \$800,000 or \$800,000 of the security posted pursuant to this section shall be released and returned to Developer as the case may be.

**7.2 Security for Grocery Store Space Construction.** In the event Developer, Developer's affiliate, or Developer's assignee has not posted security pursuant to Section 7.1, and Developer, Developer's affiliate, or Developer's assignee has both (i) closed escrow on the FMC property and (ii) received Regional Board approval to develop the FMC property with a grocery store by December 31, 2015, but has not begun construction of the Grocery Store Space by June 30, 2016, Developer shall post security (e.g., bond, escrow, holdback, letter of credit in a form reasonably approved by the City Attorney in the amount of \$800,000.00, which amount shall be payable to the City in satisfaction of Developer's obligations if Developer does not begin construction by June 30, 2017.

**7.3 Recordation of Security Interest Against FMC Property.** In addition, upon acquisition of the FMC property by Developer, Developer's affiliate, or Developer's assignee, Developer shall cause the recordation of a security instrument in a form reasonably acceptable to the City Attorney providing the FMC property may be conveyed to the City if construction of the Grocery Store Space does not begin by June 30, 2017. The boundary of the land subject to the security instrument (the “Grocery Store Parcel”) shall conform ultimately to the new lot lines established by recordation of a final map or lot line adjustment required to create the Affordable Housing Parcel on the adjoining parcel. The Grocery Store Parcel will include the grocery store space and parking spaces, and only this new Grocery Store Parcel shall be subject to the security instrument.

4. **Amendment to Section 9.1.1.**

Section 9.1.1 is deleted and replaced in its entirety with the following:

“9.1.1 **Default.** If the Developer does not perform its obligations under Section 4.1 in a timely manner, the City may give notice of default as provided herein. The City may exercise all rights and remedies provided in this Agreement, provided the City complies with the notice and cure provisions of this Agreement.”

5. **Agreement Remains In Effect.**

Except as expressly provided herein, the Grocery Store Agreement remains in full force and effect.

[signatures on next page]

IN WITNESS WHEREOF, the City and the Developer hereto have each executed this Agreement as of the date first written above.

“DEVELOPER”

THE SHH PROJECT OWNER, LLC,  
a Delaware limited liability company  
By: KPMW Integral, LLC,  
a California limited liability company  
Its Managing Member

By:  
Name:  
Title: \_\_\_\_\_

“CITY”

CITY OF NEWARK,  
a California municipal corporation

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**G.1 Claim of Pacific Gas & Electric – from City Clerk Harrington.**

**(MOTION)**

**Background/Discussion** – On August 22, 2014, the City received a claim from Pacific Gas & Electric in the amount of \$14,386 alleging a City of Newark truck drove over and damaged a lid/box.

The claim and all relevant information were forwarded to ABAG Plan, the City's insurance administrator, who recommends that it be denied.

**Attachment** – None

**Action** - It is recommended that the City Council, by motion, deny the claim and authorize staff to inform the claimant of such denial.

**G.2 Claim of Myron H. Reece – from City Clerk Harrington.**

**(MOTION)**

**Background/Discussion** – On August 26, 2014, the City received a claim from Myron H. Reece in the amount of \$6,000 alleging damages due to an inaccurate/incomplete police report.

The claim and all relevant information were forwarded to ABAG Plan, the City's insurance administrator, who recommends that it be denied.

**Attachment** – None

**Action** - It is recommended that the City Council, by motion, deny the claim and authorize staff to inform the claimant of such denial.

**M.1 Closed session pursuant to Government Code Section 54957  
Public Employee Performance Evaluation  
Title: City Attorney.**

**Background/Discussion** – City Attorney Benoun has requested that the City Council convene in closed session pursuant to Government Code Section 54957 for a performance evaluation.