CITY OF NEWARK
CITY COUNCIL

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

AGENDA

Thursday, March 26, 2015

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

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, March 12, 2015. (MOTION)

C. PRESENTATIONS AND PROCLAMATIONS

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Hearing to consider: 1) Certifying a Recirculated Final Environmental Impact Report addressing and disclosing the Environmental Impacts of the Newark Areas 3 and 4 Specific Plan Project and approving a Mitigation Monitoring and Reporting Program; 2) Approving the Newark Specific Plan: Areas 3 and 4 of the General Plan and related General Plan amendments: A map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land; 3) Introducing an Ordinance approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and; 4) Introducing an Ordinance approving a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Newark Specific Plan: Areas 3 and 4 of the General Plan – from Assistant City Manager Grindall. (RESOLUTIONS-2) (INTRODUCTION OF ORDINANCES-2)

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.3 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 Approval of Contractual Services Agreement with North American Title Company to provide Preliminary Title Reports for the Central Avenue Overpass, Project 1014 – from Public Works Director Claassen. (RESOLUTION)

F.2 Second reading and adoption of an ordinance amending Title 2 (Administration and Personnel), Chapter 2.12 (Planning Commission), Sections 2.12.010 (Created) and 2.12.20 (Qualifications) to reduce the number of Planning Commissioners from seven to five – from City Clerk Harrington. (ORDINANCE)

F.3 Acceptance of proposal and authorization for City Manager to sign an agreement with Utility Telephone for the extension and enhancement of telecommunications services and associated budget amendment – from Information Systems Manager Towne. (RESOLUTION)

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

I.1 Authorization for the Mayor to send a letter to the Office of Management and Budget to encourage support for specific actions to improve rail safety with respect to the transport of crude oil and other hazardous materials by rail – from City Manager Becker. (MOTION)

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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AGENDA

Thursday, March 26, 2015

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

CITY COUNCIL:

Alan L. Nagy, Mayor

Sucy Collazo, Vice Mayor

Luis L. Freitas

Michael K. Hannon

Mike Bucci

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

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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Agendas are posted pursuant to Government Code Section 54954.2. Supporting materials are available at the Newark Library, in the City Clerk's office or at www.newark.org on the Monday preceding the meeting. For those persons requiring hearing assistance, or other special accommodations, please contact the City Clerk two days prior to the meeting.

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MINUTES

Thursday, March 12, 2015

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

The City Council planted an Arbor Day tree at City Hall before the City Council meeting.

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:31 p.m. Present were Council Members, Hannon, Freitas, Bucci, and Vice Mayor Collazo.

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, February 26, 2015.

Council Member Bucci 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 Commending Newark Police Officers for their life saving actions.

Mayor Nagy presented a commendation to Newark Police Officers Khairy, Arroyo, and Knutson who worked together to free a driver from a burning vehicle. Police Chief Leal also presented Police Department awards to the officers.

C.2 Proclaiming March 12, 2015, as Arbor Day in Newark.

Mayor Nagy presented the proclamation to Maintenance Supervisor Carey.

C.3 Presentation by the Farmers and Farmerettes Square Dance Club.

Don Baker and members of the Farmers and Farmerettes Square Dance Club presented contributions to the Newark Betterment Corporation to be used for Graffiti Abatement, Meals On Wheels, and the K9 Program.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Hearing to consider an amendment to U-83-41, a conditional use permit, for a truck unloading station and the addition of loading asphalt to railcar at 6880 Smith Avenue (Safety-Kleen of California, Inc.). RESOLUTION NO. 10327

Assistant City Manager Grindall stated that Safety Kleen proposed constructing a structure to assist with the loading and unloading of used motor oil, including the ability to pipe product to rail cars. The request did not change operation or capacity of the re-refinery.

In response to Council Member Hannon, Assistant City Manager Grindall stated that staff occasionally receives odor complaints related to this location, but it has improved since Safety Kleen took over from Evergreen.

Mayor Nagy opened the public hearing at 7:48 p.m.

Duc Tran, Senior Project Engineer for Safety Kleen, stated that he read and agreed to the conditions.

In response to City Council questions, Mr. Tran stated that Safety Clean will be upgrading the vapor recovery system in the near future to address the odor issue. He will bring back to the office Councils' concerns regarding Safety Kleen's public outreach and to ease the process for the public to complain about odors. He stated that he could set up a tour of the facility for Council Members who might be interested.

Mayor Nagy closed the public hearing at 7:53 p.m.

Vice Mayor Collazo moved, Council Member Hannon seconded, to by resolution, to approve the amendment to U-83-41, a conditional use permit, for a truck unloading station and the addition of loading asphalt to railcar at 6880 Smith Avenue (Safety-Kleen). The motion passed, 5 AYES.

F. CITY MANAGER REPORTS

Vice Mayor Collazo moved, Council Member Bucci seconded, to approve Consent Calendar Items F.1 through F.2, that the resolution and ordinances be numbered consecutively, and that reading of the titles suffice for adoption of the resolutions. The motion passed, 5 AYES.

CONSENT

F.1 Second reading and adoption of ordinances repealing Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan

Development Agreement; and Ordinance No. 443 approving Z-10-17, a Map Amendment to Title 17 of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan. **ORDINANCE NO. 481**
ORDINANCE NO. 482

F.2 Acceptance of contract with J&J Landscape Management for the 2014 Weed Abatement Program. **RESOLUTION NO. 10328**

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

I.1 Considering a text amendment to Title 2 (Administration and Personnel), Chapter 2.12 (Planning Commission), Sections 2.12.010 (Created) and 2.12.20 (Qualifications) to reduce the number of Planning Commissioners from seven to five. **ORDINANCE INTRODUCED**

City Manager Becker gave the staff report recommending that the City Council reduce the number of Planning Commissioners from seven to five.

The City Council discussed the benefits of the proposed change such as training funds going further for 5 commissioners instead of 7.

Vice Mayor Collazo moved, Council Member Freitas seconded, to introduce an ordinance for a text amendment to Title 2 (Administration and Personnel), Chapter 2.12 (Planning Commission), Sections 2.12.010 (Created) and 2.12.20 (Qualifications) to reduce the number of Planning Commissioners from seven to five. The motion passed, 5 AYES.

Mayor Nagy stated that he would adjourn the meeting in memory of Vincent Dobson of Newark on Trent, England. Mr. Dobson was one of the original members of the Newarks of the World.

Council Member Bucci stated that the Relay For Life kick off event will be held at Birch Grove Park from 11 am to 3 pm on March 22.

Council Member Freitas congratulated the officers honored earlier in the meeting. He noted that Amy Davis in the Recreation and Community Services Department was named Employee of the Year.

Vice Mayor Collazo thanked the Farmers and Farmerettes for their donations to the Newark Betterment Corporation that will benefit the community.

Council Member Hannon wished everyone a Happy St. Patrick's Day.

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

K. ORAL COMMUNICATIONS

Semyon D. Savransky stated that he did not receive notice of the City hearings for the home development on Birch Street. He alleged damage to the existing homes as a result of the demolition. He requested that the project be placed on hold and another public hearing held. He also requested that the City Council make the construction hours in residential neighborhoods from 8 am to 5 pm, instead of 7 am to 6 pm.

City Manager Becker confirmed that notices were mailed to every property within 300 feet of the site for the City meetings, including Mr. Savransky's address. He stated that the Homeowners Association President acknowledged receiving notification. The contractor will review the alleged damage to the homes. Assistant City Manager Grindall will meet with the Homeowners Association. Staff and the Mayor have been discussing the construction hours with the contractor.

Tim Jones thanked the Farmers and Farmerettes for the $1,200 donation to be used for graffiti abatement. He noted that their donation will pay for a year's worth of paint to cover graffiti.

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 104027 to 104145.

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

M. CLOSED SESSION

N. ADJOURNMENT

At 8:24 p.m., Mayor Nagy adjourned the meeting in memory of Vincent Dobson.

E.1 Hearing to consider: 1) Certifying a Recirculated Final Environmental Impact Report addressing and disclosing the Environmental Impacts of the Newark Areas 3 and 4 Specific Plan Project and approving a Mitigation Monitoring and Reporting Program; 2) Approving the Newark Specific Plan: Areas 3 and 4 of the General Plan and related General Plan amendments: A map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land; 3) Introducing an Ordinance approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and; 4) Introducing an Ordinance approving a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Newark Specific Plan: Areas 3 and 4 of the General Plan – from Assistant City Manager Grindall.
(RESOLUTIONS-2) (INTRODUCTION OF ORDINANCES-2)

Background/Discussion - The Areas 3 and 4 Specific Plan Project was approved by the City Council on July 8, 2010. The project was subject to litigation which resulted in an order to repeal the project approval, which the City Council approved on February 26, 2015. The City has prepared and circulated environmental documentation and has revised the Development Agreement to address the court's judgment. It is proposed that the revised and recirculated environmental document be certified as disclosing the environmental impacts of the project in compliance with the California Environmental Quality Act (CEQA), and that the project be reapproved.

The project represents a balance between the community's vision for development and preservation and enhancement of natural resources. It includes:

- A maximum of 1,260 housing units;
- Five or more acres of public parks;
- A bayside recreational trail, with potential for Bay Trail designation;
- A 6 acre school site with an adjacent joint use 3 acre park at no cost to the public;
- Enhancement and permanent preservation of hundreds of acres of open space at no cost to the public;
- Transportation improvements including a Railroad Overcrossing;
- Affordable housing, either through construction or provision of funding;
- Resources to allow potential development of a golf course or other recreational amenity.

In 1992 the City Council adopted the General Plan Update, which designated areas of development focus, including Areas 3 and 4. The General Plan allowed future development of Area 4 consisting of high-quality low-density housing, an 18-hole golf course, and open space. In 1999 Newark voters confirmed this vision. In 2010 the Planning Commission and City Council Approved the Areas 3 and 4 Project to fulfill this concept. The 2013 General Plan Update also maintained this vison and designated the development area as the Southwest Newark Residential and Recreational Project.

A large portion of Area 3, bounded by Cherry Street, Stevenson Boulevard, the Union Pacific railroad tracks, and Mowry Avenue, has been developed. It is designated primarily for Research and Development (R&D) High Tech development, but also includes the City's Silliman Recreation Complex and the Ohlone College Newark Campus. A vacant 78-acre portion of Area 3 is included in the proposed project. Area 4 is one of the last undeveloped areas in the City. It consists of 560 acres that are largely agricultural in use with a wrecking yard operating on a Conditional Use Permit.

Specific Plan Process for Areas 3 and 4

Complex ownership issues have, to date, precluded the development of Areas 3 and 4 as envisioned by the City's General Plan. New Technology Park Associates (NTPA), and its successor in interest Newark Partners LLC (Newark Partners), acquired title to or options to purchase substantial amounts of property in Areas 3 and 4. NTPA then proposed the development of Area 4 consistent with the General Plan, including a golf course, housing, and open space. It has also proposed that the City re-designate and rezone the 78-acres of undeveloped land owned by NTPA, and now by its successor in interest, Newark Partners in Area 3 from R&D High Tech Business Park (Special Industrial) to residential use.

Based on these proposals, the City agreed in a Memorandum of Understanding approved by the City Council on June 22, 2006, to prepare a Specific Plan for Areas 3 and 4; and to consider General Plan re-designation of the 78 acre portion of Area 3. The MOU was approved based on the General Plan's acknowledgement that the Specific Plan may be implemented through a Development Agreement. As such, the City and Newark Partners are proposing to enter into a Development Agreement to secure benefits for both parties. Further, the Development Agreement will provide the City with assurances that the Project will include the development of high quality residential housing, a reservation of land for an elementary school, a joint use park, bicycle and pedestrian trails, permanently protected open space, and a golf course or other recreational amenities.

The City's Specific Plan process commenced in late 2006, and consisted of two phases. Phase One involved preparation of a conceptual plan and a feasibility analysis which evaluated development constraints. Phase Two used the results of this constraints analysis as the basis for developing the proposed Specific Plan and the Environmental Impact Report (EIR). The constraints analysis was completed in Fall 2007. Work began on the EIR in Spring 2007. The City distributed a Notice of Preparation for the EIR in May 2007. On February 26, 2008, the City of Newark Planning Commission, by a vote of 6-0, reviewed two alternative Concept Plans, selected a preferred alternative, and recommended that the City Council approve the preferred alternative as the basis upon which a Specific Plan would be developed. On March 13, 2008 the City Council accepted and approved the Planning Commission recommendation on the preferred land use concept.

Community Process

During the Specific Plan development process, to obtain community input, the City conducted a series of public meetings. The first community meeting for the project was held in November 2006. The meeting was very well attended. The issues raised primarily related to traffic impacts

and impacts to the Bay and surrounding habitat and were included in the EIR. An Open House, attended by approximately 50 people, was held in April 2007 to explain the project planning progress. An EIR Scoping Meeting followed on May 30, 2007. In November 2007, a community workshop updated the community on the United States Army Corps of Engineers verified wetlands delineation for the site and results of the site's biological habitat survey. In addition, land plan options were presented to the community for their comment and review. Approximately 85 community members attended this meeting and provided specific input related to the proposed concept plans by drawing their comments and suggestions on maps at the meeting.

After the November 2007 meeting, the planners and technical consultants utilized the community input to revise the land use concept plan. A joint Community Meeting and Planning Commission Workshop was held on February 6, 2008 and was attended by approximately 80 people. An additional community meeting was held on October 16, 2008 to further review land use concepts that would be developed in the specific plan. This meeting was attended by approximately 50 people. On June 22, 2009 another community meeting, attended by approximately 40 people, was held to update the community on the timeline for buildout of the project. The City then finalized the Specific Plan, and the EIR, based upon the preferred land use concept. On June 8, 2010 the Planning Commission held a Public Hearing and recommended approval of the project and the City Council held a Public Hearing on July 8, 2010 and approved the Areas 3 and 4 Specific Plan Project.

Subsequently, there was litigation that ultimately resulted in a judgment in late 2014 that affirmed the bulk of the environmental analysis and disclosure, but found three errors in the environmental documentation and found fault with a sentence in the Development Agreement.

Revised Environmental Impact Analysis

To address the judge's ruling and to update information as necessary, the Environmental Impact Report that discloses impacts of the project was revised and circulated to the public for their review. The Draft Recirculated Environmental Impact Report (Draft REIR) was released to the public in August 2014 and comments were received; these comments were responded to in the Final Recirculated Environmental Impact Report (Final REIR) which was released on January 14, 2015. The Final REIR also included modifications to the Draft REIR document.

The Recirculated Environmental Impact Report (REIR) for the Areas 3 and 4 Specific Plan identifies a number of potential impacts. Most of the impacts can be mitigated to a less than significant level with the mitigation measures proposed in the EIR. However, some of the impacts to air quality, cultural resources, and visual and aesthetic resources are significant and cannot be fully mitigated. Therefore, a statement of overriding considerations will be necessary in order to approve the project. These significant unavoidable impacts are described below.

First, the EIR finds that the proposed Specific Plan will increase regional pollutants (ROG and NOx) that are in excess of BAAQMD significance thresholds. ROG emissions, which are mostly produced by consumer products, and NOx emissions would remain well above the significance threshold even with mitigation measures. Therefore, this impact would remain significant and unavoidable. (Impact AIR-2.1)

Second, there is a significant and unavoidable impact to cultural resources in Area 4. In Impact CUL-2, the EIR finds that "implementation of the proposed Specific Plan will significantly impact archeological resources and disturb human remains, including those interred outside of formal cemeteries. While incorporation of [recommended mitigation measures] will partially reduce the cultural resources impact, the overall implementation of the Specific Plan will destroy archaeological deposits through placement of fill and soil compression and, therefore, result in a significant unavoidable impact." (Impact CUL-2)

Third, the EIR identifies a significant unavoidable impact to visual and aesthetic resources. Impact VIS-1 finds that the "proposed residential and golf course development and Stevenson Boulevard railroad overpass would substantial degrade the visual character on Area 4. There are no feasible mitigation measures that would mitigate for the significant change in visual character." (Impact VIS-1)

Fourth, and finally, there will be significant cumulative impacts resulting from the project. While improvements and mitigation measures specified in the EIR can mitigate most of these impacts, the overall implementation of the Specific Plan will still make a cumulatively considerable contribution to visual and aesthetic resources and noise impacts.

Benefits of the Areas 3 & 4 Specific Plan Project and Related Amendments

The Areas 3 & 4 Specific Plan Project and related amendments will have a number of significant benefits for the community. These include:

- It will implement the General Plan's goals for Areas 3 and 4 by approving a Specific Plan for the development of Area 4 with high-quality low-density housing, a golf course, or if not feasible, other recreational facilities, and open space for Area 4.
- It will result in providing for the reservation of land to the City for the development of a potential new elementary school with a 600 student capacity.
- It will provide for a wide variety of recreational spaces for the city including a 3-acre park in Area 3, 2.5 acres of parks and trails in Area 4 and a potential golf course or other recreational facility.
- It will provide up to 1,260 new residential units within Areas 3 and 4. Further, it will ensure that 15% of the new units developed, will be built either on or off-site as Moderate Income Household units, or, alternately, provide for the payment of in-lieu fees for affordable housing units.
- It will provide for job growth in the City. There will be short-term jobs directly tied to the construction phases of the project and an increase of workers with businesses with whom the Project construction is engaged in a buyer-seller relationship. Further, the proposed elementary school is expected to provide approximately 50 jobs and the potential golf course approximately 42 jobs. Overall, the EIR estimates that the job growth allowed by the Specific Plan would be approximately 482 permanent jobs.

General Plan Amendment

The 1992 City of Newark General Plan land use diagram showed the proposed Area 3 residential and school area designated Special Industrial. Special Industrial uses including a high-tech

business park plan was approved by the City in 1989 for this 78-acre area. The Specific Plan for the 78-acre Area 3 proposes to allow development of single-family residential, multi-family residential, and elementary school, as shown on the Land Use Diagram in the Specific Plan. The 2013 General Plan Update re-designated the Subarea A portion of Area 3 as Low–Medium Residential Designation, Public Institutional and Parks, and Recreational Facilities. The proposed General Plan map amendment and Land Use Diagram changes affirm the existing 2013 General Plan designations. The other portions of Area 3, Sub-Area F, currently developed with the Silliman Center, fire station, Ohlone College, and industrial uses, would retain their existing General Plan designations of Public-Institutional, Public Parks-Open Space, and Special Industrial.

The land used designations in Specific Plans Subareas B, C, D, and E (Area 4) were designated Low Density Residential in 1992, which remains their current designation, and would not change as a part of the proposed approvals.

Development Agreement

The City has determined that the Project presents certain public benefits and opportunities which are advanced by the City and Developer entering into a Development Agreement. This Agreement will, among other things, (1) reduce uncertainties in planning and provide for the orderly development of the Project; (2) mitigate many significant environmental impacts; (3) provide public services and infrastructure; (4) provide for and generate substantial revenues for the City in the form of one time and annual fees and exactions and other fiscal benefits; (5) provide a variety of needed housing, including affordable housing and/or funds in furtherance of affordable housing opportunities; and (6) otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. In exchange for the benefits to the City, together with the other public benefits that will result from the development of the Project, the Development Agreement will provide assurance that the Newark Partners LLC has vested rights to proceed with the Project.

Key benefits of the Development Agreement include:

- The dedication to the City of an approximately 66 acre parcel along Mowry Avenue in Area 4.
- The dedication and improvement of a three-acre neighborhood/school park in Area 3.
- The dedication and improvement of the approximately 1-acre park in Sub Area C.
- It will result in providing for the reservation of land to the City for the development of a potential new elementary school with a 600 student capacity.
- It will provide up to 1,260 new residential units within Areas 3 and 4. Further, it will ensure that 15% of the new units developed, will be built either on or off-site as Moderate Income Household units, or, alternately, provide for the payment of in-lieu fees for affordable housing units.

In addition, in order to approve the Development Agreement with Newark Partners, LLC, the City must find that the Development Agreement:

1. Is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan, any applicable area plan or specific plan, and the regulations prescribed for the zoning district(s) in which the development project is or will be located;
2. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the city as a whole;
3. Will not adversely affect the orderly development of property or the preservation of property values;
4. Will facilitate the implementation of any applicable specific plan; and
5. Is consistent with the provisions of Government Code Sections 65864 through 65868.5.

Property Rezoning

Area 3

The Specific Plan proposes to allow development of single-family residential, multi-family residential and an elementary school on the 78-acre property in Area 3. The existing zoning designation on the 78-acre property in Area 3 is MT (Industrial Technology Park) District. Specific Plan Sub-Area A (Assessor's Parcel Numbers 901-0185-018,901-0185-019,901-0185-020, 901-0185-021, 901-0185-022, 901-0185-023 and 901-0185-024) would be rezoned to R-6000 (Low Density Residential) District.

The other portions of Area 3- currently developed with the Silliman Center, fire station, Ohlone College, and industrial uses - would retain their existing General Plan designations and zoning.

Area 4

To implement the proposed development under the Specific Plan, property located in Subareas B, C and E (Assessor's Parcel Numbers 537-0801-002-06, 537-0850-009,537-0850-011-01, 537-0850-011-04 and 537-0850-007-02) are proposed to be changed from A (Agricultural) District to R-6000 (Low Density Residential) District.

Property located in Sub-Area D (Assessor's Parcel Numbers 537-0850-001-02, 537-0850-003, 537- 0850-004, 537-0850-005 and 537-0850-006) are proposed to be changed from A (Agricultural) District to 0-P (Open Space-Parks) District.

Update: On February 10, 2015 the Planning Commission held a Public Hearing for the Areas 3 and 4 Project and voted unanimously to recommend that the City Council 1) Certify the Recirculated Environmental Impact Report, including a Statement of Overriding Considerations and the approval of a Mitigation Monitoring and Reporting Program; 2) Adopt the Specific Plan Project and related General Plan Amendment, Specific Plan, and Development Agreement; and 3) Rezone Areas 3 and 4 for the Areas 3 and 4 Specific Plan Project.

Attachments

Action – The City Council should consider adopting: 1) Resolution certifying a Recirculated

Final Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan Project, including a Statement of Overriding Considerations and approval of a Mitigation Monitoring and Reporting Program; 2) Resolution approving and adopting the Newark Areas 3 and 4 Specific Plan and related General Plan amendments: A map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land (GP-10-13); 3) Introducing an Ordinance approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and; 4) Introducing an Ordinance approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be consistent with the Newark Areas 3 and 4 Specific Plan.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CERTIFYING A RECIRCULATED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE NEWARK AREAS 3 AND 4 SPECIFIC PLAN PROJECT, INCLUDING A STATEMENT OF OVERRIDING CONSIDERATIONS AND THE APPROVAL OF A MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, the City of Newark has caused a Recirculated Environmental Impact Report (State Clearinghouse Number 20007052065) to be prepared to reassess the potential environmental impacts of the proposed Newark Areas 3 and 4 Specific Plan Project and related General Plan amendment, zone change, Specific Plan, Planned Unit Development, Conditional Use Permit, and Development Agreement (the "Project"); and

WHEREAS, the Recirculated Environmental Impact Report consists of the Recirculated Draft Environmental Impact Report (Draft REIR) and the Recirculated Final Environmental Impact Report document (Final REIR), which in turn consists of all comments received by the City of Newark regarding the Draft REIR during the mandatory public review period, and responses to those comments; and

WHEREAS, the City distributed copies of the Recirculated Environmental Impact Report to public agencies which have jurisdiction by law with respect to the Project and other interested persons and agencies, and sought the comments of such persons and agencies; and

WHEREAS, notice inviting comments on the Draft REIR was given in compliance with CEQA Guidelines Section 15058; and

WHEREAS, written and oral comments to the Draft REIR have been received, and responses to those comments were prepared in the form of the Final REIR; and

WHEREAS, pursuant to Public Resources Code Section 21092.5, the City provided copies of the Final REIR to commenting agencies and individuals; and

WHEREAS, the members of the City Council have read, reviewed, and considered the information contained in the Recirculated Environmental Impact Report and staff report, and have conducted a public hearing on the subject of the Recirculated Environmental Impact Report, and have discussed, evaluated, analyzed, reviewed and considered the information presented at said hearing, as well as all of the printed matter in the Recirculated Environmental Impact Report; and

WHEREAS, Findings have been prepared for the Project, including the related General Plan amendment, zone change, Specific Plan, Planned Unit Development, Conditional Use Permit, and Development Agreement, consistent with the requirements of Public Resources Code, Section 21000 *et seq.*, which provide the written analysis and conclusions of this City Council regarding the Project's environmental impacts, mitigation measures, and alternatives to the Project; and

WHEREAS, the City Council, having reviewed and considered the information contained in the Recirculated Environmental Impact Report for the Newark Areas 3 & 4 Specific Plan Project, set forth in the Newark Areas 3 & 4 Specific Plan Project Findings as required by the California Environmental Quality Act; and

WHEREAS, Mitigation Monitoring and Reporting Program has been prepared for the Newark Areas 3 & 4 Specific Plan Project, consistent with the requirements of Public Resources Code 21081.6, which lists all of the mitigation measures contained in the Recirculated Environmental Impact Report, specified the appropriate agency or organization responsible for implementing each mitigation measure and approximate time frames for implementation of each mitigation measure; and

WHEREAS, the Planning Commission held a duly noticed public hearing on February 10, 2015, and recommended the City Council find that Recirculated Environmental Impact Report (State Clearinghouse Number 20007052065) is complete and adequate pursuant to the California Environmental Quality Act, and that the Planning Commission has considered and reviewed all information considered in it; and

WHEREAS, the City Council held a duly noticed public hearing on March 26, 2015, and finds that the Environmental Impact Report (State Clearinghouse Number 20007052065) is complete and adequate pursuant to the California Environmental Quality Act, and that the City Council has considered and reviewed all information considered in it; and

WHEREAS, the City Council finds that the Recirculated Environmental Impact Report reflects the independent judgment of the City of Newark.

NOW, THEREFORE, the City Council resolves as follows:

a. To certify the Recirculated Environmental Impact Report (State Clearinghouse Number 20007052065), prepared pursuant to the California Environmental Quality Act; and

b. All references to the Area 3 and 4 Specific Plan EIR in the General Plan Tune Up Program EIR (December 2013), and references to the Area 3 and 4 Specific Plan EIR in City of Newark Resolution 10145 (December 12, 2013) shall be deemed to refer to the Newark Areas 3 And 4 Specific Plan Project Recirculated Environmental Impact Report, including all references to the Area 3 and 4 Specific Plan EIR for purposes of environmental baseline, environmental analysis, and mitigation measures. All such references are hereby restated in whole or as amended in the Newark Areas 3 And 4 Specific Plan Project Recirculated Environmental Impact Report.

c. That the Project will have a less than significant impact on land use, public services, and water supply and utilities and service systems; and

d. That the Project, with the exception of impacts on air quality, cultural resources, aesthetic and visual resources, and cumulative impacts on noise, air quality, and visual resources, will have a less than significant impact on the environment once the proposed mitigation measures have been applied; and

e. To adopt the Findings, which provide the written analysis and conclusions regarding the Project's environmental impacts, mitigation measures, and alternatives to the Project; and

f. To adopt a Statement of Overriding Considerations documenting the unavoidable significant impacts that will result from the Project, and the benefits that will occur as a result of the project and that outweigh the impacts; and

g. To adopt the Mitigation Monitoring and Reporting Program.

THE CITY OF NEWARK'S FINDINGS FOR THE NEWARK AREAS 3 & 4 SPECIFIC PLAN PROJECT RECIRCULATED ENVIRONMENTAL IMPACT REPORT REQUIRED UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (Public Resources Code, Section 21000 et seq.)

I. Introduction

The City of Newark ("City") prepared a Draft and a Final Recirculated Environmental Impact Report for the Newark Areas 3 & 4 Specific Plan Project (collectively, "REIR"), which involves the development of up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course, open space areas, and the retention of existing light industrial and institutional (Ohlone College, City fire station, park and community activity center) uses (the "Project") in Newark, California.

The REIR addresses the potential environmental effects associated with the Project. The Findings, recommendations, and a statement of overriding considerations set forth below ("Findings") are adopted by the City of Newark City Council ("City Council") as the City's findings under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.) relating to the Project. The Findings provide the written analysis and conclusions of this City Council regarding the Project's environmental impacts, mitigation measures, alternatives to the Project, and the overriding considerations, which, in this City Council's view, justify approval of the Project, despite its environmental effects.

II. General Findings

A. Procedural Background

Pursuant to CEQA and the CEQA Guidelines, the City determined that an EIR would be required for the Project. On May 8, 2007, the City issued a Notice of Preparation for the EIR which was circulated to responsible agencies and interested groups and individuals for review and comment. A copy of this Notice is included in Appendix J of the Newark Areas 3 & 4 Specific Plan Project Draft Recirculated Environmental Impact Report ("Draft REIR").

On July 8, 2010, the City certified the Newark Area 3 and 4 Specific Plan Project EIR with a statement of overriding considerations. A citizens group filed legal action for judicial review of the EIR's compliance with CEQA, and the court found the EIR to be deficient in three respects: failing to adequately inform the public about the circumstances under which the City anticipates future environmental review in connection with the Project, improper deferral of mitigation for impacts to trees to be preserved, and improper deferral of mitigation for impacts to sensitive habitats and special status species from the potential spread of non-native invasive plant species. The court found the EIR to be adequate and in compliance with CEQA in all other respects. The Draft REIR was prepared to address the deficiencies identified by the court in the prior EIR.

The Draft REIR was published for public review and comment on August 5, 2014 and was filed with the State Office of Planning & Research under State Clearinghouse No. 2007052065. The Draft REIR was made available for review and comment by interested persons and public agencies through September 18, 2014.

The City prepared written responses to the comments received during the comment period and included these responses in the Final Recirculated Environmental Impact Report ("Final REIR"), which was made available for public review on January 14, 2015.

B. Record of Proceedings and Custodian of Record

The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:

1. The REIR and all documents referenced in or relied upon by the REIR.

2. All information (including written evidence and testimony) provided by City staff to the City Council relating to the REIR, the approvals, and the Project.

3. All information (including written evidence and testimony) presented to the City Council by the environmental consultant and subconsultants who prepared the REIR or incorporated into reports presented to the City Council.

4. All information (including written evidence and testimony) presented to the City from other public agencies related to the Project or the REIR.

5. All applications, letters, testimony and presentations relating to the Project.

6. All information (including written evidence and testimony) presented at any City hearing or City workshop related to the Project and the REIR.

7. All City-adopted or City-prepared land use plans, ordinances, including without limitation general plans, specific plans, and ordinances, together with environmental review documents, findings, mitigation monitoring programs, and other documents relevant to planned growth within the area, including the 1992 General Plan and 1992 General Plan EIR and the 2013 General Plan and 2013 General Plan EIR.

8. The Mitigation Monitoring and Reporting Program for the Project.

9. All other documents composing the record pursuant to Public Resources Code section 21167.6(e), including the Newark Areas 3 & 4 Specific Plan Project EIR certified in July 2010, including that EIR's findings, hearings, public comments, and other related documents.

The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is Assistant City Manager Terrence Grindall, or his designee. Such documents and other material are located at the Newark Community Development Department, 37101 Newark Boulevard, Newark, CA 94560.

C. Consideration and Certification of the REIR

In accordance with CEQA, the City Council certifies that the REIR has been completed in compliance with CEQA. The City Council has independently reviewed the record and the REIR prior to certifying the REIR and approving the Project. By these findings, the City Council confirms, ratifies, and adopts the findings and conclusions of the REIR as supplemented and modified by these findings. The REIR and these findings represent the independent judgment and analysis of the City and the City Council. The City Council recognizes the REIR may contain clerical errors. The City Council reviewed the entirety of the REIR and bases its determination on the substance of the information it contains. The City Council certifies that the REIR is adequate to support the approval of the action that is the subject of the staff report to which these CEQA findings are attached. The City Council certifies that the REIR is adequate to support approval of the Project described in the REIR, each component and phase of the Project described in the REIR, any variant of the Project described in the REIR, any minor modifications to the Project or variants of the Project described in the REIR and the components of the Project.

D. Absence of Significant New Information

The City Council recognizes the Final REIR incorporates information obtained and produced after the Draft REIR was completed, and that the REIR contains additions, clarifications, and modifications. The City Council has reviewed and considered the Final REIR and all of this information. The Final REIR does not add significant new information to the Draft REIR that would require recirculation of the REIR under CEQA. The new information added to the REIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft REIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft REIR. Thus, recirculation of the REIR is not required. The City Council finds that the changes and modifications made to the REIR after the Draft REIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or the CEQA Guidelines section 15088.5.

E. Severability

If any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Reorganization Project, shall continue in full force and effect unless amended or modified by the City.

III. Findings and Recommendations Regarding Significant and Unavoidable Impacts

A. Air Quality

1. Regional Air Quality

a. **Potential Impact**. The potential impacts of the Project related to the operational air pollutant emissions associated with the buildout of the proposed Specific Plan are discussed in the Draft REIR at pages 119 through 123 and the Final REIR at pages 185 through 186 and 192 through 196.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 119 and 123 and Final REIR at page 196, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM AIR-1.1**: Incorporation of the measures designed to reduce operational and transportation-related emissions, e.g., improve existing or construct new bus pullouts and transit stops, add appropriate bike amenities, provide pedestrian sidewalks, and develop and implement energy efficient building practices.

(ii) **MM AIR-2.1:** Implementation of MM AIR-1.1 will not be able to reduce ROG or NOx emissions below the significance threshold.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Impact.** Operational air pollutant emissions associated with buildout of the proposed Specific Plan will generate ozone precursors (ROG and NOx) that exceed both the current and proposed BAAQMD significance thresholds resulting in a significant impact to regional air quality.

(ii) **Effects of Mitigation.** Mitigation measures AIR-1.1 and AIR-2.1 contain a variety of transportation control measures designed to reduce motor vehicle travel by encouraging use of other modes of transportation. Implementation of these TCMs including enhanced bus pullouts and stops and pedestrian friendly street crossings, are expected to reduce emissions the ROG emissions.

(iii) **Remaining Impacts.** As noted in the Draft REIR on page 123 and Final REIR on pages 195 through 196, operational ROG and NOx emissions remain significant and unavoidable even with the above mitigation.

(iv) **Overriding Considerations.** As more fully stated in the Statement of Overriding Considerations, the City has found that the environmental, economic, social and other

benefits of the Project override any remaining significant adverse impacts of the Project to Regional Air Quality.

B. Cultural Resources

1. Archaeological Resources

a. **Potential Impact**. The potential impacts of the Project related to archaeological resources are discussed in the Draft REIR at pages 216 through 221.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 219 through 221, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM CUL-2.1:** Limited hand excavation in Area 4 by professional archaeologist to verify presence of midden soils. (This mitigation measure was completed for Area 3.)

(ii) **MM CUL-2.2:** Design plans in Area 4 to avoid impacting known cultural resources, have plans reviewed and approved by professional archaeologist. (This mitigation measure was completed for Area 3.)

(iii) **MM CUL-2.3:** Grading and/or construction activities shall, to the extent feasible, avoid areas identified as potentially containing archeological resources. Where avoidance is not possible, the materials shall be preserved in place; alternatively, hand excavation to retrieve the significant archeological data and/or material and human remains will be conducted to protect them from damage. Additional data retrieval may also be required.

(iv) **MM CUL-2.4:** Monitoring by professional archaeological monitor with authority to stop work if any unknown historic or prehistoric resources are discovered during grading, trenching or other on-site excavation. Adherence to Section 7050.5 (b) of the Health and Safety Code shall be required if Native American human remains or funerary objects are discovered.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Impact.** The planned development envelope will affect all of the cultural resources in the specific plan area in some manner. Development of the Specific Plan

could impact unique archaeological resources and disturb human remains through the compression and excavation of soils.

(ii) **Effects of Mitigation.** Based upon the current known extent of unique cultural materials in Area 4, it is unlikely that total avoidance of impacts is possible with implementation of the proposed Specific Plan. While incorporation of the above measures will partially reduce the cultural resources impacts in Area 4 and will reduce the cultural resources impacts to less than significant in Area 3, the overall implementation of the Specific Plan could destroy archaeological deposits in Area 4 through placement of fill and soil compression and, therefore, result in a significant unavoidable impact.

(iii) **Remaining Impacts.** As noted in the Draft REIR on page 221, there are no effective mitigation measures available to reduce the impacts to archaeological resources in Area 4 to a less than significant level. Therefore, impacts to archaeological deposits in Area 4 through placement of fill and soil compression will remain significant and unavoidable.

(iv) **Overriding Considerations.** As more fully stated in the Statement of Overriding Considerations, the City has found that the environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project to archaeological resources.

C. Aesthetic and Visual Resources

1. Degradation of Existing Visual Character and Scenic Resources.

a. **Potential Impact.** The potential impacts related to degradation of existing visual character and scenic resources are discussed in the Draft REIR at pages 293 through 294.

b. **Mitigation Measures.** There are no feasible mitigation measures to reduce this impact as discussed in the Draft REIR at page 294.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** There are no feasible mitigation measures that would mitigate for the significant change in visual character, which would result from the development of Area 4.

(ii) **Remaining Impacts.** Impacts to visual character and scenic resources would remain significant and unavoidable.

D. Cumulative Impacts

1. Cumulative Impacts to Air Quality.

a. **Potential Impact**. The potential impacts of the Project related to regional air quality are discussed in the Draft REIR at page 340.

b. **Mitigation Measures.** There are no feasible mitigation measures to reduce this impact as discussed in the Draft REIR at page 340.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** There are no feasible mitigation measures that would mitigate the combined contributions of the proposed project, and other cumulative projects' contributions to the exceedance of the BAAQMD thresholds for air pollutant emissions.

(ii) **Remaining Impacts.** Cumulative impacts to air quality would remain significant and unavoidable.

(iii) **Overriding Considerations.** As more fully stated in the Statement of Overriding Considerations, the City has found that the environmental, economic, social and other benefits of the Project override any remaining significant adverse impacts of the Project resulting from the project's cumulative contributions to degradation in regional air quality.

2. Cumulative Noise Impacts

a. **Potential Impact**. The potential impacts of the Project related to cumulative traffic noise are discussed in the Draft REIR at pages 363 through 365.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 364 through 365, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM C-NOI-5:** Incorporation of a combination of mitigation measures that would help reduce impacts from project-generated cumulative traffic noise, including, but

not limited to: new or larger noise barriers, sound insulation treatments, and consideration of alternative noise reduction techniques.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Impact.** The Specific Plan would result in an increase in cumulative traffic noise levels by three dBA Ldn as a result of cumulative plus project conditions along Cherry Street between Stevenson Boulevard and Mowry Avenue. This would result in a significant cumulative impact at receivers east of Cherry Street between Stevenson Boulevard and Mowry Avenue (across Cherry Street from the project). The Specific Plan would result in an increase in cumulative traffic noise levels by four dBA Ldn as a result of cumulative plus project conditions along Stevenson Boulevard between Cherry Street and Cedar Boulevard. This would result in a significant cumulative impact at receivers north of Stevenson Boulevard between Cherry Street and Cedar Boulevard.

(ii) **Effects of Mitigation.** Because the proposed mitigation measures involve non-acoustical considerations, it may not be reasonable or feasible to reduce project-generated cumulative traffic noise at all affected off-site receivers. If the City determines that the mitigation is feasible, then with implementation of the mitigation measures, the impact would be less than significant. However, if the City determines that the mitigation is not feasible, the impact would be considered significant and unavoidable. Due to the uncertainty regarding the feasibility of this mitigation, the impact would be considered significant and unavoidable.

(iii) **Remaining Impacts.** As noted in the Draft REIR on page 364, the implementation of the Specific Plan will result in a significant unavoidable cumulative impact to traffic noise levels. Therefore, cumulative impacts to noise will remain significant and unavoidable.

(iv) **Overriding Considerations.** As more fully stated in the Statement of Overriding Considerations, the City has found that the environmental, economic, social and other benefits of the Project override any remaining significant adverse cumulative impacts of the Project to traffic noise levels.

3. Cumulative Visual Resources Impacts

a. **Potential Impact**. The potential impacts of the Project related to cumulative visual resources impacts are discussed in the Draft REIR at page 367.

b. **Mitigation Measures.** There are no feasible mitigation measures to reduce this impact as discussed in the Draft REIR at page 367.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** There are no feasible mitigation measures that would mitigate the proposed project's cumulative contribution to visual impacts.

(ii) **Remaining Impacts.** Cumulative impacts to visual resources would remain significant and unavoidable.

(iii) **Overriding Considerations.** As more fully stated in the Statement of Overriding Considerations, the City has found that the environmental, economic, social and other benefits of the Project override any remaining significant adverse cumulative impacts of the Project to visual resources.

IV. Findings and Recommendations Regarding Significant Impacts Which are Avoided or Mitigated to a Less Than Significant Level

A. Air Quality

1. Transportation Control Measures (TCM)

a. **Potential Impact**. The potential impacts of the Project related to the incorporation of appropriate TCMs as outlined in the 2005 Bay Area Ozone Strategy are discussed in the Draft REIR at pages 119 through 120.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 119 through 120, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM AIR-1.1:** Incorporation of the following Specific Plan measures designed to reduce transportation-related emissions:

- Improve existing or construct new bus pullouts and transit stops at convenient locations along Cherry Street and Stevenson Boulevard.

- Inclusion of appropriate bicycle amenities, e.g., bike lane connections throughout the project site and off-site bicycle lane improvements for roadways that would serve the project.

- Explore and implement feasible means to bring transit or shuttle service to Area 4.

- Provide pedestrian sidewalks or paths throughout project site with convenient access to bus stops along adjacent arterials.

- Consider providing pedestrian signs and signals including convenient pedestrian crossing with count-down signals.

- Review landscape plans to ensure they provide new trees that would shade buildings and walkways during summer.

- Develop and implement energy efficient building practices that exceed State building code.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Impact.** Without incorporation of appropriate TCM, the project would conflict with 2010 Bay Area Clean Air Plan.

(ii) **Effects of Mitigation.** Implementation of mitigation measure AIR-1.1 is intended to reduce motor vehicle emissions by encouraging use of other modes of transportation and therefore reduce transportation-related emissions. Construction of new or enhanced bus pullouts and transit stops will ensure that normal traffic flow on arterial roadways is not impeded when buses are pulled over to serve riders. Inclusion of bicycle amenities, as well as transit or shuttle service to Area 4 would encourage the use of alternate modes of transportation. Pedestrian friendly enhancements and amenities will enhance pedestrian use of the site, as well as access to transit or shuttle service. Proper shading of buildings and walkways in summer will help reduce cooling loads on buildings and energy usage can be minimized by implementing energy

efficient building practices. Together these measures will reduce transportation-related emissions and reduce the conflict with the 2010 Bay Area Clean Air Plan.

(iii) **Remaining Impacts.** Any remaining impacts related to project consistency with the 2010 Bay Area Clean Air Plan and appropriate TCMs will be less than significant.

2. **Construction Impacts**

a. **Potential Impact.** The potential impacts to air quality resulting from construction emissions are discussed in the Draft REIR at pages 127 through 129 and Final REIR at pages 196 through 200.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Final REIR at pages 199 through 200, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM AIR-3.1:** Implementation of MM AIR-4.2 (see below).

c. **Findings:** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure AIR-4.2 will reduce NOx emissions associated with grading and new construction to a less-than-significant level.

(ii) **Remaining Impacts.** Any remaining impacts from construction-related NOx emissions will be less than significant.

(iii) **Remaining Impacts.** Any remaining impacts related to sensitive receptors will be less than significant.

3. **Sensitive Receptors**

a. **Potential Impact.** The potential impacts resulting from construction of the project and the effect on sensitive receptors are discussed in the Draft REIR at pages 129 through 132.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 130 through 132, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM AIR-4.1:** Implementation of measures designed to reduce air quality impacts associated with grading and new construction, e.g., watering of all active construction areas twice daily and limit traffic speeds on unpaved roads.

(ii) **MM AIR-4.2:** Implementation of additional measures designed to reduce air quality impacts associated with grading and new construction, e.g., prohibit equipment with dirty emissions and reduce equipment and vehicle idle times.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures AIR-4.1 and AIR 4.2 will reduce air quality impacts associated with grading and new construction, as well as reducing diesel particulate matter and $PM_{2.5}$ from construction to ensure that short-term health impacts to nearby sensitive receptors are less than significant.

(ii) **Remaining Impacts.** Any remaining impacts related to sensitive receptors will be less than significant.

B. Transportation

1. Impacts to Intersection Levels of Service

a. **Potential Impact.** The potential impacts related to traffic generated by the project are discussed in the Draft REIR at pages 88 through 93.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at 89 through 93, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **2014 MM TRAN-1.1:** Construction of an additional left turn lane to the westbound Mowry Avenue approach to Cherry Street.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the measures recommended by 2014 MM TRAN-1.1 would allow the Cherry Street/Mowry Avenue intersection to operate at

LOS D during the AM peak hour (better than no project conditions) and LOS C during the PM peak hour. This improvement would reduce intersection level of service impacts to a less than significant level.

(ii) **Remaining Impacts.** Any remaining impacts related to intersection levels of service will be less than significant.

2. **Cumulative Transportation Impacts**

a. **Potential Impact.** The potential impacts related to cumulative transportation impacts are discussed in the Draft REIR at pages 331 through 339.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 331 through 335, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM C-TRAN-1.1:** Addition of a left turn lane on the westbound Mowry Avenue approach to Cherry Street.

(ii) **MM C-TRAN-2.1:** Addition of a through lane on the northbound approach of Cherry Street to Stevenson Boulevard

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures C-TRAN-1.1 and C-TRAN-2.1 will ensure that the effects of cumulative transportation impacts are mitigated to a less than significant level.

(ii) **Remaining Impacts.** Any remaining cumulative transportation impacts will be less than significant.

C. **Noise**

1. **Interior Noise Environment**

a. **Potential Impact**. The potential impacts of the Project related to interior noise levels are discussed in the Draft REIR at pages 144 through 145.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 144 through 145, are hereby

adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM NOI-1.1:** Construction of noise barriers. In addition, residences in Area 3 will include noise attenuating features. In Area 4, design-specific acoustical analyses shall be completed at the same time as the detailed development plans are prepared. For the elementary school, a design-specific acoustical analysis shall be completed at the same time the school design is proposed.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure NOI-1.1 will ensure that interior noise levels are mitigated to a less than significant level.

(ii) **Remaining Impacts.** Any remaining impacts related to interior noise levels will be less than significant.

2. **Construction Noise**

a. **Potential Impact**. The potential impacts of the Project related to construction noise are discussed in the Draft REIR at pages 147 through 149.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 148 through 149, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM NOI-2.1:** Implement Best Management Practice for Construction Noise, e.g., restrict noise-generating activities during certain hours and on certain days, prohibit unnecessary idling, use quiet air compressors, and designate a disturbance coordinator.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure NOI-2.1 will ensure that the noise impacts related to the Project's construction noise impacts are mitigated to a less than significant level.

(ii) **Remaining Impacts.** Any remaining impacts related to construction noise will be less than significant.

D. Biological Resources

1. Impacts to Wetland Habitats.

a. **Potential Impact.** The potential impacts related to wetland habitats are discussed in the Draft REIR at pages 173 through 176 and Final REIR at page 200.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 174 through 176 are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-1.1:** Locate all temporary staging areas and construction access roads, if necessary, away from seasonal wetland and aquatic habitat abutting development areas. Clearly mark and fence these areas. Design grading plans to avoid permanent impacts to wetland and aquatic habitat.

(ii) ***EITHER*** **MM BIO-1.2A:** Utilize a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off site.

(iii) ***OR*** **MM BIO-1.2B:** Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands.

(iv) **MM BIO-1.3:** Annual monitoring of the mitigation sites by a qualified biologist.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-1.1, BIO-1.2A or BIO-1.2B, and BIO-1.3 will ensure that the effects to wetland/marsh/aquatic habitats are mitigated to a less than significant level by avoiding permanent impacts to wetland and aquatic habitat, creating or enhancing wetland habitat, and/or preserving wetlands offsite.

(ii) **Remaining Impacts.** Any remaining impacts to wetland/marsh/aquatic habitats will be less than significant.

2. **Alteration of Site Hydrology on Avoided Wetlands**

a. **Potential Impact.** The potential impacts related to hydrologic alterations within Area 4 and the related affect on wetland and marsh habitats are discussed in the Draft REIR at pages 177 through 179.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 177 through 179, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-2.1:** Design discharge of stormwater runoff to prevent erosion and channelization. Simulation of natural flow through a more dispersed discharge of collected runoff shall be designed for movement of water from hardscape within developed features into wetlands surrounded by or adjacent to development such that the existing hydrologic condition is not substantially changed.

(ii) **MM BIO-2.2:** All grading and culvert sizing and installation shall be designed to ensure adequate drainage without draining wetlands more quickly than currently occurs and to allow water to pond for durations similar to the current existing condition.

(iii) **MM BIO-2.3:** Planting of native grass species to prevent any significant decrease in the amount of water entering preserved wetland habitats in Area 4 during the winter months.

(iv) **MM BIO-2.4:** Various measures to minimize any perennial ponding within the existing seasonal wetlands, including minimization and control of nuisance runoff and planting of drought tolerant plants.

(v) **MM BIO-2.5:** Retention within the development footprint of any remaining dry-season nuisance flows.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-2.1, BIO-2.2,

BIO-2.3, BIO-2.4, and BIO-2.5, will reduce impacts to seasonal wetland species and associated special status species due to altering the hydrology on the project site. These measures will reduce these impacts to a less than significant level.

(ii) **Remaining Impacts.** Any remaining impacts related to alteration of site hydrology and associated species impacts will be less than significant.

3. **Impacts on Salt Marsh Habitat and Associated Species**

a. **Potential Impact.** The potential impacts related to freshwater inputs on salt march habitat and associated species are discussed in the Draft REIR at pages 179 through 180.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 180, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-3.1:** Implementation of MM BIO-2.1 through 2.5.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure BIO-3.1 will reduce the Specific Plan's impacts associated with the discharge of freshwater runoff into salt marsh habitats to a less than significant level.

(ii) **Remaining Impacts.** Any remaining impacts related to discharge of freshwater runoff into salt marsh habitats will be less than significant.

4. **Impacts to Burrowing Owls**

a. **Potential Impact.** The potential impacts related to burrowing owls are discussed in the Draft REIR at pages 182 through 186.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 183 through 186 are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-4.1:** Pre-construction surveys for burrowing owls shall be completed in areas planned for fill placement and construction areas in general conformance with the California Burrowing Owl Consortium's protocols.

(ii) **MM BIO-4.2:** Maintain a 150-ft buffer zone for burrowing owls located during the non-breeding season if practicable. If not practicable, then a buffer adequate to avoid injury or mortality of owls will be maintained, or the birds will be evicted as described for MM BIO-4.3 below. During the breeding season, a 250-ft buffer zone, within which no new activity will be permissible, will be maintained between project activities and occupied burrows.

(iii) **MM BIO-4.3:** Eviction of owls may occur outside the nesting season to prevent injury or mortality of individual owls if construction will directly impact occupied burrows.

(iv) **MM BIO-4.4:** Preserve and manage habitat for burrowing owls on and/or off-site if and when development occurs in Area 4.

(v) ***EITHER*** **MM BIO-4.5A:** If on-site (within Area 4) habitat is to be preserved, a detailed mitigation and monitoring plan and adaptive management program shall be prepared by a qualified biologist and submitted to the City and the CDFG for review and approval. The mitigation area will be protected in perpetuity through a conservation easement, deed restriction, conveyance to a qualified land trust or the Refuge, or through equivalent means.

(vi) ***OR*** **MM BIO-4.5B:** If the project proponent elects to mitigate off-site, such mitigation may take the form of habitat preservation and management or the purchase of credits in an off-site mitigation bank. Furthermore, unless at least 13 acres of burrowing owl habitat mitigation occurs on-site, some on-site enhancements shall also be made to reduce impacts of the project on the local (South Bay) burrowing owl population.

(vii) **MM BIO-4.6:** Signage shall be placed throughout the golf course or recreation area to prohibit golfers/visitors from entering areas where the artificial burrow complexes will be located (See MM BIO-9.2 below). If development occurs on Area 4, signage will also be placed along the

ACFC&WCD Line D levees and the Mowry Slough levee to instruct recreational users of these levees against leaving the levee tops.

(viii) **MM BIO-4.7:** Development and implementation of a predator management program.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-4.1, BIO-4.2, and BIO-4.3 will ensure against the possibility of take of individual owls within Area 3. Within Area 4 implementation of mitigation measures BIO-4.1, BIO-4.2, BIO-4.3, BIO-4.4, BIO-4.5A or BIO-4.5B, BIO-4.6 will ensure against the possibility of take of individual owls. BIO-4.7 will minimize impacts from non-native and urban-adapted native species on sensitive native species, such as burrowing owls, in any designated on-site conservation areas.

(ii) **Remaining Impacts.** Any remaining impacts related to burrowing owls will be less than significant.

5. **Impacts to Nesting Peregrine Falcons**

a. **Potential Impact.** The potential impacts related to nesting Peregrine falcons are discussed in the Draft REIR at pages 188 through 189.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 186 through 189, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-5.1:** Construction shall occur during the non-breeding season to the maximum extent possible.

(ii) **MM BIO-5.2:** Any construction that must occur during the breeding seasons shall be preceded by pre-construction surveys for nesting peregrine falcons and shall be reviewed and approved by the City prior to the start of grading and construction.

(iii) **MM BIO-5.3:** If an active nest is found within 300 feet of any construction activity, a 300-foot buffer, within which no new development-related activity will be permissible,

will be maintained between development activities and the occupied nest until the young falcons have fledged or the nest is no longer active.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-5.1, BIO-5.2, and BIO-5.3 will reduce the potential for loss of eggs or young Peregrine falcons.

(ii) **Remaining Impacts.** Any remaining impacts related to nesting Peregrine falcons will be less than significant.

6. **Impacts to Tricolored Blackbird Colonies**

a. **Potential Impact.** The potential impacts related to tricolored blackbirds are discussed in the Draft REIR at page 189.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at page 189 are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-6.1:** Construction shall occur during the non-breeding season to the maximum extent possible.

(ii) **MM BIO-6.2:** Any construction that must occur during the breeding seasons shall be preceded by pre-construction surveys for nesting tricolored blackbirds conducted by a qualified ornithologist.

(iii) **MM BIO-6.3:** If an active colony is found within 400 feet of any construction activity, a 400-foot buffer, within which no new development-related activity will be permissible, will be maintained between development activities and the occupied nest until the young have fledged or the colony is no longer active.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-6.1, BIO-6.2, and BIO-6.3 will reduce the potential for impacts to tricolored blackbird colonies.

(ii) **Remaining Impacts.** Any remaining impacts related to tricolored blackbird colonies will be less than significant.

7. **Impacts to Roosting Bats**

a. **Potential Impact.** The potential impacts related to roosting bats are discussed in the Draft REIR at pages 190 through 191.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 190 through 191, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-7.1:** A survey for roosting bats shall be completed prior to the removal of any building or tree with potential for day-roosting by bats, or prior to the initiation of any construction activities within 250 ft of such potential roost sites, by a qualified bat biologist. The survey results shall be reviewed and approved by the City prior to the start any construction related activities.

(ii) **MM BIO-7.2:** A second pre-demolition/pre-construction survey for roosting bats, following the methods described in MM BIO-7.1, shall be completed within 15 days prior to the commencement of these activities in a given area.

(iii) **MM BIO-7.3:** If a maternity roost of any bat species is found, the bat biologist shall determine the extent of a construction-free buffer around the active roost that will be maintained until the young are flying.

(iv) **MM BIO-7.4:** If a roost of any kind is found in an area (e.g., a building or tree) that will not be disturbed by construction, or that can be avoided, the roost structure will not be impacted.

(v) **MM BIO-7.5:** If a day roost is found in a building, or in a tree that is to be completely removed or replaced, individual bats will be safely evicted under the direction of a qualified bat biologist.

(vi) **MM BIO-7.6:** If a day roost for pallid bats or Yuma myotis will be impacted, an alternative bat roost structure will be provided.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-7.1, BIO-7.2, BIO-7.3, BIO-7.4, BIO-7.5, and BIO-7.6 will reduce the potential for impacts to roosting bats.

(ii) **Remaining Impacts.** Any remaining impacts related to roosting bats will be less than significant.

8. **Impacts to Salt Marsh Harvest Mouse and Wandering Shrew.**

a. **Potential Impact.** The potential impacts related to salt marsh harvest mouse and wandering shrew are discussed in the Draft REIR at pages 191 through 194.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 192 through 194, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-8.1:** Prior to the issuance of building permits, all temporary staging areas and construction access roads shall be located away from suitable habitat for these species and limits of all wetlands that are to be avoided will be clearly demarcated by a qualified biologist with Environmentally Sensitive Area fencing.

(ii) **MM BIO-8.2:** Prior to issuance of grading permits and under the supervision of a qualified biological monitor, all salt marsh harvest mouse/wandering shrew habitat within the construction area shall be removed by hand. After at least 24 hours have elapsed since the removal of this pickleweed-dominated vegetation from harvest mouse/wandering shrew habitat areas, a barrier to exclude salt marsh harvest mice and salt marsh wandering shrews from impact areas will be installed at the perimeter of all project construction areas that are located within 50 feet of potential salt marsh harvest mouse and salt marsh wandering shrew habitat.

(iii) **MM BIO-8.3:** Any individuals already in the impact areas shall be salvaged and translocated to the exterior of the construction exclusion area. A qualified mammalogist should be on-site during removal of pickleweed-dominated vegetation, construction of the barrier fence, and initial clearing and grubbing within 10 feet of the barrier fence to look for individual salt marsh harvest mice and salt marsh wandering shrews that may be within the Specific Plan

area. Any individuals detected would be captured and translocated to a safe location within the closest suitable, pickleweed-dominated habitat.

If these species are present at all it would be in small numbers, and thus we are not proposing to require trapping and relocation.

(iv) **MM BIO-8.4:** Permanent loss of salt marsh harvest mouse and salt marsh wandering shrew habitat due to fill, shading, or isolation will be mitigated at a 3:1 ratio by the creation or restoration of pickleweed-dominated salt marsh on Area 4. Habitat for these species that is indirectly impacted will be mitigated at a 2:1 ratio by on-site habitat restoration.

A habitat mitigation and monitoring plan will be prepared that outlines the necessary steps for restoration. All created mitigation habitats will be protected in perpetuity and will be placed into a land trust or under a conservation easement, or fee title will be transferred to the Refuge or a third-party non-profit entity that has been approved by the City and appropriate permitting agencies.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-8.1, BIO-8.2, 8.3, and BIO-8.4 will reduce the potential for impacts to salt marsh harvest mice and wandering shrews.

(ii) **Remaining Impacts.** Any remaining impacts related to salt marsh harvest mice and wandering shrews will be less than significant.

9. **Impacts to Sensitive Habitats and Species from Recreational Disturbance**

a. **Potential Impact.** The potential impacts related to sensitive habitats and species resulting from recreational disturbance are discussed in the Draft REIR at page 194 through 195.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at page 195, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-9.1:** The golf course shall be designed to minimize disturbance to adjacent sensitive habitats and species by golfers.

(ii) **MM BIO-9.2:** On the golf course, areas that are "out of bounds" shall be clearly marked as such, explaining the importance of preserving the ecological integrity of the adjacent natural areas. Signs will be erected along the ACFC&WCD levees and along Mowry Slough describing the ecological value of adjacent wetland areas and instructing users to stay on the ACFC&WCD levee tops, stay out of sensitive habitats, and keep dogs on leashes.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-9.1 and BIO-9.2 will reduce the potential for impacts to special status species and sensitive habitats resulting from recreational disturbances.

(ii) **Remaining Impacts.** Any remaining impacts related to special status species and sensitive habitats resulting from recreational disturbances will be less than significant.

10. Indirect Impacts on Waterbird Use of Wetlands

a. **Potential Impact.** The potential impacts related to the use of wetlands by waterbirds are discussed in the Draft REIR at pages 195 through 197.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 196 through 197, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-10.1:** Creation or enhancement of waterbird habitat at a 0.5:1 ratio for a total of 9 acres of mitigation shall be included on the site. A mitigation plan shall be developed that outlines the proposed wetland creation/enhancement for indirect impacts to waterbird use of wetlands on the site.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure BIO-10.1 will mitigate indirect impacts to birds using the undeveloped wetlands on the site by the creation or enhancement of waterbird habitat.

(ii) **Remaining Impacts.** Any remaining indirect impacts related to the use of wetlands by waterbirds will be less than significant.

11. Impacts from the Spread of Non-native, Invasive Plant Species

a. **Potential Impact.** The potential impacts related to the spread of non-native, invasive plant species are discussed in the Draft REIR at pages 197 through 199.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 197 through 199, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-11.1:** Prior to issuance of grading and building permits, an Invasive Species Management Plan to reduce the presence and spread of non-native, invasive plant species shall be developed and shall include various measures, including the removal of concentrations of invasive species, maintain staging areas free of weeds, and ensure that any straw used for road stabilization and erosion control is certified weed-free.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigation recommended by Mitigation Measures BIO-11.1 will reduce native plant and wildlife species impacts resulting from the spread of non-native invasive plant species to a less than significant level.

(ii) **Remaining Impacts.** Any remaining impacts related to the spread of non-native invasive plant species will be less than significant.

12. Short-term Impacts to Water Quality During Construction

a. **Potential Impact.** The potential temporary impacts to water quality during construction are discussed in the Draft REIR at pages 200 through 202.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 201 through 202, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-12.1:** Future development projects will incorporate Best Management Practices for water quality.

(ii) **MM BIO-12.2:** No soil stockpiling, equipment staging, construction access roads, or other intensively soil-disturbing activities shall occur immediately adjacent to any wetlands that are to be avoided. The limits of the construction area shall be clearly demarcated with Environmentally Sensitive Area fencing by a qualified biologist.

(iii) **MM BIO-12.3:** Dust suppression methods shall be used during all grading, construction, and soil stockpiling activities that have the potential to mobilize dust. If soil stockpiles are to remain on the site for long periods of time prior to the start of grading, they shall be hydroseeded so that vegetation will suppress dust and inhibit erosion.

(iv) **MM BIO-12.4:** All mitigation measures for containing contamination from the auto wrecking yard removal will be followed (*see* Hazardous Materials and Water Quality sections of the EIR).

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures BIO-12.1, BIO-12.2, BIO-12.3, and BIO-12.4 will minimize impacts in the surrounding wetland environment, sloughs and channels, and the San Francisco Bay during construction.

(ii) **Remaining Impacts.** Any remaining impacts related to short-term water quality will be less than significant.

13. **Long-term Water Quality Impacts**

a. **Potential Impact.** The potential impacts relating to long-term water quality are discussed in the Draft REIR at pages 202 through 203.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 203, is hereby adopted and

will be implemented as provided in the Mitigation and Monitoring Reporting Program:

- **MM BIO-13.1**: All development projects within the Specific Plan shall comply with the NPDES permit requirements, the Alameda County Clean Water Program standards, the City of Newark's ordinances, policies, and processes, and other applicable local, state, and federal requirements.

  All development projects shall also prepare a SWMP that includes post-construction water quality BMPs that control pollutant levels.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure BIO-13.1 will reduce impacts to long-term water quality.

(ii) **Remaining Impacts.** Any remaining impacts related to long-term water quality will be less than significant.

14. Impacts to Ordinance-Size Trees

a. **Potential Impact.** The potential impacts related to the loss of City ordinance-size trees in Area 4 (there are no ordinance-sized trees in Area 3) are discussed in the Draft REIR at pages 203 through 204 and Final REIR at pages 200 through 201.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at page 204, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-14.1:** The Specific Plan shall incorporate preservation of existing trees with emphasis on ordinance-size or larger native species and in good or better condition, to the maximum extent practicable, to the satisfaction of the City's Community Development Director.

(ii) **MM BIO-14.2:** Where preservation of existing trees is not feasible due to site constraints, trees to be removed by the project shall be replaced at a 3:1 ratio unless the City's Community Development Director determines that a higher ratio is required. Trees greater than 18 inches in diameter

shall not be removed unless a Tree Removal Permit, or equivalent, has first been approved.

(iii) **MM BIO-14.3:** The species and exact number of trees to be planted on the site during the construction phase shall be determined in consultation with the City Arborist and to the satisfaction of the Community Development Director.

(iv) **MM BIO-14.4:** If the developed portion of the development site cannot accommodate the required tree mitigation, an alternative site(s) shall be identified for additional tree planting and/or the size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure BIO-14.1, BIO-14.2, BIO-14.3, and BIO-14.4 will mitigate impacts related to the loss of City ordinance-size trees.

(ii) **Remaining Impacts.** Any remaining impacts related to the loss of City ordinance-size trees will be less than significant.

15. Health of Preserved Trees

a. **Potential Impact.** The potential impacts related to the short and long-term health of preserved trees are discussed in the Draft REIR at pages 204 through 206.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 204 through 206, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM BIO-15.1:** A Tree Preservation Plan shall be prepared by a certified arborist to the satisfaction of the City's Community Development Director for all areas with trees prior to the issuance of any construction-phase permit. The Tree Preservation Plan shall include tree protection measures, including tree protection zones with wood bark mulch, root protection measures, protection zone fencing, pruning in accordance with ANSI A300 practices, and temporary irrigation to all trees in protection zones.

(ii) **MM BIO-15.2:** A certified arborist will monitor construction when work is done around any trees to be preserved. In areas where the construction-phase tree protection measures described in MM BIO-15.1 are not feasible, all trees affected shall be replaced with 15-gallon replacement trees at a ratio based on the size of the tree removed and the mitigation described under MM BIO-14.3 and MM BIO-14.4 will be implemented.

(iii) **MM BIO-15.3:** A certified arborist will review the development areas after all construction has been completed. In areas were improvements associated with development have encroached within 1-1/2 times the diameter of the tree canopy drip line, or trees are otherwise injured or damaged, all trees affected will be replaced with 15-gallon replacement trees at a ratio based on the size of the affected tree.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure BIO-15.1, BIO-15.2, and BIO-15.3 will mitigate impacts to the health of trees to be preserved.

(ii) **Remaining Impacts.** Any remaining impacts related to the health of preserved trees will be less than significant.

E. Cultural Resources

1. Paleontological Resource Impacts

a. **Potential Impact.** The potential impacts of the Specific Plan on paleontological deposits throughout the site are discussed in the Draft REIR at pages 215 through 216.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 216, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM CUL-1.1:** A variety of measures shall be completed during all development activities that include excavation or disturbance of existing ground surfaces, installation of utility lines, or other subsurface trenching, including: redirection of all work within 25 feet of any paleontological resources discovered during project activities to allow for

an assessment by a qualified paleontologist. Upon completion of the assessment, the paleontologist would prepare a report that would be submitted to the City and would document the methods and results and provide recommendations for the treatment of the paleontological resources discovered.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure CUL-1.1 will ensure that the effects of direct or indirect destruction of paleontological resources are mitigated to a less than significant level by requiring the immediate suspension of work if any resources are discovered during construction.

(ii) **Remaining Impacts.** Any remaining impacts related to paleontological resources will be less than significant.

F. Geology and Soils

1. Liquefaction-Induced Settlement

a. **Potential Impact.** The potential impacts associated with settlement during strong seismic ground shaking due to potentially liquefiable soils are discussed in the Draft REIR at page 230.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 230, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-1.1:** Prior to issuance of grading permits, further study will be required to characterize the lateral extent and magnitude of potential liquefaction-induced settlement for design of new structures and improvements within Areas 3 and 4. The results of the investigation shall be submitted to the Director of Public Works for review and approval.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-1.1 will ensure that the effects of exposure to hazards from groundshaking are mitigated to a less than significant level. These

measures contain various provisions, which reduce the possibility of hazards from groundshaking, such as recommendation for rigid foundations designed to tolerate the anticipated total and differential settlements, or deep foundations to support structures on firm soil below potentially liquefiable layers. Additionally, coordination with ACWD prior to beginning any soil improvement measures will ensure impacts on groundwater resources are minimized. Ground improvement techniques may also be used to mitigate liquefaction-induced differential settlement.

(ii) **Remaining Impacts.** Any remaining impacts related to seismically-induced settlement will be less than significant.

2. **Seismically-Induced Lateral Spreading Adjacent to Existing Channels**

a. **Potential Impact.** The potential impacts of seismically induced lateral spreading on adjacent flood control channels are discussed in the Draft REIR at pages 230 through 231.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 230 through 231, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-2.1:** Prior to issuance of building permits, design-level geotechnical investigations for specific site improvements such as residential developments, bridges, or school development shall be completed and submitted to the Director of Public Works for review and approval, once detailed site development plans are available.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-2.1 will ensure that impacts resulting form the liquefiable conditions of on-site soils and the possibility of localized lateral spreading adjacent to the existing flood control channels or Mowry Slough are reduced to less than significant levels.

(ii) **Remaining Impacts.** Any remaining impacts related to seismically-induced lateral spreading adjacent to existing channels will be less than significant.

3. **Settlement Due to Compressible Soils**

a. **Potential Impact.** The potential impacts associated with settlement of compressible soils in Area 4 are discussed in the Draft REIR at pages 231 through 232.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 232, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-3.1:** This mitigation measure provides for alternative settlement mitigation approaches. Settlement due to fill and building loads can be mitigated by supporting lightly loaded structures on rigid foundations designed to resist differential settlement. As an alternative, buildings could be supported on deep foundations. In addition, design ground improvement techniques, such as surcharging, rammed aggregate piers, or soil/cement mixing can be utilized. The settlement mitigation approach shall be reviewed and approved by the Director of Public Works, prior to issuance of grading and building.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-3.1 will ensure that settlement due to fill and building loads is mitigated by attempting to provide rigid or deep foundations that resist differential settlement and by instituting ground improvement techniques to mitigate settlement.

(ii) **Remaining Impacts.** Any remaining impacts related to settlement due to compressible soils in Area 4 will be less than significant.

4. **Settlement of the Stevenson Boulevard Overpass Embankment**

a. **Potential Impact.** The potential impacts associated with the Stevenson Boulevard Overpass Embankment and the potential for settlement are discussed in the Draft REIR at pages 232 through 233.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 232 through 233, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-4.1:** A site-specific investigation shall be prepared for the proposed Stevenson Boulevard Bridge to determine the potential for differential settlement and to formulate a detailed approach to mitigate such settlement. The investigation and proposed measures shall be reviewed and approved by the Director of Public Works prior to issuance of grading and building permits. Bridge foundations shall be designed to account for potential differential settlement, as well as the approached slabs and asphalt pavement sections constructed on the embankments.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-4.1 will ensure that a site-specific plan that accounts for the potential for differential settlement on the project site and addresses the particular issues with the site is prepared.

(ii) **Remaining Impacts.** Any remaining impacts related to settlement of the Stevenson Boulevard Overpass Embankment will be less than significant.

5. **Settlement from Undocumented Fills**

a. **Potential Impact.** The potential impacts associated with development of the Specific Plan and the possible undocumented fill within Areas 3 and 4 are discussed in the Draft REIR at page 233.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 233, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-5.1:** Construction-level evaluation of undocumented fills shall be undertaken as necessary as part of the lot-specific geotechnical evaluation. The undocumented fills would likely need to be over-excavated and recompacted or removed and replaced with engineered fill material prior to site development, subject to approval by the City.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-5.1 will ensure that possible undocumented fill is identified, removed and replaced with engineered fill, where necessary, prior to development.

(ii) **Remaining Impacts.** Any remaining impacts related to settlement from undocumented fills in the Specific Plan area will be less than significant.

6. **Expansive Soils**

a. **Potential Impact.** The potential impacts associated with expansive soils are discussed in the Draft REIR at page 234.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 234, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-6.1:** Provide sufficient reinforcement to slabs-on-grade, which shall be supported on a layer of non-expansive fill; footings shall extend below the zone of seasonal moisture fluctuation. Use of positive drainage away from buildings and improvements, as well as limiting landscaping watering to minimize moisture changes, will limit moisture changes. The Director of Public Works shall review and approve the design-specific geotechnical investigation prior to issuance of building permits.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-6.1 will ensure that adverse impacts associated with expansive soils are mitigated to less than significant levels.

(ii) **Remaining Impacts.** Any remaining impacts related to expansive soils will be less than significant.

7. **Groundwater Impacts**

a. **Potential Impact.** The potential impacts associated with groundwater are discussed in the Draft REIR at pages 234 through 235.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 234 through 235, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-7.1:** Design underground improvements for potential hydrostatic uplift pressures. Groundwater losses due to dewatering shall be measured and the amount of water that may be extracted by dewatering shall be estimated and documented. Substantial groundwater losses due to dewatering may be subject to an ACWD replenishment assessment fee.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-7.1 will ensure that groundwater impacts to grading and underground improvements are mitigated to less than significant levels.

(ii) **Remaining Impacts.** Any remaining impacts related to groundwater will be less than significant.

8. **Soil Corrosion Potential**

a. **Potential Impact.** The potential impacts associated with corrosive soils are discussed in the Draft REIR at page 235.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 235, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM GEO-8.1:** Soil corrosion testing shall be performed in Areas 3 and 4 during future phases of investigation. This testing result shall be reviewed and approved by the Director of Public Works prior to issuance of building permits. Consultation with a corrosion engineer will also be necessary to determine appropriate mitigation measures for site improvements. Special requirements for corrosion protection could be considered to protect metal pipelines, such as cathodic protection or specially coated pipes. In addition, if near-surface soils contain moderate to high levels of soluble sulfates, then buried concrete structures in contact with these soils may require special concrete mix design, such as using Type II cement and a higher

compressive strength or Type V cement, to mitigate impacts from sulfate attack.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure GEO-8.1 will limit the corrosion potential for buried metallic structures, such as metal pipes, by limiting corrosive soils and protecting metallic structures from corrosion.

(ii) **Remaining Impacts.** Any remaining impacts related to corrosive soils will be less than significant.

G. Hydrology and Water Quality

1. Long-Term Impacts to Quality of Stormwater Drainage Runoff

a. **Potential Impact.** The potential impacts related to polluted stormwater drainage runoff are discussed in the Draft REIR at pages 251 through 254 and Final REIR at page 201.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 252 through 254 and Final REIR at page 201, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM HYD-1.1:** Comply with the NPDES permit requirements, the City of Newark's ordinances, policies, and processes, and other applicable local, state, and federal requirements.

(ii) **MM HYD-1.2:** Development projects within the Specific Plan shall include post-construction water quality BMPs that control pollutant levels. Provision C.3 of the Municipal Stormwater Permit is applicable to new development within the Specific Plan Area. The development of the golf course clubhouse shall include applicable post-construction water quality BMPs that control pollutant levels as required under Section C.4 of the NPDES Municipal Stormwater Permit issued by the RWQCB. Golf course maintenance facilities shall be developed and operated to include applicable post-construction water quality BMPs that control pollutant levels.

The use of low impact development (LID) techniques as

required by Section C.3.c shall be emphasized. The City of Newark shall require the golf course operators to prepare, implement, and maintain a SWPPP for all corporation yards, vehicle maintenance, parking areas, and material storage facilities that comply with water quality standards by incorporating all applicable BMPs described in the REIR.

Post-construction water quality treatment BMPs typically will include infiltration basins and trenches, rain gardens, grassy swales, media filters, and biofiltration features. Since the Specific Plan Area is mostly underlain by soils of low permeability and there is a high groundwater table, BMPs that enhance water quality without relying on infiltration are most appropriate.

Water quality source control measures, site design elements, and post-construction treatment measures will be implemented. The transport of turfgrass chemicals shall be minimized by the proposed computerized irrigation system that will be connected to an on-site weather station, which will minimize runoff and percolation to the groundwater table.

The stormwater at the outlets leaving the site shall be sampled on a first flush basis, once a year for the lifetime of the project. Pesticides shall be avoided during periods of expected rainfall and immediately prior to scheduled golf course irrigation. The golf course superintendent shall maintain a log of all pesticide and herbicide purchase and application, which shall be submitted periodically to the City Community Development Director for review.

(iii) **MM HYD-1.3:** BMPs shall be designed in accordance with engineering criteria in the California Stormwater BMP Handbook for New and Redevelopment, or other accepted guidance and designs shall be reviewed and approved by the City prior to issuance of grading or building permits for the roadway or driveways.

(iv) **MM HYD-1.4:** All development projects within the Specific Plan shall implement storm water management program measures, such as street sweeping and litter control, outreach regarding appropriate fertilizer and pesticide use practices, and managed disposal of hazardous wastes. The project proponent shall prepare a clearly defined operations and maintenance plan for post-

construction water quality and quality control measures. The project proponent shall identify the responsible parties and provide adequate funding to operate and maintain stormwater improvements. If lot-level BMPs are accepted by the City as a suitable control measure, the project proponent shall establish a mechanism for enforcement to assure that BMP functioning is being maintained as designed. The project proponent shall also establish financial assurances, as deemed appropriate by the Department of Resource Management, enabling the City to maintain the stormwater improvements should the HOA or other entity disband or cease to perform its maintenance responsibilities.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures HYD-1.1, HYD-1.2, HYD-1.3, and HYD-1.4 will ensure that the effects of polluted runoff are mitigated to a less than significant level. Polluted runoff would be reduced to a less than significant level through the implementation of the Construction General Permit, as it would minimize land disturbance and associated runoff and provide stabilization of disturbed soils. Adherence to BMPs and stormwater management program measures would also maintain stormwater quality. Together, these measures would reduce the effects of polluted runoff to a less than significant level.

(ii) **Remaining Impacts.** Any remaining impacts related to polluted stormwater runoff will be less than significant.

2. **Short-Term Hydrology and Water Quality Impacts**

a. **Potential Impact.** The potential impacts associated with contamination of runoff from construction activities are discussed in the Draft REIR at pages 254 through 256.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 255 through 256, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM HYD-2.1:** Development projects within the Specific Plan shall file a NOI with the SWRCB and prepare a SWPPP prior to issuance of grading permits.

(ii) **MM HYD-2.2:** The SWPPP shall include an erosion control plan that prescribes measures such as phasing of grading, limiting areas of disturbance, designation of restricted-entry zones, diversion of runoff away from disturbed areas, protective measures for sensitive areas, outlet protection, and provision for revegetation or mulching. The plan would also prescribe treatment measures to trap sediment once it has been mobilized, at a scale and density appropriate to the size and slope of the catchment. These measures typically include inlet protection, straw bale barriers, straw mulching, straw wattles, silt fencing, check dams, terracing, and siltation or sediment ponds.

(iii) **MM HYD-2.3:** The Specific Plan developer(s) shall implement BMPs for reducing the volume of runoff and pollution in runoff to the maximum extent practicable during demolitions, site excavation, grading, and construction. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans.

(iv) **MM HYD-2.4:** BMPs shall be implemented in accordance with criteria in the California Stormwater BMP Handbook for Construction, or other accepted guidance and shall be reviewed and approved by the County prior to issuance of grading or building permits.

(v) **MM HYD-2.5:** Specific Plan developer(s) shall identify the SWPPP Manager responsible for proper implementation, maintenance, and performance of the BMPs.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures HYD-2.1, HYD-2.2, HYD-2.3, HYD-2.4, and HYD-2.5 will mitigate the contamination of runoff from construction activities to less than significant levels.

(ii) **Remaining Impacts.** Any remaining impacts related to contamination of runoff from construction activities will be less than significant.

H. Hazards and Hazardous Materials

1. Area 3 Residential Uses Exposure

a. **Potential Impact.** The potential impacts related to the exposure of residential uses in Area 3 to hazardous materials contamination are discussed in the Draft REIR at pages 270 through 271.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 271, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **HAZ-1.1:** Development of a remediation plan.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure HAZ-1.1 will ensure mitigation of residual organochlorine pesticides where residential uses will occur in Area 3 so that future occupants or users of the site are not exposed to contamination in excess of soil cleanup goals developed for the site.

(ii) **Remaining Impacts.** Any remaining impacts related to the exposure of residential uses to hazardous materials contamination in Area 3 will be less than significant.

2. Hazards to Schools

a. **Potential Impact.** The potential impacts related to hazards to schools are discussed in the Draft REIR at pages 271 through 272.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at page 272, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM HAZ-2.1:** Prior to any approval of the potential school site by the Newark Unified School District, the District shall coordinate with DTSC and all available data pertaining to the proposed school site shall be provided to

them, so that an appropriate plan for further site evaluation and/or remediation can be developed. The DTSC's School Property Evaluation and Cleanup Division is responsible for assessing, investigating, and cleaning up proposed school sites for schools that receive state funding for land acquisition or construction. A future elementary school developed on the proposed Area 3 school site would be a public school within the Newark Unified School District and therefore would be subject to DTSC review and approval. Investigation and remediation of the pesticide impacted soil will be required prior to elementary school development. Options for remediation of pesticide impacted soils would be similar to those described for MM HAZ-1.1.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure HAZ-2.1 will ensure that the effects of hazards to schools are mitigated to a less than significant level. First, a further site evaluation shall be coordinated. Then a plan for cleaning-up the site shall be overseen by DTSC. And all of this mitigation shall take effect prior to the development of a school on the site, so as to minimize exposure to hazards.

(ii) **Remaining Impacts.** Any remaining impacts related to hazards to schools will be less than significant.

3. **Area 4 Residential Uses Exposure**

a. **Potential Impact.** The potential impacts related to the exposure of residential uses in Area 4 to hazardous materials contamination are discussed in the Draft REIR at pages 273 through 275.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 273 through 275, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM HAZ-3.1:** Implementation of the measures below will reduce Area 4 hazardous material contamination to residential uses to a less than significant level. The measures below that include additional testing and remediation shall be completed under oversight by the City

and an appropriate regulatory agency, DTSC and/or ACWD, prior to issuance of grading permits.

- Prior to any subsurface drilling activities a drilling permit must be obtained from ACWD.

- If on-site mitigation (such as habitat restoration) will occur in Sub-Area E, the area of the former duck club and associated ponds shall be evaluated for lead from lead shot and former fill soil quality of the duck club ponds shall be evaluated prior to issuance of grading permits for the residential development in Area 4.

- All pesticide impacted soil shall be remediated;

- Additional soil samples shall be collected near existing and known former farm structures to test for residual levels of pesticides and remediate as necessary.

- Soil quality adjacent to on-site wells shall also be analyzed for spilled chemicals including pesticides. Appropriate remediation will be implemented, if necessary. Prior to issuance of a grading permit, the project proponent(s) and ACWD shall identify all abandoned wells within the project boundary. Any wells identified or discovered during construction shall be appropriately destroyed in accordance with ACWD specifications and local standards prior to issuance of a grading permit.

- The unnamed parcel located to the west of the southern terminus of Stevenson Boulevard, shall be further evaluated to assess the current environmental conditions of this area to determine appropriate remediation, if necessary.

- The source and quality of all imported soil to raise the level of the site shall be documented.

- The property owner shall periodically review monitoring data from the TCRDF to assess whether there are any significant changes to the Area 4 conditions. The Perry/Arrillaga property shall be evaluated for soil vapor for contaminants that may have migrated from TCRDF unless monitoring data from the landfill shows that further evaluation is unnecessary.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure HAZ-1.1 will ensure mitigation of residual organochlorine pesticides where residential uses will occur in Area 4 so that future occupants or users of the site are not exposed to contamination in excess of soil cleanup goals developed for the site.

(ii) **Remaining Impacts.** Any remaining impacts related to the exposure of residential uses to hazardous materials contamination in Area 4 will be less than significant.

4. **Proposed Golf Course**

a. **Potential Impact.** The potential impacts related to the exposure of the public, construction workers, or the environment to existing hazardous materials contamination related to the construction and use of the golf course are discussed in the Draft REIR at pages 275 through 277.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 276 through 277, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM HAZ-4.1:** The following measures shall be followed by proper remediation under the authority of the appropriate regulatory agency:

- Soil and ground water quality investigations at the auto wrecking operation properties prior to issuance of demolition permits.

- Any future golf course development activities at the 10-acre Mowry Avenue property shall be coordinated with the City and the appropriate regulatory agency, DTSC and/or ACWD. Additionally, prior to issuance of grading permits, methane monitoring shall be completed.

- The depth and quality of the former fill areas shall be investigated prior to issuance of grading permits.

- Prior to any demolition of the existing buildings (Pick-N-Pull, Ace Auto Wrecker's), an asbestos survey is

required. Removal of potentially friable ACBMS are required prior to building demolition or renovation that may disturb the ACBM.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure HAZ-4.1 will ensure impacts to the golf course are reduced to a less than significant level through early investigation and safe demolition techniques followed by remediation under the authority of the appropriate regulatory agencies.

(ii) **Remaining Impacts.** Any remaining impacts related to the exposure of residential uses to hazardous materials contamination in Area 4 will be less than significant.

5. **Golf Course Operation**

a. **Potential Impact.** The potential impacts related to the exposure of residential uses in Area 4 to hazardous materials contamination are discussed in the Draft REIR at pages 277 through 278.

b. **Mitigation Measures.** The following mitigation measure, discussed in the Draft REIR at pages 277 through 278, is hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM HAZ-5.1:** Development of a golf course operations plan prior to the opening of the golf course that includes elements addressing proper storage, handling, and disposal of chemicals, limited use of chemicals, strict adherence to manufacturer's recommendations and procedures involving chemical applications, application of chemicals only by state-licensed personnel, and use of only short-listed pesticides and herbicides. In addition, the golf course superintendent shall maintain a log of all herbicide and pesticide purchases and application. The proposed gasoline storage tanks will be installed and maintained per City, state, and federal requirements. The proposed golf care barn and electric golf cart batter charging facilities shall be designed, constructed, and managed to prevent buildup of hydrogen gas. Batteries shall be stored in a safe manner in compliance with California Building Code and Fire Code.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measure HAZ-5.1 will ensure from the proposed golf course operation are mitigated to a less than significant level impacts would not create a significant hazard to the public or the environment through reasonably foreseeable upset or accident conditions involving the release of hazardous materials into the environment.

(ii) **Remaining Impacts.** Any remaining impacts related to the release of hazardous materials from the operation of the golf course will be less than significant.

I. Energy

1. Construction Energy Usage

a. **Potential Impact.** The potential impacts related to construction energy usage are discussed in the Draft REIR at pages 326 through 327.

b. **Mitigation Measures.** The following mitigation measures, discussed in the Draft REIR at pages 326 through 327, are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

(i) **MM ENR-1.1:** Utilize local and regional building materials.

(ii) **MM ENR-1.2:** Use of local construction sites for fill material necessary for the development of Area 4.

(iii) **MM ENR-1.3:** Reduce Equipment and vehicle idle times.

(iv) **MM ENR-1.4:** Reduce Vehicle emissions by properly tuning and maintaining equipment.

c. **Findings.** Based on the REIR and the entire record before the City, the City finds that:

(i) **Effects of Mitigation.** Implementation of the mitigations recommended by Mitigation Measures ENR-1.1, ENR-1.2, ENR-1.3, and ENR-1.4 will ensure that the construction of the project does not result in a wasteful and inefficient consumption of energy associated with fuel usage.

(ii) **Remaining Impacts.** Any remaining impacts related to construction energy usage will be less than significant.

V. Findings and Recommendations Regarding Impacts which are Less Than Significant

A. Specific impacts within the following categories of environmental effects were found to be less than significant as set forth in more detail in the REIR.

1. Conflict with Applicable Land Use Plans: The Project's potential impacts related to conflicts with applicable land use plans are discussed on pages 49 through 72 of the Draft REIR and are determined to be less than significant.

2. Loss of Agricultural Potential: The Project's potential impacts related to loss of agricultural lands are discussed on page 72 of the Draft REIR and are determined to be less than significant.

3. Cumulative Land Use Impacts: The Project's potential cumulative land use impacts are discussed on pages 330 through 331 of the Draft REIR and page 202 of the Final REIR and are determined to be less than significant.

4. Impacts to Intersection Level of Service: The Project's potential impacts related to impacts to signalized and unsignalized intersections as discussed on pages 87 through 93 of the Draft REIR and, except for the intersections noted above, are determined to be less than significant.

5. Impacts to the CMA Roadway Network: The Project's potential impacts relating to the CMA roadway network as discussed on pages 93 through 98 of the Draft REIR are determined to be less than significant.

6. Pedestrian and Bicycle Impacts: The Project's potential impacts related to pedestrians and bicycle traffic as discussed on pages 98 through 99 of the Draft REIR are determined to be less than significant.

7. Transit Impacts: The Project's potential impacts related to transit systems are discussed on page 99 of the Draft REIR and are determined to be less than significant.

8. On-site Access and Circulation: The Project's potential impacts related to on-site access and circulation are discussed on pages 100 through 101 of the Draft REIR and are determined to be less than significant.

9. Impacts to Construction and Air Traffic: The Project's potential impacts related to construction and air traffic are discussed on pages 102 through 103 of the Draft REIR and are determined to be less than significant.

10. Local Air Quality: The Project's potential impacts related to localized air quality are discussed on pages 124 through 127 of the Draft REIR and are determined to be less than significant.

11. Objectionable Odors: The Project's potential impacts related to objectionable odors are discussed on page 133 of the Draft REIR and are determined to be less than significant.

12. Airport Noise: The Project's potential impacts related to airport noise are discussed on page 145 of the Draft REIR and are determined to be less than significant.

13. Groundborne Vibration: The Project's potential impacts related to groundborne vibration are discussed on page 145 of the Draft REIR and are determined to be less than significant.

14. Project Generated Noise: The Project's potential impacts related to noise-generating uses and project-generated traffic noise are discussed on page 147 of the Draft REIR and are determined to be less than significant.

15. Impacts to Upland Agriculture, Ruderal Heraceous Field, Developed, and Coastal Scrub Habitat: The Project's potential impacts related to Upland Agriculture, Ruderal Heraceous Field, Developed, and Coastal Scrub Habitat are discussed on pages 172 through 173 of the Draft REIR and are determined to be less than significant.

16. Impacts to Certain Potentially Breeding and Non-Breeding Special Status Wildlife Species and Their Habitats: The Project's potential impacts related to Potentially Breeding and Non-Breeding Special Status Wildlife Species and Their Habitats are discussed on pages 180 through 182 of the Draft REIR and are determined to be less than significant.

17. Impacts to California Tiger Salamander: The Project's potential impacts related to California tiger salamander are discussed on page 188 of the Draft REIR and are determined to be less than significant.

18. Impacts to Wildlife Movement: The Project's potential impacts related to wildlife movement are discussed on pages 199 through 200 of the Draft REIR and are determined to be less than significant.

19. Short-term Impacts to Wildlife during Construction: The Project's potential impacts related to short-term effects to wildlife from construction-associated activities are discussed at page 200 of the Draft REIR and are determined to be less than significant.

20. Cumulative Impacts to Biological Resources: The Project's contribution to potential cumulative biological impacts is discussed at pages365 through 366 of the Draft REIR and is determined to be less than cumulatively considerable.

21. Historic Resources Impacts: The Project's potential impacts related to historic resources are discussed on page 222 of the Draft REIR and are determined to be less than significant.

22. Seismic Impacts: The Project's potential impacts related to seismic activity and fault rupture hazards in particular are discussed on page 229 of the Draft REIR and are determined to be less than significant.

23. Flooding from Levee Failure: The Project's potential impacts related to long-term flooding risks from levee failure are discussed on page 233 of the Draft REIR and are determined to be less than significant.

24. Geologic Hazards from Landslides: The Project's potential impacts related to landslide risks are discussed on page 234 of the Draft REIR and are determined to be less than significant.

25. Long-term and Off-site Flooding and Inundation: The Project's potential impacts related to long-term and off-site flooding and inundation are discussed on pages 244 through 247 of the Draft REIR and are determined to be less than significant.

26. Project Alteration of Drainage Patters Resulting in Increased Flooding or Erosion: The Project's potential impacts related to altering drainage patterns in a manner that would increase flooding or erosion are discussed on pages 247 through 250 of the Draft REIR and are determined to be less than significant.

27. Stormwater Drainage System Capacity Impacts: The Project's potential impacts related to stormwater drainage capacity are discussed on page 250 of the Draft REIR and are determined to be less than significant.

28. Groundwater Impacts: The Project's potential impacts related to groundwater are discussed on page 250 of the Draft REIR and are determined to be less than significant.

29. Violation of Water Quality Standards and Impacts to Wetland Hydrology: The Project's potential to violate water quality standards or impact wetland hydrology are discussed on page 251 of the Draft REIR and are determined to be less than significant.

30. Residential Operations Hazardous Materials: The Project's potential impacts related to emissions or handling of hazardous materials from residential operations are discussed on page 271 of the Draft REIR and are determined to be less than significant.

31. School Siting Issues: The Project's potential impacts related to the siting and construction of the elementary school site in relation to hazardous emissions are discussed on page 272 of the Draft REIR and are determined to be less than significant.

32. Risks due to Accidental Chemical Release: The Project's potential impacts related to potential sources of risks due to accidental chemical release are discussed on pages 278 through 280 of the Draft REIR and are determined to be less than significant.

33. **Visual Significance and Scenic Vistas**: The Project's potential impacts related to general plan elements of visual significance and scenic vistas are discussed on pages 292 through 293 of the Draft REIR and are determined to be less than significant.

34. **Light and Glare**: The Project's potential impacts related to the generation of light or glare are discussed on page 295 of the Draft REIR and are determined to be less than significant.

35. **Public Services Impacts**: The Project's potential impacts related to the provision of public services are discussed on pages 298 through 301 of the Draft REIR and are determined to be less than significant.

36. **Water Supply, Utilities, and Service Systems**: The Project's potential impacts related to demands on water supply, utility or service facilities are discussed on page 305 through 318 of the Draft REIR and pages 201 through 202 of the Final REIR and are determined to be less than significant.

37. **Operational Energy**: The Project's potential impacts related to usage of operational energy is discussed on pages 325 through 326 of the Draft REIR and is determined to be less than significant.

38. **Impacts from the Project on Climate Change**: Potential impacts from the Project on global climate change are discussed on pages 352 through 357 of the Draft REIR and pages 202 through 211 of the Final REIR and are determined to be less than significant.

39. **Cumulative Impacts to Cultural Resources**: The Project's potential contribution to cumulative impacts on cultural resources is discussed on page 366 of the Draft REIR and is determined to be less than cumulatively considerable.

40. **Cumulative Impacts to Hydrology and Water Quality**: The Project's potential contribution to cumulative impacts on hydrology and water quality is discussed on pages 366 through 367 of the Draft REIR and is determined to be less than cumulatively considerable.

41. **Cumulative Impacts to Energy Use**: The Project's potential contribution to cumulative impacts on energy use is discussed on page 367 through 368 of the Draft REIR and is determined to be less than cumulatively considerable.

VI. Findings and Recommendations Regarding Significant Irreversible Changes

Section 21100(b)(2)(B) of CEQA requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the CEQA Guidelines identifies irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The Project's significant and irreversible changes are discussed in the Draft REIR at page 384. The Draft REIR explains that the proposed project will require the use and consumption of nonrenewable resources, such as steel and other metals used to construct the school and residences. Nonrenewable construction materials will also be used during the construction phase including concrete, metals, and plastics. Nonrenewable resources and energy will be consumed during the manufacturing and transportation of building materials, preparation of the site, and construction of the school buildings, residences, and golf course facilities. The operational phase will also consume energy for multiple purposes including cooking, lighting, and electronics. Energy in the form of fossil fuels will be used to fuel vehicles traveling to and from the area. Finally, the Project will be constructed on lands that are mostly undeveloped; the transformation of these lands from an undeveloped/open space character to suburban/urban environment would, from a practical perspective, be an irreversible change.

VII. Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the CEQA Guidelines states that an EIR should discuss "the ways in which the Proposed Project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." Growth can be induced in a number of ways, including through elimination of obstacles to growth, through the stimulation of economic activity within the region, or through precedent-setting action.

The Project's growth inducing impacts are discussed in the Draft REIR at pages 380 through 382. The Project would result in the construction of 1,260 new residential units. The 1992 General Plan assumed a higher level of potential residential growth on the site, up to 2,700 new residential units, which is more than twice the amount of the residential units than is currently being proposed. The current General Plan assumes 1,260 units, however, which matches the number proposed by the Project. The new Stevenson Bridge overcrossing will increase public access into Area 4, but this would not foster new housing into surrounding areas because Area 4 is the western edge of the developable area of Newark, meaning that there is nowhere else for development to occur beyond Area 4. Therefore, the overcrossing making Area 4 accessible would not encourage additional growth beyond what is currently proposed.

Development of the Specific Plan will result in economic growth for the area due to the creation of short-term jobs directly tied to the construction phases of the project. In addition, there will be an indirect increase of workers with businesses with whom the project is engaged in a buyer-seller relationship, primary in retail and services. It is expected that some of these jobs will be filled by local residents, employees, and suppliers already in the Alameda County area and some of the jobs may be filled with people who temporarily transfer to the area during the construction phase. Given that these are temporary jobs, it would be speculative to assume that these jobs would induce substantial new housing or commercial development.

While the proposed Specific Plan would allow less job-producing development than the current General Plan land use designation, the proposed project would result in job growth at the site, with a total job growth of approximately 482 jobs.

The proposed development would generate tax revenues for the City of Newark. The project will require services that would increase expenditures for City departments, but it would not

require the construction of new community facilities. Existing public facilities are adequate to serve the proposed Specific Plan project. The proposed project would include recreational facilities, which will reduce the residential development's demands on existing local parks and recreation. No additional sewer system growth will be induced by the project.

While the proposed development is intended to accommodate planned population growth, the project may indirectly induce some growth in the immediate vicinity of the project site. The golf course or other recreational facilities and residential development could attract additional commercial, support services, and residential development; however, the surrounding area is largely built out.

Attempts to predict where growth will occur are speculative, but based upon the limited possible amount of growth that could occur as a result of the proposed Specific Plan project, the development would not result in a significant growth inducing impact.

VIII. Project Alternatives

A. Background - Legal Requirements:

CEQA requires that EIRs assess feasible alternatives or mitigation measures that may substantially lessen the significant effects of projects prior to approval. Public Resources Code § 21002. With the exception of the "no project" alternative, the specific alternatives or types of alternatives that must be assessed are not specified. CEQA "establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its own facts, which in turn must be reviewed in light of the statutory purpose." *Citizens of Goleta Valley v. City Council* (1990) 52 Cal.3d. 553, 556. The legislative purpose of CEQA is to protect public health, welfare and the environment from significant impacts associated with all types of development, by ensuring that agencies regulate activities so that major consideration is given to preventing environmental damage while providing a decent home and satisfying living environment for every Californian. Public Resources Code § 21000. In short, the objective of CEQA is to avoid or mitigate environmental damage associated with development. This objective has been largely accomplished in the Project through the inclusion of mitigation measures that reduce most of the potentially significant impacts of the Project to a less than significant level.

B. Identification of Project Objectives:

The CEQA Guidelines state that the "range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one of more of the significant effects" of the Project. CEQA Guidelines § 15126(d)(2). Thus, an evaluation of the Project objectives is key to determining which alternatives should be assessed in the EIR.

The primary objective of the Areas 3 and 4 Specific Plan is to provide low density residential, a golf course, and/or recreational facilities, and land for a school for the current and future residents of Newark. Specific project objectives include the following:

- Through a General Plan amendment allow residential uses;
- Provide up to 1,260 units of low density residential uses (4.2 – 8.5 units per acre) in Areas 3 and 4;
- Provide high quality residential uses including a mix of executive housing types;
- Provide up to 189 below market rate housing units that are within the 1,260 total residential units;
- Provide land for an up to 600-student elementary school in Area 3 to serve both the Specific Plan development and neighboring residential;
- Provide vehicle access to Area 4 via a railroad overcrossing at Stevenson Boulevard;
- Provide and contribute toward community recreational facilities;
- Provide park and open space amenities within Areas 3 and 4;
- Provide land for a golf course available to the public;
- If a golf course is found unfeasible, then provide another recreation use that is acceptable to the City.

C. Alternatives Analyzed in EIR:

The CEQA Guidelines state that the "range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects" of the Project. The City evaluated the alternatives listed below by determining the desirability of the alternatives based on a reasonable balancing of the economic, environmental, social and technological factors involved. *See California Native Plant Society v. City of Santa Cruz* (2009) 1177 Cal.App.4th 957, 1001, quoting *City of Del Mar v. City of San Diego* (1992) 133 Cal.App.3d 401, 417.

1. No Project (Continuation of Existing Conditions) Alternative

The No Project (Continuation of Existing Conditions) Alternative is discussed in the Draft REIR at pages 371 through 372. With the No Project (Continuation of Existing Conditions) Alternative, the existing farming and discing of the 78-acre property in Area 3 and approximately 520 acres of Area 4 would continue as long as the property owner(s) continue with this operation. The approximately 30 acres within Area 4 utilized for the two auto dismantler businesses would continue as long as the property owners did not discontinue their operations and allow their conditional use permits to expire.

The No Project (Continuation of Existing Conditions) Alternative would avoid the significant environmental impacts of the project, but it would not result in the enhancement of Area 4 wetland areas that is proposed as mitigation for project impacts, nor would it implement the City's General Plan.

a. **Findings:** The No Project (Continuation of Existing Conditions) Alternative is rejected as infeasible because it is not consistent with and will not achieve any of the Project's objectives.

b. **Explanation:** The No Project (Continuation of Existing Conditions) Alternative meets none of the Project's objectives, as

identified in the Draft REIR and as summarized in section **VIII(B)**, above.

2. No Project (Implementation of the General Plan) Alternative

The No Project (Implementation of the General Plan) Alternative is discussed in the Draft REIR at pages 372 through 373. With the No Project (Implementation of the General Plan) Alternative, the City of Newark General Plan would be implemented.

The General Plan land use diagram designates the 78-acres within Area 3 as Special Industrial. Under the No Project (Implementation of the General Plan) Alternative, the 78-acre property in Area 3 would be developed with an approximate 1.175 million square foot industrial/office business park. According to the General Plan, Area 4 is planned for high-quality low-density residential use with up to 1,260 units, an 18-hole golf course, and open space, with a requirement for preparation of a Specific Plan to guide development on Area 4. The proposed Specific Plan implements the General Plan vision for Area 4; therefore, the proposed project and the No Project (Implementation of Existing General Plan) Alternative are the same for Area 4.

a. **Findings:** The No Project (Implementation of the General Plan) Alternative is rejected as infeasible because it is not consistent with and fails to achieve many of the Project's fundamental objectives. Furthermore, the No Project (Implementation of the General Plan) Alternative is rejected because it would not avoid any impacts compared to the proposed project, and in fact, would result in similar or greater impacts as the proposed project.

b. **Explanation:** The No Project (Implementation of the General Plan) Alternative would not eliminate all environmental impacts associated with the Project, nor as discussed below, would it meet many of the Project's fundamental objectives.

(i) The No Project (Implementation of the General Plan) Alternative does not meet the project objective to provide housing within Area 3;

(ii) The No Project (Implementation of the General Plan) Alternative does not meet the project objective to provide land for an up to 600-student elementary school in Area 3.

3. No Development in Area 4 and Higher Density Area 3 Alternative

The No Development in Area 4 and Higher Density Area 3 Alternative is discussed in the Draft REIR at pages 373 through 374. The No Development in Area 4 and Higher Density Area 3 Alternative would eliminate development within Area 4 and intensify the housing development on Area 3, while retaining the land for a school. This alternative would not include the golf course. The No Development in Area 4 and Higher Density in Area 3

Alternative consists of the same number of residential units as the proposed Specific Plan project, but all the residential units would be located within Area 3. The elementary school would be the same size (up to 600-student capacity) as the proposed project. Area 4 would remain in its current existing condition, as long as the property owner(s) continue with the current agricultural operation.

The No Development in Area 4 and Higher Density Area 3 would eliminate impacts associated with the development of Area 4, including all wetland, marsh, and aquatic habitat and specific status species impacts, as well as cultural resources impacts within Area 4. There would a substantial reduction in the short-term energy usage associated with importing soil to Area 4 because no imported soil would be required under this alternative. While impacts to archaeological resources, geology, hazardous materials, water quality, and visual resources in Area 4 would not occur, impacts related to Area 3 would still occur and all the mitigation measures associated with Area 3 would continue to be required to reduce or avoid impacts. Traffic, air quality, noise, and energy impacts would be similar to the proposed project.

The No Development in Area 4 and Higher Density Area 3 alternative is identified in a Draft REIR at page 378 as one of the two environmentally superior alternatives.

a. **Findings:** The No Development in Area 4 and Higher Density Area 3 Alternative is rejected as infeasible because it is not consistent with and fails to achieve many of the Project's fundamental objectives. This alternative would also still result in significant unavoidable impacts associated with long-term air quality emissions in Area 3. Further, the No Development in Area 4 and Higher Density Area 3 Alternative would also result in densities in Area 3 that are inconsistent with the community's vision and which would create greater aesthetic impacts due to building height and massing, and therefore it is rejected as infeasible.

b. **Explanation:** The No Development in Area 4 and Higher Density Area 3 Alternative would not eliminate all environmental impacts associated with the Project, nor would it meet key Project objectives, as identified in the Draft REIR, and as summarized in section VIII(B), above.

(i) The No Development in Area 4 and Higher Density Area 3 Alternative would not provide for any development in Area 4.

(ii) The No Development in Area 4 and Higher Density Area 3 Alternative would not meet the project objective to provide up to 1,260 units of low density residential uses (4.2–8.5 units per acre) in Areas 3 and 4;

(iii) The No Development in Area 4 and Higher Density Area 3 Alternative would not meet the project objective of providing for the development of a golf course available to the public.

(iv) The No Development in Area 4 and Higher Density Area 3 Alternative does not meet the project objective to provide park and open space amenities within Areas 3 and 4.

4. Reduced Housing Alternative

The Reduced Housing Alternative is discussed in the Draft REIR at pages 374 through 375. The Reduced Housing Alternative anticipates the development within Area 3 would be the same as the proposed project. Approximately 400 single-family units and 189 multi-family units were assumed to be constructed in Area 3 under this alternative. There would be a 120-acre golf course in Area 4 designed to minimize wetland fill and no residential development within Area 4. The Stevenson Bridge overcrossing would be the same as the proposed project in order to provide access to the golf course.

The Reduced Housing alternative would result in lessened traffic; air quality; wetlands, marsh and aquatic habitat and specific status species; and noise impacts, but mitigation would still be required. The Reduced Density Alternative would not avoid the significant unavoidable regional air quality impact of the project. Short-term energy usage associated with importing soil to Area 4 would be substantially reduced because no imported soil would be required under this alternative. Cultural resource impacts also would be decreased in Area 4 through design of the golf course and mitigation measures. The impacts associated with geology, hazardous materials, water quality, and visual resources would be the similar to the proposed project.

The Reduced Housing Alternative is identified in the Draft REIR at page 318 as one of the two environmentally superior alternatives.

a. **Findings:** The Reduced Housing Alternative is rejected as infeasible because it is not consistent with and fails to achieve a key project objective. Further, this alternative fails to reduce biological and cultural impacts in Area 4 to a less than significant level and as such is rejected as infeasible.

b. **Explanation:** The Reduced Housing Alternative fails to meet a fundamental Project objective, as identified in the Draft REIR and as summarized in section VIII(B), above.

(i) The Reduced Housing Alternative does not meet the project objective to provide high quality, low density executive housing within Area 4.

5. No Golf Course Alternative

The No Golf Course Alternative is discussed in the Draft REIR at pages 375 through 376. The No Golf Course Alternative would be the same as the proposed project, in terms of residential and school uses, except the Area 4 golf course component would be replaced with a passive recreation area and habitat restoration. The recreation area could include public trails and wildlife viewing platforms/areas, while the wildlife restoration areas would be protected for restoration by the appropriate public agencies.

The No Golf Course Alternative would result in similar impacts to traffic, air quality, noise, energy cultural resources, geology, hazardous materials, water quality, and visual resources as the proposed project. Impacts associated with importing fill will be the same as the proposed project, as would associated impacts to cultural resources from the placement of fill. There would be some beneficial biological impacts associated with preservation and habitat restoration under the No Golf Course Alternative, as well as avoidance of some biological habitat impacts.

a. **Findings:** The No Golf Course Alternative is rejected as infeasible because it does not meet the project objective of providing a golf course, as anticipated by the City's General Plan. Further, significant unavoidable project impacts including long-term and short-term air quality, cultural resources, and visual impacts would remain under this alternative and therefore it is rejected as infeasible.

b. **Explanation:** The No Golf Course Alternative fails to meet a fundamental Project objective, as identified in the Draft REIR and as summarized in section VIII(B), above.

(i) The No Golf Course Alternative does not meet the General Plan goals and project objectives of providing a golf course within Area 4.

6. Location (Area 2) Alternative

The Location (Area 2) Alternative is discussed in the Draft REIR at pages 376 through 378. This alternative considers the development of the project at another location within the City. The only other location within the City with a similar amount of infill area would be Area 2. Area 2 is located south of Thornton Avenue and west of Willow Street and encompasses 232 acres. The Location (Area 2) Alternative would result in similar traffic impacts. Air quality, noise, and energy would also be similar to the proposed project because the development buildout is assumed to be the same. There would also be impacts associated with importing fill because portions of Area 2 are within the 100-year flood zone. Impacts to cultural resources would be considered the same under this alternative as under the proposed project. Based upon the similar habitat impacts and possible filling of wetlands, the impacts to biological resources are assumed to be similar to the proposed project. The Location (Area 2) Alternative would result in a reduced visual impact compared to the proposed project. Additionally, it is likely there may be hazardous contamination that would require soil and ground water mitigation similar to what is required on the proposed project site.

a. **Findings:** Location (Area 2) Alternative is rejected as infeasible because it is not consistent with and will not achieve many of the Project's fundamental objectives. Additionally, the Location (Area 2) Alternative would likely result in similar traffic, air quality, biological resources, noise, cultural resources, and energy impacts. Further, soil and ground water mitigation similar to what is proposed for the project would likely be required. For these reasons, this alternative is rejected as infeasible.

b. **Explanation:** The Location (Area 2) Alternative fails to meet a fundamental Project objective, as identified in the Draft REIR and as summarized in section VIII(B), above.

(i) The Location (Area 2) Alternative would not meet the General Plan goals and project objectives for providing a golf course because there is not sufficient acreage available within Area 2. Furthermore, the developable land in Area 2 is not available for sale.

IX. Statement of Overriding Considerations

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093, this City adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the Project, as discussed above, and the anticipated economic, social, and other benefits of the Project.

A. Findings and Statement

The City finds and determines that the majority of the significant impacts of the Project will be reduced to less than significant levels by the mitigation measures recommended in these Findings. However, as set forth above, the City's approval of the Project as proposed will result in certain significant adverse environmental effects that cannot be avoided, even with the incorporation of all feasible mitigation measures into the Project. Further, as set forth above, and there are no feasible Project alternatives which would also mitigate or avoid those significant environmental effects.

In light of the environmental, social, economic, and other considerations set forth below, the City chooses to approve the Project because, in its view, the economic, social, technological, and other benefits resulting from the Project will render the significant effects acceptable.

The following statement identifies the reasons why, in the City's judgment, the benefits of the Project outweigh the significant and unavoidable effects. The substantial evidence supporting the enumerated benefits of the Project can be found in the preceding findings, which are herein incorporated by reference, in the Project itself, and in the record of proceedings as defined in Section II(B). Each of the overriding consideration set forth below constitutes a separate and independent ground for findings that the benefits of the Project outweigh its significant adverse environmental effects and is an overriding consideration warranting approval.

The City finds that the Project, as approved, would have the following economic, social, technological, and environmental benefits:

1. It will implement the General Plan's goals for Areas 3 and 4 by approving a Specific Plan for the development of Area 4 with high-quality low-density housing, a golf course, or if not feasible, other recreational facilities, and open space for Area 4.

2. It will result in providing for the reservation of land to the City for the development of a potential new elementary school with a 600 student capacity.

3. It will provide for a wide variety of recreational spaces for the City including a 3-acre park in Area 3, 2.5 acres of parks and trails in Area 4, and a potential golf course or other recreational facility.

4. It will provide up to 1,260 new residential units within Areas 3 and 4. Further, it will ensure that 15% of the new units developed, will be built either on or off-site as

Moderate Income Household units, or, alternately, provide for the payment of in-lieu fees for these affordable housing units. This will help Newark satisfy its Regional Housing Needs Allocation.

5. It will provide for economic growth in the city, both short-term jobs directly tied to the construction phases of the project, and indirectly through an increase of workers with businesses with whom the Project is engaged in a buyer-seller relationship, primarily in retail and services. Further, the proposed elementary school is expected to provide approximately 50 jobs and the proposed golf course approximately 42 jobs. Overall, the REIR estimates that the job growth allowed by the Specific Plan would be approximately 482 jobs.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	TRANSPORTATION			
Impact TRAN-1: Based upon 2014 traffic counts, current approved trip data from the cities of Newark and Fremont, and using the current City of Newark LOS acceptability threshold, the addition of project traffic would cause the intersection of Cherry Street/Mowry Avenue to degrade from a LOS D to an unacceptable LOS E during the AM peak hour.	**MM TRAN-1.1:** Implementation of the following measures would reduce this impact to a less than significant level: To mitigate the project impact at Cherry Street and Mowry Avenue, the intersection would require an additional left turn lane to the westbound Mowry Avenue approach. This mitigation measure would allow the intersection to operate at LOS C during the AM peak hour. This improvement would require the intersection be re-aligned on the eastbound and westbound approaches and extensive modifications to the existing traffic signal. Depending on the final design, it appears that these mitigation measures could be accommodated within the existing right-of-way. Modification of the intersection would be required concurrent with the development of Areas 3 & 4 at the developer's expense. This mitigation measure would return the intersection to LOS D (its LOS standard) during the AM peak hour.	The project developer is responsible for implementing mitigation measures MM TRAN-1.1 concurrent with project construction.	These measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a Certificate of Occupancy, the Community Development Director shall verify this measure is implemented.	Community Development Director
	AIR QUALITY			
Impact AIR-1: Without incorporation of appropriate Transportation Control Measures	**MM AIR-1.1:** The Specific Plan shall incorporate the following measures, which would reduce transportation-related emissions. The measures listed in below are expected to include implementation of appropriate TCMs. Incorporation of these measures would reduce the impact to a less-than-significant level. • Improve existing or construct new bus pullouts and transit stops at	The project applicant is responsible for implementing mitigation measures MM	These measures shall be printed on all construction documents, contracts, and	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
the project would conflict with the 2005 Bay Area Ozone Strategy.	convenient locations along Cherry Street and Stevenson Boulevard. Pullouts shall be designed so that normal traffic flow on arterial roadways would not be impeded when buses are pulled over to serve riders. Bus stops shall include shelters, benches and posting of transit information; • Appropriate bicycle amenities shall be included. This would include bike lane connections throughout the project site. Off-site bicycle lane improvements shall be considered for roadways that would serve the project; • The City and project proponents shall explore and implement feasible means to bring transit or shuttle service to Area 4; • Provide pedestrian sidewalks or paths throughout the project site with convenient access to bus stops along adjacent arterials; • Consider providing pedestrian signs and signalization to make a pedestrian friendly environment. Include convenient pedestrian crossings at strategic areas with count-down signals at intersections that would enhance pedestrian use; • Review landscape plans to ensure that they provide new trees that would shade buildings and walkways in summer to reduce the cooling loads on buildings; • Develop and implement building practices for the project that that are based on energy efficient standards that exceed State building code.	AIR-1.1 concurrent with project construction.	project plans. The Community Development Director shall verify this measure is implemented.	
Impact AIR-3: Based upon the BAAQMD significance thresholds for construction activity, temporary daily emissions of ROG, PM_{10} and $PM_{2.5}$ from truck hauling,	**MM AIR-3.1:** With incorporation of Mitigation Measure 4.2 (MM-4.2), the NOx emissions levels will be reduced by over 33 percent to a less than significant level impact.	During construction, the project contractor shall ensure these measures are implemented.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit within Area 3, the	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
along with emissions from on-site equipment used to move fill material would have emissions below the BAAQMD daily thresholds. Construction activity NOx emissions would be above the significance thresholds Because NOx emissions are above the BAAQMD significance threshold of 54 pounds per day, the effect of these emissions to the air basin would be significant.			developer shall submit a diesel particulate/ $PM_{2.5}$ reduction plan to the Community Development Director for review and approval.	
Impact AIR-4: Without incorporation of construction mitigation measures,	**MM AIR-4.1:** Implementation of the following measures listed below would reduce the air quality impacts associated with grading and new construction to a less- than-significant level. • Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.	During grading and construction, the project contractor shall ensure these	These measures shall be printed on all construction documents, contracts, and	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
development of the Areas 3 and 4 Specific Plan would temporarily expose sensitive receptors to substantial pollutant concentrations.	• Cover all hauling trucks or maintain at least two feet of freeboard. • Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas. • Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads. • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more). • Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles. • Limit traffic speeds on any unpaved roads to 15 mph. • Replant vegetation in disturbed areas as quickly as possible. • Suspend construction activities that cause visible dust plumes to extend beyond the construction site. **MM AIR-4.2:** Measures to reduce diesel particulate matter and PM2.5 from construction shall also be implemented to ensure that short-term health impacts to nearby sensitive receptors are avoided. • All construction related activities within Area 3 shall provide a plan, for approval by the City, demonstrating that the heavy-duty (> 50 horsepower) mobile off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project wide fleet-average that meet U.S. EPA Tier 3 emissions standards, and portable equipment operating on the site for more than two days continuously, will meet U.S. EPA Tier 4 emission standards. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. • Prohibit equipment with dirty emissions. The project shall ensure that emissions from all off-road diesel powered equipment used on the	measures are implemented. During construction, the project contractor shall ensure these measures are implemented.	project plans. Prior to issuance of a grading permit, the developer shall submit a dust control management plan to the Community Development Director for review and approval. The BAAQMD construction dust control measures shall be incorporated in the plan. Prior to issuance of a grading permit within Area 3, the developer shall submit a diesel particulate/ PM2.5 reduction plan to the Community Development Director for review and	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately. This measure means that equipment with continuous dark emissions is in violation of the requirement. • Reduce equipment and vehicle idle times. Diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite. • Reduce vehicle emissions. Properly tune and maintain equipment for low emissions. • Separate equipment and trucks from residences. Avoid staging equipment within 200 feet of residences (including newly built and occupied residences).		approval.	
	NOISE			
Impact NOI-1: Future residential uses developed in Areas 3 and 4 would be exposed to exterior noise levels greater than 60 dBA Ldn, which exceeds the noise and land use compatibility standards contained in the City of Newark's General Plan. Interior noise levels would be expected to exceed 45 dBA Ldn	**MM NOI-1.1:** The following mitigation measures shall be implemented in Areas 3 and 4 to reduce noise impacts to a less-than-significant level: • Noise barriers shall be constructed to reduce noise levels at private use areas along Cherry Street, Stevenson Boulevard, and the railroad tracks. To be effective, the barriers shall be constructed solidly over the entire surface and at the base. Openings or gaps between barrier materials or the ground decrease the reduction provided by a noise barrier. Suitable material for barrier construction shall have a minimum surface weight of three pounds per square foot (such as one-inch thick wood, masonry block, concrete, or metal). Preliminary barrier designs are shown in on Figure 3.4-2. The final design of noise barriers shall be completed during construction-level review when detailed site plans and grading plans are available. • Design of the residential units and educational buildings will be sufficient to adequately reduce interior noise levels to 45 dBA Ldn or lower. Building sound insulation requirements will include the provision of forced-air mechanical ventilation for all new units with direct line of sight to significant transportation noise sources or	During project design, the project contractor shall ensure the noise attenuation measures are incorporated into the project.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of building permits, a project-specific acoustical analysis prepared by a licensed professional shall be	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
without the incorporation of noise insulation features into the future development projects' design.	railroad lines in the project vicinity. Special building sound insulation treatments may be required. These treatments would include, but are not limited to, sound rated windows and doors, sound rated wall constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what treatments are necessary would be determined on a unit-by-unit basis. The results of the analysis, including the description of the necessary noise control treatments to achieve acceptable noise levels inside the living units, shall be submitted to the City along with the building plans and will be reviewed and approved by the Community Development Director prior to issuance of a building permit.		submitted to the Community Development Director for review and approval. Prior to issuing a Certificate of Occupancy, the Community Development Director will verify the approved noise attenuation measures were incorporated into the project.	
Impact NOI-2: Without incorporation of construction mitigation measures, development of the Areas 3 and 4 Specific Plan would result in significant temporary noise impacts.	**MM NOI-2.1:** Future development of the Areas 3 and 4 Specific Plan will include the following construction-noise mitigation measures, to reduce noise impacts from project construction to a less-than-significant level. • Restrict noise-generating activities at the construction site or in areas adjacent to the construction site to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and between 8:00 a.m. to 5:00 p.m. on Saturdays. Construction shall be prohibited on Sundays and holidays. • Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Unnecessary idling of internal combustion engines should be strictly prohibited. • Locate stationary noise generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary	The project contractor shall ensure the construction noise mitigation measures and management plan are implemented during all phases of development.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the developer shall submit to the Community Development Director for	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	noise generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA. • Utilize "quiet" air compressors and other stationary noise sources where technology exists. • Route all construction traffic to and from the project site via designated truck routes where possible. Prohibit construction related heavy truck traffic in residential areas where feasible. • Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. • The contractor shall prepare and submit to the City for approval a detailed construction plan identifying the schedule for major noise-generating construction activities. • Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.		review and approval, the detailed construction noise attenuation plan. The noise disturbance coordinator shall ensure the construction noise mitigation measures are implemented.	
BIOLOGICAL RESOURCES				
Impact BIO-1: The project would result in the loss of up to 85.6 acres of wetland/ marsh/aquatic habitat in Area 4. This would result in a substantial adverse effect on riparian habitat and	**MM BIO-1.1:** Temporary disturbance to and permanent loss of all wetland and aquatic habitat in Area 4 will be avoided to the maximum extent feasible. All temporary staging areas and construction access roads, if necessary, will be located away from seasonal wetland and aquatic habitat abutting development areas will be clearly demarcated with Environmentally Sensitive Area fencing to avoid inadvertent disturbance during construction activities. Grading plans will be designed to avoid permanent impacts to wetland and aquatic habitat. Either Mitigation Measure MM BIO-1.2A or MM BIO-1.2B, described below, shall be implemented.	Environmentally Sensitive Area shall be designated by a qualified biologist and fencing shall be installed prior to issuance of a grading permit.	All measures shall be printed on all construction documents, contracts, and project plans.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
on federally protected wetlands through the loss of these habitats. At the time project-specific applications are proposed for residential development in Area 4, the detailed plans will be subject to tiered environmental review, in conformance with CEQA Section 21094, including more detailed evaluation of wetland impacts and identification of mitigation measures.	**MM BIO-1.2A:** To offset impacts to the wetland and aquatic habitat in Area 4, the future project proponent(s) will utilize a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off site. The on-site component of the mitigation shall include creation of wetland and aquatic habitat within upland habitat that is currently disked and graded within Area 4 and will enhance portions of the remaining areas of agricultural field/seasonal wetland habitat within Area 4, as described below. Compensatory mitigation for impacts to these habitats shall consist of two parts: (1) creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an acreage ratio of 1:1 (habitat created/enhanced: habitat impacted) to prevent any net loss of habitat functions or values, and (2) enhancement of existing seasonal wetland habitat that is currently within agricultural production (mapped as agricultural field/seasonal wetland habitat) at an acreage ratio of 0.5:1 (such enhancement will include cessation of farming activities, seeding with appropriate seasonal wetland plant seeds, and may include minor earth moving activities). In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted). A detailed mitigation plan shall be developed by a qualified biologist under contract to the landowner/applicant requesting permits for wetland fill (prior to grading). This plan will be submitted to and approved by appropriate regulatory agencies and the City of Newark prior to the initiation of grading within wetlands. The detailed mitigation plan will outline the necessary steps for mitigation; it will include a plan view graphic showing the target mitigation activities, a brief seeding plan (species palette and application techniques) to re-vegetate the areas currently in agricultural production, and a monitoring and reporting plan with success criteria. The plan will include a recommended timeline for mitigation activities and the establishment of	The fencing shall be maintained and remain in place until construction is complete. If off-site wetland habitat is acquired, the developer shall acquire the wetland habitat, prior to the issuance of a grading permit. If the on-site creation and enhancement of wetland habitat is proposed, the project contractor shall implement the site-specific mitigation plan during project construction.	If off-site wetland habitat is acquired, the developer shall provide proof of the acquired habitat to the Community Development Director, prior to issuance of a grading permit. If the on-site mitigation is proposed, the developer shall submit a site-specific mitigation plan to the Community Development Director for review and approval, prior to issuance of a grading permit; prior to issuing a Certificate of Occupancy, the City will verify the approved onsite mitigation plan is implemented.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	seeded native species. The mitigation work will begin in the same construction season as the initiation of grading within wetlands or aquatic habitats, and mitigation site grading will be completed within one year of initiation (or as otherwise determined by resource agency permits). Potential biological impacts associated with grading activities required for the mitigation of the seasonal wetlands have been considered during this current Specific Plan CEQA impact analysis and no additional significant impacts have been identified. All created/enhanced habitats will be protected in perpetuity through a conservation easement, deed restriction, conveyance to a qualified land trust or the Refuge, or through equivalent means. **MM BIO-1.2B:** Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. offsite) or other private lands. These off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements. The off-site component of the wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed, or as otherwise approved by the USACE and RWQCB. **MM BIO-1.3:** Monitoring and Performance Standards: Annual monitoring of the mitigation sites by a qualified biologist will determine if the project has met its mitigation obligation. Attainment of the quantitative performance and final success criteria outlined below will indicate that the mitigation site is well on its way towards meeting the long-term habitat goals with little chance of failure. When the final success criteria is met, a final report shall be submitted to the agencies for approval. Furthermore, the monitoring program is designed to provide feedback to ensure a successful restoration project. The performance criteria are based on vegetation trends observed at comparable restoration		Annual monitoring reports will be submitted to the Community Development Director.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	projects. The wetland mitigation sites shall be monitored for a 5-year period or until attainment of the final success criteria. During Years 1, 2, 3, and 5 the monitoring results shall be compared to performance criteria for vegetation establishment. Failure to meet the performance criteria will trigger an evaluation of the cause of poor performance and implementation of remedial actions. If the final success criteria have not been met, remedial actions shall be required and monitoring will continue until the final success criteria have been achieved. Monitoring of performance criteria will evaluate the extent to which the wetland mitigation site is incrementally developing high-quality wetland habitat values. Furthermore, this information shall be utilized in the maintenance program. Percent cover of wetland indicator species shall be monitored in Years 1, 2, 3, and 5 via quadrat sampling. At Years 2, 3, and 5 the percent cover values will have shown steady trends towards, or will have met the percent cover success criteria of wetland indicator species. The percent cover performance criteria for the mitigation site will be 15% for year 1, 35% for year 2, and 60% for year 3. No performance criterion for percent cover are set for Year 1 as cover will be limited to plantings. However, percent cover will still be quantified in Year 1 to obtain a baseline. Final success criteria will be used to determine if the mitigation goals have been met. Attainment of the final goals will indicate that the on-site mitigation is well on its way towards meeting the long-term habitat goals with little chance of failure. The performance of the mitigation site will be measured during the monitoring period to assess site development and influence management. Percent cover will be used as the primary quantitative indicator of successful establishment of wetland habitat. The final success criterion for percent cover is 60% cover of native wetland indicator species throughout			

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	the created, restored, and enhanced tidal wetland areas. An informal wetland delineation of the created jurisdictional habitats shall begin 3 years following site construction. The mitigation will be considered a success if the informal wetland delineation reveals that the requisite mitigation of wetlands was created. If the requisite acreage is not achieved in Year 3, a wetland delineation shall be undertaken at the site until the necessary wetland acreage is achieved or contingency measures are accepted by the agencies.			
Impact BIO-2: Development within Area 4 would result in substantial adverse effects on federally protected wetlands (seasonal wetlands) and associated special status species due to altering the hydrology on the project site.	**MM BIO-2.1:** Stormwater runoff for the proposed residential development and golf course within Area 4, shall continue to drain, post-project, from multiple discharge points and the velocity of discharge into the wetlands shall be designed to prevent erosion and channelization. This includes avoiding single-point source of water discharges from the proposed development. Rather, simulation of natural flow through a more dispersed discharge of collected runoff shall be designed for movement of water from hardscape within developed features into wetlands surrounded by or adjacent to development such that the existing hydrologic condition is not substantially changed. For every seasonal wetlands to be preserved that fronts the development envelope that is smaller than (1) acre, as shown on the habitat map (Figure 2.4-1), there will be at least one discharge point of stormwater flows and nuisance flows. For wetlands greater than one (1) acre there shall be a minimum of three (3) discharge points separated by no less than 200 feet and situated along the upslope perimeter of the wetlands. For each of the seasonal wetlands to be preserved, stormwater runoff and nuisance flows shall be designed to incorporate grassy swales, retention basins, and energy dissipaters to control discharge velocities in order to prevent erosion at the discharge point within wetlands and to prevent channelization. Channel erosion at each of the outfall discharge points draining into seasonal wetlands shall be monitored annually for the first five (5) years. If any channel erosion is noted, remedial measures shall be	During project design, the project civil engineers shall ensure there are multiple stormwater discharge points in order to meet the requirements of MM BIO-2.1 through MM BIO-2.5. The project contractor shall ensure these measures are incorporated into all plans and implemented during construction of the project.	All measures shall be printed on all construction documents, contracts, and project plans. The Community Development Director and Public Works Director shall review the project plans to ensure these measures are incorporated into the project. Annual monitoring reports will be submitted to the Community	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	taken to incorporate additional suitable water control structures to prevent further erosion. Once these remedial measures are implemented, the five (5) year monitoring phase will be restarted at that location. **MM BIO-2.2:** All grading and culvert sizing and installation shall be designed to ensure adequate drainage without draining wetlands more quickly than currently occurs and to allow water to pond for durations similar to the current existing condition. **MM BIO-2.3:** To prevent any significant decrease in the amount of water entering preserved wetland habitats in Area 4 during the winter months, native grass species shall be used in the proposed golf course. A species list for use on the golf course (including outside of the turf area) shall be developed by a qualified biologist in concert with golf course designers and approved by the City of Newark. **MM BIO-2.4:** The following measures shall be implemented to minimize any perennial ponding within the existing seasonal wetlands. • Nuisance runoff from the proposed residential and golf course uses shall be minimized and controlled to reduce their input into the remaining natural habitat during the dry season. • Water use shall be limited to the minimum necessary for the golf course and landscaping, including that under private ownership, to decrease summer nuisance flow to negligible amounts and approximate the existing condition. • Drought tolerant plant species shall be planted within landscaped areas, including private lawns, which do not require water during the summer months. Where this is not feasible, proper irrigation using only the amount of water that can be taken up by the plants shall be implemented. • Water shall be applied at dawn to limit evaporation, thereby limiting the amount of water that must be applied and reducing the possibility of over flow from the site as evapotranspiration takes place during the day. • Implement the following University of California Integrated Pest	A qualified geomorphologist or hydrologist shall annually monitor the outfall discharge points. A qualified biologist shall assist in the development of the golf course planting. Incorporated during landscape design and stormwater design by landscape architect and civil engineer. Incorporated into golf course landscape management plan	Development Director. Community Development Director will approve the design and planting plan for the golf course.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	Management Plan recommendations to maximize irrigation efficiency: ▪ Irrigate deeply, but infrequently. ▪ Irrigate early in the morning. At this time water loss from evaporation is minimal, distribution is usually good because of good water pressure and limited wind, and the risk of disease development is reduced. ▪ Avoid runoff by matching water application rates to soil infiltration rates (rate water enters soil) or by pulsing (i.e., applying a portion of the water, waiting for it to be absorbed in the soil, and then applying the next portion). ▪ Use less water in shaded areas than in open sun. ▪ Remove thatch in spring if it is more than 0.5 inch thick. ▪ Do not over fertilize; fertilize moderately according to the individual species and location. **MM BIO-2.5:** Any remaining dry-season nuisance flows shall be retained within the development footprint by grading the site to drain internally, particularly within the golf course area, or by constructing berms or swales to confine these flows to the site to infiltrate or evaporate rather than flowing overland to salt marsh habitat.	Completed by project civil engineer		
Impact BIO-3: The project would result in significant impacts to federally protected wetlands in Area 4, including salt marsh habitat and associated special status species due to an increase in freshwater flows as a result of the	**MM BIO-3.1:** Implementation of mitigation measures MM BIO-2.1 through 2.5 described above will reduce the Specific Plan's impacts in Area 4 associated with the discharge of freshwater runoff into salt marsh habitats to a less than significant level.	Same as above.	Same as above.	Same as above.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
project.				
Impact BIO-4: The project would result in the loss of burrowing owl habitat, a California species of special concern, and disturbance to existing owls on-site. This is a significant impact.	*Area 3:* Any development activities within Area 3, Sub-Area A will require implementation of mitigation measures MM BIO-4.1 through MM BIO-4.3 to ensure against the possibility of take of individual owls, as applicable. *Area 4:* Any development activities within Area 4 will require implementation of mitigation measure MM BIO-4.1 through MM BIO-4.6 below to ensure against the possibility of take of individual owls. **MM BIO-4.1:** Pre-construction surveys for burrowing owls shall be completed in areas planned for fill placement and construction areas in general conformance with the California Burrowing Owl Consortium's and the CDFW Staff Report (2012) protocols. Because owls are known to occupy the site, these surveys shall be completed no more than 15 days prior (rather than 30 days prior, as per the Consortium's protocol) to the start of importing fill and construction to minimize the probability of immigration of owls between the time surveys are completed and the initiation of grading. If the initial disturbance is followed by periods of inactivity exceeding 15 days, or if the development is phased spatially and/or temporally such that an area in which construction activities are to commence has not been disturbed by construction activities within the prior 15-day period, a new burrowing owl pre-construction survey will be completed prior to the start of disturbance. If burrowing owls are detected on or within 250 ft of the site, Mitigation Measures MM BIO-4.2 and MM BIO-4.3, described below, shall be implemented. **MM BIO-4.2:** For burrowing owls located during the non-breeding season (generally 1 September to 31 January), a 150-ft buffer zone will be maintained around the occupied burrow(s) if practicable. If such a buffer is not practicable, then a buffer adequate to avoid injury or mortality of owls will be maintained, or the birds will be evicted as described for Mitigation Measure MM BIO-4.3 below. During the breeding season	The project contractor shall hire a qualified ornithologist to complete the pre-construction burrowing owl surveys.	All measures shall be printed on all construction documents, contracts, and project plans. A report prepared by a qualified ornithologist documenting the results of the survey shall be submitted to the Community Development Director for review and approval, prior to the start of construction.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	(generally 1 February to 31 August), a 250-ft buffer, within which no new activity will be permissible, will be maintained between project activities and occupied burrows. Owls on site after 1 February will be assumed to be nesting unless direct observations indicate otherwise. This protected buffer area will remain in effect until 31 August, or based upon monitoring evidence, until the young owls are foraging independently or the nest is no longer active. **MM BIO-4.3:** If construction will directly impact occupied burrows, eviction of owls may occur outside the nesting season to prevent injury or mortality of individual owls. No burrowing owls shall be evicted from burrows during the nesting season (1 February through 31 August) unless evidence indicates that nesting is not actively occurring (e.g., because the owls have not yet begun nesting early in the season, or because young have already fledged late in the season). Relocation of owls during the non-breeding season will be completed by a qualified biologist using one-way doors, which should be installed in all burrows within the impact area and left in place for at least two nights. These one-way doors will then be removed and the burrows backfilled immediately prior to the initiation of grading. **MM BIO-4.4:** To reduce impacts of the Specific Plan on the local (South Bay) burrowing owl population in Area 4, habitat shall be preserved and managed for burrowing owls on and/or off-site if and when development occurs in Area 4. California burrowing owl mitigation guidelines recommend that 6.5 acres of foraging habitat be preserved and managed per occupied burrowing owl burrow (whether by a pair or singly) in mitigation sites. Based upon the existing quality of burrowing owl habitat on the site and the impact to baseline conditions, future developers of Area 4 shall provide 26 acres of mitigation habitat. This habitat will be preserved and managed specifically for use by burrowing owls. Development on Area 4 is likely to occur in phases, and provision of burrowing owl habitat mitigation will likewise be phased according to the extent of habitat impacts. Habitat mitigation will be provided for any	Burrowing owl mitigation habitat shall be designated by a qualified ornithologist and secured prior to issuance of any grading permits in Area 4	Community Development Director and CDFG will review and approve mitigation habitat	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	residential or recreational development on Area 4. Residential or recreational development affecting less than 100 acres will require mitigation for two pairs of owls, or 13 acres of habitat mitigation on-site and/or off-site. Residential or recreational development equaling or exceeding 100 acres, mitigation for two additional pairs of owls will be required, for a total of 26 acres of habitat mitigation. A combination of on-site and off-site mitigation is acceptable. However, on-site mitigation shall contribute toward the habitat mitigation requirement only if at least 6.5 acres of contiguous burrowing owl habitat is preserved and managed on-site. Either Mitigation Measure MM BIO-4.5A or MM BIO-4.5B, described below, shall be implemented. **MM BIO-4.5A:** If on-site (within Area 4) habitat is to be preserved, a mitigation and monitoring plan detailing the areas to be preserved for owls; the methods for managing on-site habitat for owls and their prey; methods for enhancing burrow availability within the mitigation site (potentially including the provision of artificial burrows, although long-term management for ground squirrels will be important as well); measures to minimize adverse effects of development on owls on-site; and a monitoring program and adaptive management program shall be prepared by a qualified biologist and submitted to the City of Newark and the CDFW for review and approval. At least 50 percent of the mitigation area must consist of upland habitat suitable for use by burrowing mammals, and no wetlands supporting tall vegetation shall be included within the mitigation site. The mitigation area must be contiguous with habitat that is permanently preserved as open space to avoid having the site surrounded by development in the future. The mitigation area will be protected in perpetuity through a conservation easement, deed restriction, conveyance to a qualified land trust or the Refuge, or through equivalent means.	A mitigation and monitoring plan and adaptive management program shall be completed by a qualified biologist hired by the project proponents.	Community Development Director and CDFG will review and approve plan and program.	
	MM BIO-4.5B: If the project proponent elects to mitigate off-site, such mitigation may take the form of habitat preservation and management (in which case all the monitoring and habitat requirements in the preceding paragraphs would apply) or the purchase of credits in an off-site mitigation	For off-site habitat		

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	bank. Because the nearest burrowing owl mitigation banks are located outside of the South Bay, this mitigation may occur outside the region. Unless at least 13 acres of burrowing owl habitat mitigation occurs on-site, some on-site enhancements shall also be made to reduce impacts of the project on the local (South Bay) burrowing owl population. Such enhancements shall include the provision of artificial burrow complexes at the edge of the golf course or recreation area or on the outboard side of levees on the site and management of at least portions of levee side slopes around these burrow complexes to provide suitable conditions for burrowing owls and ground squirrels (e.g., periodic mowing to maintain short vegetation). If less than 13 acres of on-site habitat mitigation is provided, then: • Residential or recreational development affecting less than 100 acres shall require the provision of two artificial burrow complexes. • Residential or recreational development equaling or exceeding 100 acres, shall require two additional burrow complexes be provided (for a total of four). These burrow complexes and the vegetation around them, shall be maintained regularly to maintain suitable on-site conditions for nesting and roosting owls. Given the extent of natural habitat with short vegetation, and the continued presence of seasonal wetlands on much of Area 4, providing and maintaining burrows for use by owls is expected to maintain some burrowing owl presence on the site even if most or all of the owl habitat mitigation occurs off-site. **MM BIO-4.6:** As described in greater detail under Mitigation Measure MM BIO-9.2 below, signage shall be placed in appropriate locations on the golf course or recreation area to prohibit golfers/visitors from entering areas where the artificial burrow complexes will be located. If development occurs on Area 4, signage will be placed along the ACFC&WCD Line D levees and the Mowry Slough levee to instruct recreational users of these levees against leaving the levee tops to protect sensitive species such as the burrowing owl.	preservation: A mitigation and monitoring plan and adaptive management program shall be completed by a qualified biologist hired by the project proponent(s). For on-site enhancements: a qualified biologist hired by the project proponent(s) shall implement the burrowing enhancements. Signage shall be implemented by golf course/recreatio		

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	MM BIO-4.7: Indirect effects of development could include an increase in non-native and urban-adapted native species, and an increase in domestic animals such as cats and dogs, that could prey on more sensitive native species in the on-site conservation areas. To reduce this effect, a predator management program will be developed and implemented. This program will focus on education of occupants of the new residential areas regarding measures to minimize the potential for subsidizing predator species and to minimize the potential effects of pets on sensitive species and enforcement of the program's measures, and restrictions on certain activities that could increase predation of sensitive species. The program will include, at a minimum, the following: • Feeding pets outdoors will be prohibited so that pet food does not attract or subsidize the diets of nuisance species. • Pets will be prohibited from ranging freely (off-leash dogs will be prohibited in conservation areas and no free-roaming outdoor cats will be permitted), to prevent their entry into sensitive species habitat. • All food waste will be contained so that it does not attract or subsidize the diets of predators. Any neighborhood association established for new residential areas will be responsible for disseminating this information, and the neighborhood association and City will be responsible for enforcing the program.	n developer prior to start of operation to the public. A predator management program shall be prepared by a qualified biologist. It shall be implemented and enforced through the neighborhood association or similar program and City of Newark.		
Impact BIO-5: Loss of eggs or young peregrine falcons, a species protected by the Migratory Bird Treaty Act	**MM BIO-5.1:** Construction, including any tower modifications and/or replacement in Area 4, shall occur during the non-breeding season (1 September to 31 January), to the maximum extent possible. **MM BIO-5.2:** If construction must commence between 1 February and 31 August, then pre-construction surveys for nesting peregrine falcons shall be completed by a qualified ornithologist to ensure that no nests will	The project contractor shall hire a qualified ornithologist to complete the pre-construction peregrine falcon	All measures shall be printed on all construction documents, contracts, and project plans.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
(MBTA) and threatened under the California Endangered Species Act (CESA) would result in a significant impact.	be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all power-line towers within 300 feet of impact areas for nests. If no peregrine falcon nests are detected within the Specific Plan area during this survey, further measures are not necessary. The survey results shall be provided to the Community Development Director for review and approval prior to the start of grading and construction. **MM BIO-5.3:** If an active nest is found within 300 feet of any construction activity, a 300-foot buffer, within which no new development-related activity will be permissible, will be maintained between development activities and the occupied nest. This protected area will remain in effect until the young falcons have fledged or the nest is no longer active.	surveys.	A report prepared by a qualified ornithologist documenting the results of the survey shall be submitted to the Community Development Director for review and approval, prior to the start of construction.	
Impact BIO-6: The project could result in significant impacts to nesting colonies of tricolored blackbirds, a California species of special concern.	**MM BIO-6.1:** Construction shall commence during the non-breeding season (approximately 1 April through 31 July for this species), to the maximum extent possible. **MM BIO-6.2:** If construction must commence between 1 April and 31 July, then pre-construction surveys for nesting tricolored blackbirds will be completed by a qualified ornithologist to ensure that no nests will be disturbed during Specific Plan implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities. During this survey, the ornithologist will inspect all potential breeding habitat within 400 feet of impact areas for nests. If no tricolored blackbird colonies are detected within the Specific Plan area during this survey, further measures are not necessary. **MM BIO-6.3:** If an active colony is found within 400 ft of any construction activity, a 400-ft buffer, within which no new development-	The project contractor shall hire a qualified ornithologist to complete the pre-construction tricolored blackbird surveys.	All measures shall be printed on all construction documents, contracts, and project plans. A report prepared by a qualified ornithologist documenting the results of the survey shall be submitted to the	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	related activity will be permissible, will be maintained between development activities and any occupied nests. This protected area shall remain in effect until the young have fledged or the colony is no longer active.		Community Development Director for review and approval, prior to the start of construction.	
Impact BIO-7: The project could result in significant impacts to nesting colonies of pallid bats, a California species of special concern, and Yuma myotis bats; a rare species in the South Bay.	**MM BIO-7.1:** Survey for roosting bats shall be completed prior to the removal of any building or tree with potential for day-roosting by bats, or prior to the initiation of any construction activities within 250 ft of such potential roost sites. The survey shall be completed by a qualified bat biologist (i.e., a biologist holding a CDFW collection permit and a Memorandum of Understanding with CDFW allowing the biologist to handle and collect bats). If suitable roost sites are found but a visual survey is not adequate to determine presence or absence of bats (which would be particularly likely in the case of potential roost trees), acoustical equipment will be used to determine occupancy. This survey shall be completed prior to the beginning of the breeding season (i.e., prior to 1 March) in the year in which construction or demolition in a given area is scheduled to occur so that adequate measures can be implemented, if necessary, to evict the bats during the non-breeding season. The survey results shall be provided to the Community Development Director for review and approval prior to the start any construction related activities. **MM BIO-7.2:** Because the surveys in Mitigation Measure MM BIO-7.1 will be completed prior to the breeding season, several months may pass between that survey and the initiation of construction or demolition in a given area. Therefore, a second pre-demolition/pre-construction survey for roosting bats, following the methods described above, shall be completed within 15 days prior to the commencement of these activities in a given area to determine whether bats have occupied a roost in or near the development impact areas. This survey will be facilitated considerably by information (e.g., on potential roost trees) gathered during the previous survey. If bats are found to be roosting, additional mitigation as follows must be implemented.	Prior to removal of any structures or trees or prior any grading/ construction activities within 250 feet of a structure or tree, the project contractor shall hire a qualified bat biologist to complete the pre-construction roosting bat surveys. Within 15 days prior to the start of demolition or construction, a pre-demolition/ pre-construction survey shall be completed by a qualified bat biologist hired by the project	All measures shall be printed on all construction documents, contracts, and project plans. A report prepared by a qualified bat biologist documenting the results of the survey shall be submitted to the Community Development Director for review and approval, prior to the start of construction.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	MM BIO-7.3: If a maternity roost of any bat species is found, the bat biologist shall determine the extent of a construction-free buffer around the active roost that will be maintained. This buffer would be maintained from 1 March until the young are flying, typically after 31 August. **MM BIO-7.4:** If a roost of any kind is found in an area (e.g., a building or tree) that will not be disturbed by construction, or that can be avoided, the roost structure will not be impacted. **MM BIO-7.5:** If a day roost is found in a building, or in a tree that is to be completely removed or replaced, individual bats will be safely evicted under the direction of a qualified bat biologist. Eviction of bats will occur at dusk, so that bats will have less potential for predation compared to daytime roost abandonment. Eviction will occur between 1 September and 31 March, outside the maternity season, but will not occur during long periods of inclement or cold weather (as determined by the bat biologist) when prey are not available or bats are in torpor. If a day roost is found within a building, eviction will occur by opening the roosting area to allow air flow through the cavity. Demolition may then follow no sooner than the following day (i.e., there must be no less than one night between initial disturbance for air flow and the demolition). This action should allow bats to leave during dark hours, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight. If feasible, one-way doors will also be used to evict bats from tree roosts. If use of a one-way door is not feasible, or the exact location of the roost entrance in a tree is not known, the trees with roosts that need to be removed will first be disturbed by removal of some of the trees' limbs not containing the bats. Such disturbance will occur at dusk to allow bats to escape during the dark hours. These trees would then be removed the following day. All of these activities will be performed under the supervision of the bat biologist. **MM BIO-7.6:** If a day roost for pallid bats or Yuma myotis will be impacted, an alternative bat roost structure will be provided. The design	contractor. Between 1 March to 31 August a construction-free buffer shall be maintained by project contractor if a maternity roost is found.		

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	and placement of this structure will be determined by a qualified bat biologist based on the location of the original roost and which species is located. This bat structure will be erected at least one month (and preferably a year or more) prior to removal of the original roost structure. This structure will be checked during the breeding season for up the three years following completion of the development, or until it is found to be occupied by bats, to provide information for future development projects regarding the effectiveness of such structures in minimizing impacts to bats.			
Impact BIO-8: Project development would result in significant impacts due to the loss of federally and state listed endangered salt marsh harvest mouse and California species of special concern salt marsh wandering shrew individuals and habitat.	With the exception of trapping that previously occurred in the vicinity of the former Pintail Duck Club, it is unknown if any trapping that has been completed to determine the presence or absence of salt marsh harvest mice or salt marsh wandering shrews in specific portions of the Specific Plan area. In the absence of protocol-level presence/absence surveys, presence shall be assumed in the pickleweed-dominated locations. Incorporation of the following measures will reduce salt marsh harvest mouse and salt marsh wandering shrew individual and habitat impacts to a less than significant level: **MM BIO-8.1:** Temporary disturbance to and permanent loss of salt marsh harvest mouse and salt marsh wandering shrew habitat shall be avoided to the maximum extent practicable. Although avoidance of wetland impacts was previously described, further attempts to avoid impacts to pickleweed-dominated habitats shall be made. Prior to the issuance of building permits, all temporary staging areas and construction access roads shall be located away from suitable habitat for these species and limits of all wetlands that are to be avoided will be clearly demarcated by a qualified biologist with Environmentally Sensitive Area fencing to avoid inadvertent disturbance of any habitat outside of the designated construction areas during construction activities. **MM BIO-8.2:** Prior to issuance of grading permits and under the supervision of a qualified biological monitor, who is permitted by the	The project contractor shall hire a qualified biologist to complete these measures prior to grading the site and/or the onset of building activities.	All measures shall be printed on all construction documents, contracts, and project plans. A report prepared by a qualified biologist documenting the completion of these measures shall be submitted to the Community Development Director for review and approval, prior to the issuance of grading and/or building	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	USFWS and CDFW to move salt marsh harvest mice out of the construction area, all salt marsh harvest mouse/wandering shrew habitat within the construction area shall be removed by hand (e.g., including weed-whacker if, with USFWS and CDFW approval, such equipment is used in such a way as to avoid impacting individual mice/shrews) within a given area of harvest mouse/wandering shrew habitat. Vegetation requiring hand removal will be limited to pickleweed and other associated plants, such as saltgrass or bulrush, within pickleweed-dominated areas considered to be potential habitat for these mammals as depicted on Figure 3.5-2. After at least 24 hours have elapsed since the removal of this pickleweed-dominated vegetation from harvest mouse/wandering shrew habitat areas, a barrier to exclude salt marsh harvest mice and salt marsh wandering shrews from impact areas will be installed at the perimeter of all project construction areas that are located within 50 feet of potential salt marsh harvest mouse and salt marsh wandering shrew habitat. This barrier, which will be constructed under the guidance of a qualified biologist, shall consist of a 3-foot tall, tight cloth or smooth plastic silt fence toed into the soil at least three inches deep and supported with stakes. **MM BIO-8.3:** Mitigation Measure MM BIO-8.2 will minimize the probability of salt marsh harvest mice and salt marsh wandering shrews entering the site but in addition, any individuals already in the impact areas shall be salvaged and translocated to the exterior of the construction exclusion area. Although detecting every individual on a site is not feasible due to these species' secretive habits, a qualified mammalogist should be on-site during removal of pickleweed-dominated vegetation, construction of the barrier fence, and initial clearing and grubbing within 10 feet of the barrier fence. The mammalogist would look for individual salt marsh harvest mice and salt marsh wandering shrews that may be within the Specific Plan area. Any individuals detected would be captured and translocated to a safe location within the closest suitable, pickleweed-dominated habitat. The mammalogist must possess all required USFWS and CDFW permits authorizing such capture and translocation.		permits.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	Trapping and removal of salt marsh harvest mice has been required by the USFWS and CDFW in areas with a high likelihood that the species is located. The direct impact areas for the current Specific Plan contain narrow and/or small patches of habitat that likely support sparse salt marsh harvest mouse and wandering shrew populations, if the species are present at all, and thus we are not proposing to require trapping and relocation. **MM BIO-8.4:** Salt marsh harvest mouse and salt marsh wandering shrew habitat that is permanently lost due to fill, shading, or isolation due to the golf course access road will be mitigated at a 3:1 ratio by the creation or restoration of pickleweed-dominated salt marsh on Area 4. Habitat for these species that is indirectly impacted due to proximity to residential and golf course development (i.e., habitat that is not directly filled but that is located within 100 feet of direct impact areas) will be mitigated at a 2:1 ratio by on-site habitat restoration. This lower ratio is appropriate because habitat within 100 feet of developed areas will retain some habitat quality for mice and shrews. This habitat restoration can occur in the same locations as habitat creation, restoration, or enhancement performed for impacts to wetlands as long as suitable conditions for these two mammal species are targeted. A habitat mitigation and monitoring plan will be prepared that outlines the necessary steps for restoration; it will include a plan view graphic showing the target restoration activities, a brief seeding plan (species palette and application techniques) to re-vegetate the areas currently in agricultural production, and a monitoring and reporting plan with success criteria. The plan will include a recommended timeline for restoration activities and the establishment of suitable habitat. The mitigation and monitoring plan will be approved by the City of Newark, the USFWS, and the CDFW prior to issuance of grading and building permits. The restoration work will begin in the same construction season as the initiation of grading within suitable salt marsh harvest mouse/salt marsh wandering shrew habitat, and restoration site grading will be completed within one year of initiation (or as otherwise determined by resource agency permits). All created mitigation habitats will be protected in perpetuity and will be placed into a			

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	land trust or under a conservation easement, or fee title will be transferred to the Refuge or a third-party non-profit entity that has been approved by the City and appropriate permitting agencies.			
Impact BIO-9: Proposed recreational activities in Area 4 would impact sensitive habitats that are known to support special status species and large numbers of foraging and roosting waterbirds. The Specific Plan would result in significant impacts due to recreational activities on the site.	**MM BIO-9.1:** As the design of the golf course progresses disturbance by golfers of adjacent sensitive habitats and species. For example, high-use areas such as tees and greens shall be set back from the edge of the golf course, and broad rough/out-of-bounds areas shall occur along the interface between the golf course and sensitive habitats. **MM BIO-9.2:** On the golf course, areas that are "out of bounds" (which will include the artificial burrowing owl burrow complexes and all natural areas that are not directly filled during golf course construction) shall be clearly marked as such, explaining the importance of preserving the ecological integrity of the adjacent natural areas. Signs will be erected along the ACFC&WCD levees and along Mowry Slough describing the ecological value of adjacent wetland areas and instructing users to stay on the ACFC&WCD levee tops, stay out of sensitive habitats, and keep dogs on leashes.	The project contractor shall hire a qualified biologist to ensure these measures are completed during the design of the golf course and construction of the golf course.	All measures shall be printed on all construction documents, contracts, and project plans. The golf course plans shall be subject to review and approval by the Community Development Director prior to issuance of a grading permit for construction of the golf course. A report prepared by a qualified biologist documenting the measures have been implemented shall be	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
			submitted to the Community Development Director prior to operating the golf course.	
Impact BIO-10: The proposed project would indirectly impact large numbers of foraging and roosting waterbirds, including species protected by the Migratory Bird Treaty Act (MBTA) in the wetland portions of the site. This is a significant impact.	**MM BIO-10.1:** Indirect impacts of residential and golf course development in Area 4 on birds using the undeveloped wetlands on the site shall be mitigated by the creation or enhancement of waterbird habitat on the site at a 0.5:1 ratio for a total of 9 acres of mitigation. Mitigation wetlands for these indirect impacts shall be located at least 300 feet from any development, to the maximum extent possible. The mitigation areas shall provide perennial or near-perennial water with a variety of depths ranging from very shallow water or exposed mud to water up to several feet deep to support the bird species currently using the former Pintail Duck Club. This mitigation can occur within the same wetland areas created as mitigation for permanent loss of wetlands as long as it is located at least 300 feet from any residential or golf course development. A mitigation plan shall be developed that outlines the proposed wetland creation/enhancement for indirect impacts to waterbird use of wetlands on the site. It will include a plan showing the target mitigation activities and a monitoring and reporting plan with success criteria. The plan shall include a recommended timeline for mitigation activities. This plan will be submitted to and approved by staff of the City of Newark prior to the initiation of any fine grading or construction on the site. The mitigation work will begin in the same construction season as the initiation of grading or construction, and mitigation site grading will be completed within one year of initiation. All created/enhanced habitats shall be protected in perpetuity and will be placed into a land trust or under a conservation easement, or fee title will be transferred to the Refuge or a third-party non-profit entity that has been approved by the City and appropriate permitting agencies.	The project contractor shall implement the mitigations measures concurrent with construction of the project.	All measures shall be printed on all construction documents, contracts, and project plans. The mitigation plan shall be prepared by a qualified biologist and submitted to the Community Development Director for review and approval prior to the issuance of a grading permit.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
Impact BIO-11: Implementation of the project would result in significant impacts to sensitive habitats and special status species due to the potential spread of non-native, invasive plant species on the site.	**MM BIO-11.1:** Prior to issuance of any building or grading permits, the project shall develop and implement an Invasive Species Management Plan to reduce the presence and spread of non-native, invasive plant species for the area to be developed. The Plan shall be developed prior to importing any fill material required to elevate building sites and prior to grading any areas on the Specific Plan site. The overarching goal of this mitigation is to halt the further expansion of existing invasive species and introduction of new invasives into sensitive habitats on site. The Invasive Species Management Plan shall include, but not be limited to, the following, summarized below: • Prior to construction, map populations of invasive species within all areas proposed to be graded; quantify the extent and location of invasive populations in sensitive habitats. • Areas identified to have weed infestations shall be treated prior to ground disturbance according to weed control methods detailed below and Best Management Practices within all upland areas to be graded, after review and approval of methodologies by the City of Newark. • Weed control treatments shall include all legally permitted herbicide, manual, and mechanical methods approved for application. The timing of the weed control treatment shall be determined for each plant species with the goal of controlling populations before they start producing seeds and/or encroach into adjacent areas from rhizomatous shoots. Consultation with a City of Newark approved wildlife biologists or plant ecologist shall be required prior to weed control treatments in sensitive habitats with the intent of avoiding any adverse impacts to special-status species in the area. • Surveying and monitoring for weed infestations shall occur annually while grading operations are occurring for a Project. Treatment of all identified weed populations shall occur at a minimum of once annually. • Once grading ceases, invasive plant populations within all sensitive habitats to be preserved shall be mapped and the aerial extent and location of invasive populations documented on an annual basis for a minimum of three years following grading operations.	The project contractor shall hire a qualified biologist to implement the mitigation measures prior to grading the site and during construction of the project.	All measures shall be printed on all construction documents, contracts, and project plans. The Invasive Species Management Plan shall be prepared by a qualified biologist and submitted to the Community Development Director for review and approval prior to the issuance of a grading permit.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	• If, in any monitoring year, the size of existing populations within sensitive habitats expands by 20% or greater in terms of surface area from populations documented prior to construction, weed control measures shall be implemented as outlined above within sensitive habitats. • During Project construction, all seeds and straw materials used on site shall be weed-free rice straw, and all gravel and fill material shall be certified weed free. • During Project construction, vehicles and all equipment shall be washed before and after entering the Project area.			
Impact BIO-12: The proposed Specific Plan would result in significant impacts to biological resources associated with water quality impacts during construction.	**MM BIO-12.1:** Prior to the issuance of grading permits, future development projects will incorporate Best Management Practices (BMPs) for water quality to minimize impacts in the surrounding wetland environment, sloughs and channels, and the San Francisco Bay during construction. These BMPs will include numerous practices that will be outlined within the Stormwater Pollution Prevention Plan (SWPPP), but will include measures such as: • No equipment shall be operated in live flow in any of the sloughs or channels or ditches on or adjacent to the site. • No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into aquatic or wetland habitat. • Standard erosion control and slope stabilization measures will be required for work performed in any area where erosion could lead to sedimentation of a water body. For example, silt fencing will be installed just outside the limits of grading and construction in any areas where such activities will occur upslope from, and within 50 feet of, any wetland, aquatic, or marsh habitat. This fencing shall be inspected and maintained regularly throughout the duration of construction. • Machinery shall be refueled at least 60 feet from any aquatic habitat, and a spill prevention and response plan shall be developed and approved by the City of Newark. All workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.	During construction, the project contractor shall implement all measures identified in the SWPPP.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the developer shall provide the SWPPP to the Community Development Director for review and approval.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	MM BIO-12.2: Soil stockpiling, equipment staging, construction access roads, and other intensively soil-disturbing activities shall not occur immediately adjacent to any wetlands that are to be avoided. The limits of the construction area shall be clearly demarcated with Environmentally Sensitive Area fencing by a qualified biologist to avoid inadvertent disturbance outside the fence during construction activities. **MM BIO-12.3:** Dust suppression (e.g., using watering trucks) shall be implemented during all grading, construction, and soil stockpiling activities that have the potential to mobilize dust to keep dust from being transported to vegetated wetlands nearby. If soil stockpiles are to remain on the site for long periods of time prior to the start of grading, they shall be hydroseeded so that vegetation will suppress dust and inhibit erosion. **MM BIO-12.4:** All mitigation measures for containing contamination from the auto wrecking yard removal will be followed (see *Hazardous Materials* and *Water Quality* sections of this EIR).			
Impact BIO-13: The proposed Specific Plan would result in significant impacts to biological resources associated with long- term water quality impacts.	**MM BIO-13.1:** All development projects within the Specific Plan shall comply with the National Pollution Discharge Elimination System (NPDES) permit requirements, the Alameda County Clean Water Program standards, the City of Newark's ordinances, policies, and processes, and other applicable local, state, and federal requirements. All development projects within the Specific Plan shall prepare a SWMP that includes post-construction water quality BMPs that control pollutant levels as required under Section C.3 of the NPDES Municipal Stormwater Permit issued by the RWQCB. Neighborhood- and/or lot-level BMPs to promote "green" treatment of storm runoff shall be emphasized, consistent with Regional Board guidance for NPDES Phase 2 permit compliance. The purpose of these measures will be to ensure that water leaving the site and entering seasonal wetland and marsh habitats, including ACFC&WCD Line D and Mowry Slough, will be of the same quality (or better) than currently enters these habitats from the site. These measures include the	During construction, the project contractor shall implement all measures identified in the SWMP.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the developer shall provide the SWMP to the Community Development	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	design and construction of features to remove particulates and contaminants from runoff. Such features may include mechanical treatment; the use of grassy swales to capture contaminants from the golf course, landscaping or residences as water infiltrates/percolates to the surrounding wetland habitat; the use of "planter boxes" within private development to treat individual residential runoff; the use of surface materials (where practicable) to allow for infiltration on private property (including permeable driveway material); and the retention of water on the site, when possible (in addition, see *MM HYD-1.1 through 1.4* in this EIR).		Director for review and approval.	
Impact BIO-14: The proposed Specific Plan could result in the loss of City of Newark ordinance-size trees. This is a significant impact.	**MM BIO-14.1:** Implementation of the Specific Plan shall incorporate preservation of existing trees with emphasis on ordinance-size or larger native species and in good or better condition, to the maximum extent practicable, to the satisfaction of the City's Community Development Director. **MM BIO-14.2:** In locations where preservation of existing trees is not feasible due to site constraints, trees to be removed by the project shall be replaced at a 3:1 ratio unless the City's Community Development Director determines that a higher ratio is required. Newark's tree preservation ordinance requires a permit for the removal of any tree with a trunk diameter of six inches or greater, measured at four feet above the ground. The replacement species must be native to the project area of the San Francisco Bay area. **MM BIO-14.3:** The species and exact number of trees to be planted on the site during the construction phase shall be determined in consultation with the City Arborist and to the satisfaction of the Community Development Director. **MM BIO-14.4:** In the event the developed portion of the development site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented at the development permit stage: • An alternative site(s) shall be identified for additional tree planting.	During construction, the project contractor shall implement the tree mitigation measures.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the developer shall provide a tree removal and planting plan to the Community Development Director for review and approval.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	Alternative sites may include local parks or schools, or installation of trees on adjacent properties for screening purposes, to the satisfaction of the City's Community Development Director. • The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.			
Impact BIO-15: The health of the trees to be preserved could be significantly impacted in the short-term by construction activities and in the long-term due to the proposed Specific Plan development.	**MM BIO-15.1:** Prior to the issuance of any construction-phase permit, a construction-phase Tree Preservation Plan shall be prepared by a certified arborist to the satisfaction of the City's Community Development Director for all areas with trees. The construction-phase Tree Preservation Plan shall include the following tree protection measures which are based on guidelines established by the International Society of Arboriculture: • Establish Tree Protection Zones • Protect Tree Root Systems • Install Wood Bark Mulch • Install and Maintain Protection Zone Fencing • Prune Tree Roots and Crowns Only as Necessary • Irrigate Trees This Tree Protection Zone is established to protect the tree trunk, canopy and root system from damage during construction activities and to ensure the long-term survival of the protected trees. The Tree Protection Zone shall: (1) ensure that no structures or buildings, that might restrict sunlight relative to the existing condition, will be constructed in close proximity to the trees; and (2) that no improvements are constructed on the ground around the tree within the Tree Protection Zone, thus ensuring that there is sufficient undisturbed native soil surrounding the tree to provide adequate moisture, soil nutrients and oxygen for healthy root growth. **MM BIO-15.2:** A certified arborist will monitor construction when work is done around any trees to be preserved. In areas where the construction-phase tree protection measures, described above under MM BIO-5-1, are not feasible, all trees affected shall be replaced with 15-gallon replacement trees at a ratio based upon the size of the tree removed. The rationale for the replacement ratio is based upon the anticipated loss of tree canopy	During construction, the project contractor shall implement the measures identified in the Tree Preservation Plan.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the developer shall provide the Tree Preservation Plan to the Community Development Director for review and approval.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	from tree removal. In addition, all mitigation described above under MM BIO-14.3 AND MM BIO-14.4 shall be implemented. **MM BIO-15.2:** A certified arborist will review the development areas after all construction has been completed. In areas where the improvements associated with development have encroached within 1-1/2 times the diameter of the tree canopy drip line, or the trees are otherwise injured or damaged, all trees affected shall be replaced with 15-gallon replacement trees at a ratio based upon the size of the tree affected. In addition, all mitigation described above under MM BIO-14.3 AND MM BIO-14.4 shall be implemented.			
	CULTURAL RESOURCES			
Impact CUL-1: Implementation of the proposed Areas 3 and 4 Specific Plan may impact paleontological deposits through excavation of previously undisturbed alluvial sediments.	**MM CUL-1.1:** The following measures shall be completed during all development activities that include excavation or disturbance of existing ground surfaces, installation of utility lines, or other subsurface trenching. If paleontological resources are discovered during project activities, all work within 25 feet of the discovery would be redirected and a qualified paleontologist contacted to assess the finds, consult with agencies as appropriate, and make recommendations regarding the treatment of the discovery. Project personnel would not move or collect any paleontological resources. If adverse effects to paleontological resources cannot be avoided, they would be assessed to determine their significance. If the resources are not significant, avoidance is not necessary. If the paleontological resources are significant, they would need to be avoided, or adverse effects must be mitigated. Treatment would be consistent with SVP guidelines and may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection. Upon completion of the assessment, the paleontologist would prepare a report documenting the methods and results and provide recommendations for the treatment of the paleontological resources discovered. This report would be submitted to the Director of the City Community Development	During construction, the project contractor will implement the mitigation measures, if needed.	All measures shall be printed on all construction documents, contracts, and project plans.	During construction, the project contractor will implement the mitigation measures, if needed.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	Department. Recovery of fossil remains and associated specimen data and corresponding geologic and geographic site data would reduce impacts to a less than significant level.			
Impact CUL-2: Based upon the current known extent of unique cultural materials on Area 4, it is unlikely that total avoidance of impacts is possible within Area 4 of the Specific Plan. Area 4 development will impact unique archaeological resources and disturb human remains, including those interred outside of formal cemeteries through compression of soils and excavation of existing soils. Mechanical and hand-excavated testing completed on Area 3 in conformance with EIR mitigation	**MM CUL-2.1:** The following mitigation measures shall be completed prior to issuance of a grading permit and prior to any earth moving activities in those areas of the Specific Plan Area 4 already identified as potentially containing archaeological resources based upon the research and survey work completed by *Holman & Associates*. This mitigation measure was already completed on Area 3. • A limited program of hand excavation shall be undertaken by a professional archaeologist certified by the Register of Professional Archaeologists (RPA) subject to the following standards: o If specimens are collected, a system for identifying and recording their proveniences must be maintained. o Uncollected entities such as environmental or cultural features, depositional strata, and the like, must be fully and accurately recorded by appropriate means, and their location recorded. o The methods employed in data collection must be fully and accurately described. Significant stratigraphic and/or associational relationships among artifacts, other specimens, and cultural and environmental features must also be fully and accurately recorded. o All records should be intelligible to other archaeologists. If terms lacking commonly held referents are used, they should be clearly defined. o During accessioning, analysis, and storage of specimens and records in the laboratory, the archaeologist must take precautions to ensure that correlations between the specimens and the field records are maintained, so that provenience contextual relationships and the like are not confused or obscured. o Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities, unless otherwise required by law. o The archaeologist has responsibility for appropriate dissemination of the results of her/his research to the appropriate constituencies	Prior to any earth moving activities, the project contractor shall hire a professional archaeologist certified by the Register of Professional Archaeologists (RPA) to complete these measures.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to the issuance of a grading permit, the project plans shall be reviewed and approved by a professional archaeologist certified by the RPA and the Community Development Director to ensure the known resources have been adequately avoided.	Prior to any earth moving activities, the project contractor shall hire a professional archaeologist certified by the Register of Professional Archaeologists (RPA) to complete these measures.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
measures MM CUL-2.1 and MM CUL-2.2 has determined there is a low-to-moderate potential for significant, unidentified prehistoric or historic archaeological deposits in Sub-Area A of Area 3.	with reasonable dispatch. • The hand excavation must take place at the locations of the three burials and two cultural features in order to verify the presence of midden soils. Hand excavation will verify this, and will provide the researchers with the information needed to determine the aerial extent of the deposits. **MM CUL-2.2:** Prior to any future development in areas of Area 4 identified as potentially containing archeological resources based upon the research and survey work completed by *Holman & Associates* or areas for which any additional information has been gathered through hand excavations under MM CUL-2.1, plans shall be designed to avoid impacting known cultural resources.[1] Development plans shall be reviewed and approved by a professional archaeologist certified by the RPA and the City of Newark to ensure the known resources have been adequately avoided. Final mitigation recommendations shall depend on the amount and nature of earthmoving activities which will occur inside those areas which are mapped as intact archaeological deposits after completion of the hand excavation program described above. For example, mitigation of impacts to archaeological deposits found inside the proposed golf course area may possibly be achieved simply by redesigning the course in proximity to the borders of the archaeological deposit, as determined by the professional archaeologist's hand excavation and subsequent mechanical subsurface presence/absence testing program. This mitigation measure was already completed on Area 3. **MM CUL-2.3:** All grading and/or construction activities shall, to the extent feasible, avoid all areas identified as potentially containing archeological resources based upon the research and survey work completed by *Holman & Associates* or areas for which any additional			

[1] It should be noted that "capping" or covering the known archaeological resources would not mitigate the impacts to cultural resources because all grading activities, placement of fill, and compaction of the soil would crush and destroy the known cultural resource deposits.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	information has been gathered through hand excavations under MM CUL-2.1. However, to the extent that these areas cannot be avoid, then mitigation for burial resources shall be achieved through either preservation in place pursuant to CEQA Guidelines Section 15126.4(B)(3)(a) or a program of data recovery pursuant to CEQA Guidelines Section 15126.4(B)(3)(c) combining limited hand excavation to retrieve significant archaeological data and material and to remove the known human remains to protect them from additional damage. This program shall be designed by a professional archaeologist and reviewed and approved by the City of Newark. Depending on the findings of the proposed evaluative hand excavation, a data retrieval program may also be done by carefully stripping those areas where additional cultural materials are expected utilizing heavy equipment under the direction of a professional archaeologist. Soils would be removed to the depth of the archaeological deposit in selected areas (a percentage of the anticipated deposit). In the event, that archaeological materials and in particular, human burials, are encountered extending out of the areas designated for stripping, additional data retrieval work shall be required. **MM CUL-2.4:** The following measures shall be completed during all development activities in both Area 3 and 4 that include excavation or disturbance of existing ground surfaces, installation of utility lines, or other subsurface trenching: • A professional archaeological monitor certified by the RPA shall monitor with authority to direct and halt earthmoving activities as deemed necessary by the monitor, if and when cultural materials area encountered. In accordance with CEQA Guidelines Section 15064.5(f), if any previously unknown historic or prehistoric resources are discovered during grading, trenching, or other on-site excavation, earthwork within 100 feet of these resources shall be stopped until the professional archaeologist has an opportunity to evaluate the significance of the find and suggest appropriate mitigation as determined necessary to protect the resource. • Given the low to moderate potential for significant cultural materials to be present within Area 3 Sub-Area A, archaeological monitoring			

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	should be discontinued as soon as the archaeologist is satisfied that construction will not disturb important archaeological deposits. • In the event that Native American human remains or funerary objects are discovered, the provisions of the California Health and Safety Code shall be followed. Section 7050.5(b) of the California Health and Safety Code states: ▪ In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 of Part 3 of Division 2 of Title 3 of the Government Code, that the remains are not subject to the provisions of Section 27492 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of death, and the recommendations concerning treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. Based upon the current known extent of unique cultural materials on Area 4 of the site, it is unlikely that total avoidance of impacts is possible with implementation of the proposed Specific Plan. While incorporation of the above measures will partially reduce the cultural resources impact, the overall implementation of Area 4 elements of the Specific Plan will destroy archaeological deposits through placement of fill and soil compression and, therefore, result in a significant unavoidable impact. (Significant Unavoidable Impact – Area 4) Previous mechanical and hand-excavated testing completed on Area 3 in conformance with MM CUL-2.1 and MM CUL-2.2 determined there is a low to moderate potential for significant, unidentified archaeological			

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	deposits in Sub-Area A of Area 3. Archaeological monitoring will be completed during construction on Area 3 to ensure the project does not impact buried, as yet undisturbed, archaeological resources. (Less than Significant Impact with Mitigation – Area 3)			
	GEOLOGY AND SOILS			
Impact GEO-1: The development of Areas 3 and 4 could result in adverse impacts associated with settlement during strong seismic ground shaking due to potentially liquefiable soils.	**MM GEO-1.1:** Prior to issuance of grading permits, construction-level study will be required to characterize the lot-specific lateral extent and magnitude of potential liquefaction-induced settlement for design of new structures and improvements within Areas 3 and 4. The project geotechnical engineer shall coordinate with ACWD prior to beginning any soil improvement measures to ensure impacts on groundwater resources are minimized. The results of the investigation shall be submitted to the Director of Public Works for review and approval. Structures will need to be supported on rigid foundations designed to tolerate the anticipated total and differential settlements. Alternatively, deep foundations may be required to support structures on firm soil below potentially liquefiable layers. Ground improvement techniques could also be used to mitigate liquefaction-induced differential settlement.	During construction, the recommendations in the design-level geotechnical investigations shall be implemented by the project contractor.	All measures shall be printed on all construction documents, contracts, and project plans. The developer shall submit the design-level geotechnical investigations to the Director of Public Works for review and approval, prior to issuance of building permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that all measures in the design-level	During construction, the recommendations in the design-level geotechnical investigations shall be implemented by the project contractor.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
			geotechnical investigations were implemented.	
Impact GEO-2: Any construction improvements near the ACFC&WCD drainage channels could result in adverse seismically-induced lateral spreading impacts associated with future development of the proposed Specific Plan.	**MM GEO-2.1:** Prior to issuance of building permits, design-level geotechnical investigations for specific site improvements such as residential developments, bridges, or school development shall be completed and submitted to the Director of Public Works for review and approval, once construction-level plans are available. Geotechnical observation and testing services shall be completed during earthwork and foundation construction.	During construction, the recommendations in the design-level geotechnical investigations shall be implemented by the project contractor.	All measures shall be printed on all construction documents, contracts, and project plans. The developer shall submit the design-level geotechnical investigations to the Director of Public Works for review and approval, prior to issuance of building permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that all measures in the approved design-level geotechnical	During construction, the recommendations in the design-level geotechnical investigations shall be implemented by the project contractor.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
			investigations were implemented.	
Impact GEO-3: The development of Area 4 could result in adverse impacts associated with settlement due to placement of fill and building loads.	**MM GEO-3.1:** Settlement due to fill and building loads can be mitigated by supporting lightly loaded structures on rigid foundations designed to resist differential settlement. As an alternative, buildings could be supported on deep foundations. Design ground improvement techniques, such as surcharging, rammed aggregate piers, or soil/cement mixing, to mitigate settlement. If surcharging is considered, this would include installing vertical wick drains and surcharging building areas with additional imported fill to allow the settlement to occur at an increased rate. If this option is pursued, the Geotechnical Engineer shall work with ACWD during preparation of the design-level geotechnical report. The wick drain design approach shall include the following: • Wick drains shall be confined within the compressible clay zone (upper 20 feet of soil profile). Additional subsurface exploration during the design-level geotechnical investigation shall confirm the depth of the compressible soil zone. • Wick drains shall extend no further than 10 feet from the top of slope of the planned areal fill. This will provide at least 5 feet of soil between final grade and the tops of the wick drains, which would be installed prior to areal fill placement. • This will reduce the potential for surface water to access the wick drains. • Horizontal strip drains that are placed at the surface to collect water from the wick drains shall be connected to solid pipes that extended beyond the toe of the areal fill slopes. The horizontal strip drain/solid pipe transitions shall be at the outer row of wick drains. At the completion of the surcharge program, the solid pipes shall be grouted in place to abandon them. The settlement mitigation approach shall be reviewed and approved by the Director of Public Works, prior to issuance of grading and building permits and the process for implementation of the settlement mitigation	During construction, the settlement mitigation approach shall be implemented by the project contractor.	All measures shall be printed on all construction documents, contracts, and project plans. The developer shall submit the settlement mitigation approach to the Director of Public Works for review and approval, prior to issuance of grading and building permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that the settlement mitigation approach was	During construction, the settlement mitigation approach shall be implemented by the project contractor.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	will be included on all construction bid documents.		implemented.	
Impact GEO-4: Differential settlement could occur between the abutments of the proposed Stevenson Boulevard Overpass, due to compressible Area 4 soils.	**MM GEO-4.1:** A site specific investigation shall be prepared for the proposed Stevenson Boulevard Bridge to determine the potential for differential settlement and the detailed approach to mitigate such settlement. The investigation and proposed measures shall be reviewed and approved by the Director of Public Works prior to issuance of grading and building permits. Bridge foundations shall be designed to account for potential differential settlement, as well as the approached slabs and asphalt pavement sections constructed on the embankments.	During construction of the Stevenson Boulevard Bridge, the measures identified in the site specific investigation shall be implemented by the project contractor.	All measures shall be printed on all construction documents, contracts, and project plans. The developer shall submit the site specific investigation to the Director of Public Works for review and approval, prior to issuance of grading and building permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that the measures identified in the site specific investigation were implemented.	During construction of the Stevenson Boulevard Bridge, the measures identified in the site specific investigation shall be implemented by the project contractor.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
Impact GEO-5: Possible undocumented fill within Areas 3 and 4 could result in adverse impacts to future development associated with the proposed Specific Plan.	**MM GEO-5.1:** Construction-level evaluation of undocumented fills shall be undertaken as necessary as part of the lot-specific geotechnical evaluation. The undocumented fills shall be over-excavated and recompacted or removed and replaced with engineered fill material as required to stabilize each lot in accordance with standard engineering practice prior to site development. The Director of Public Works shall review and approve the specified approach for all undocumented fill area prior to issuance of grading permits.	During construction, the project contractor shall implement the undocumented fill mitigation approach for the areas of undocumented fill.	All measures shall be printed on all construction documents, contracts, and project plans. The developer shall submit the mitigation approach to the Director of Public Works for review and approval, prior to issuance of grading permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that the undocumented fill mitigation was implemented.	During construction, the project contractor shall implement the undocumented fill mitigation approach for the areas of undocumented fill.
Impact GEO-6: The development of Areas 3 and 4 could	**MM GEO-6.1:** Slabs-on-grade shall have sufficient reinforcement and shall be supported on a layer of non-expansive fill; footings shall extend below the zone of seasonal moisture fluctuation. Moisture changes shall	During construction, the recommendation	All measures shall be printed on all	During construction, the recommendation

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
result in adverse impacts associated with expansive soils.	be limited in the expansive surficial soils by using positive drainage away from buildings and improvements, as well as limiting landscaping watering. The Director of Public Works shall review and approve the design-specific geotechnical investigation prior to issuance of building permits.	s in the design-level geotechnical investigations shall be implemented by the project contractor.	construction documents, contracts, and project plans. The developer shall submit the design-level geotechnical investigations to the Director of Public Works for review and approval, prior to issuance of building permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that all measures in the approved design-level geotechnical investigations were implemented.	s in the design-level geotechnical investigations shall be implemented by the project contractor.
Impact GEO-7: The shallow groundwater	**MM GEO-7.1:** Design underground improvements for potential hydrostatic uplift pressures. The Director of Public Works shall review and approve all underground improvements prior to issuance of building	During construction, the project	All measures shall be printed on all	During construction, the project

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
located throughout Areas 3 and 4 could result in adverse impacts associated with grading and installing underground utilities.	permits. Groundwater losses due to dewatering shall be measured and the amount of water that may be extracted by dewatering shall be estimated and documented. Substantial groundwater losses due to dewatering may be subject to an ACWD replenishment assessment fee.	contractor shall install the approved underground improvements.	construction documents, contracts, and project plans. The developer shall submit the groundwater loss estimates to ACWD prior to issuance of grading permits. The Director of Public Works shall review and approve the underground improvements, prior to issuance of building permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that the approved underground improvements were installed correctly.	contractor shall install the approved underground improvements.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
Impact GEO-8: The soils and shallow groundwater conditions within Areas 3 and 4 could result in adverse impacts associated with corrosive soils.	**MM GEO-8.1:** Soil corrosion testing shall be performed in Areas 3 and 4 during construction-level phases of investigation to ensure fill soils and native soils are not corrosive. This testing results shall be reviewed and approved by the Director of Public Works prior to issuance of building permits. It will be necessary to consult with a corrosion engineer to determine appropriate mitigation measures for site improvements. Special requirements for corrosion protection could be considered to protect metal pipelines, such as cathodic protection or specially coated pipes. In addition, if near-surface soils contain moderate to high levels of soluble sulfates, then buried concrete structures in contact with these soils may require special concrete mix design, such as using Type II cement and a higher compressive strength or Type V cement, to mitigate impacts from sulfate attack.	During construction, the project contractor shall implement the necessary corrosion protection measures.	All measures shall be printed on all construction documents, contracts, and project plans. The developer shall submit the corrosive soil testing results to the Director of Public Works for review and approval prior to issuance of building permits. Prior to issuing a Certificate of Occupancy, the Director of Public Works will verify that the approved corrosion protection measures were implemented.	During construction, the project contractor shall implement the necessary corrosion protection measures.
HYDROLOGY AND WATER QUALITY				
Impact HYD-1: The proposed project could	**MM HYD-1.1:** All development projects within the Specific Plan shall comply with the National Pollution Discharge Elimination System (NPDES) permit requirements, the City of Newark's ordinances, policies,	During construction, the project	All measures shall be printed on all	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
provide substantial sources of polluted runoff and degrade water quality downstream of the Specific Plan site.	and processes, and other applicable local, state, and federal requirements. **MM HYD-1.2:** All development projects within the Specific Plan include post-construction water quality BMPs that control pollutant levels directed by the City of Newark or Alameda County as Permittees of NPDES Municipal Stormwater Permit issued by the RWQCB. Provision C.3 of the Municipal Stormwater Permit is applicable to new development within the Specific Plan Area. The development of a golf course clubhouse shall include applicable post-construction water quality BMPs that control pollutant levels as required under Section C.4 of the NPDES Municipal Stormwater Permit issued by the RWQCB. Golf course maintenance facilities shall be developed and operated to include applicable post-construction water quality BMPs that control pollutant levels as required under Section C.2.f of the NPDES Municipal Stormwater Permit issued by the RWQCB. The use of low impact development (LID) techniques as required by Section C.3.c shall be emphasized. The City of Newark shall require the golf course operators to prepare, implement, and maintain a Stormwater Pollution Prevention Plan (SWPPP) for all corporation yards, vehicle maintenance, parking areas, and material storage facilities that comply with water quality standards by incorporating all applicable BMPs as described herein. Post-construction water quality treatment BMPs typically will include infiltration basins and trenches, rain gardens, grassy swales, media filters, and biofiltration features. Since the Specific Plan Area is mostly underlain by soils of low permeability and there is a high groundwater table, BMPs that enhance water quality without relying on infiltration are most appropriate for development sites within the Specific Plan Area. Water quality source control measures, site design elements, and post-construction treatment measures may include the following: • "No Dumping" signs at appropriate locations. • Stenciled storm drain inlets to prevent the ignorant disposal of	contractor shall ensure the stormwater treatment systems are constructed as shown in the approved Stormwater Drainage Study. The ongoing maintenance of stormwater will be completed by the property owners.	construction documents, contracts, and project plans. The developer shall submit the Stormwater Drainage Study to the Community Development Director for review and approval prior to issuance of building permits. Prior to issuing a Certificate of Occupancy, the Community Development Director will verify that the post-construction BMPs were implemented.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	pollutants and warn against the intentional dumping of pollutants into the storm drain system. • Runoff from roofs, sidewalks, paving and other hardscape areas directed into landscape areas rather than directly connected to storm drain systems. • Minimizing impervious surfaces to the maximum extent practicable and using permeable pavements where practical. • Locating and designing trash enclosures (all shall be covered) to and materials handling areas to prevent the discharge of pollutants into the streets and storm drain collection systems. The transport of turfgrass chemicals shall be minimized by the proposed computerized irrigation system that will be connected to an on-site weather station, which shall minimize runoff and percolation to the groundwater table. The irrigation system shall include the features described below. • The weather station shall monitor daily average evapotranspiration (ET) conditions and automatically adjust sprinkler rates so that ET rates are matched; • The irrigation system shall also include multiple controls cycles so that sprinklers can be turned on and off, matching soil percolation rates with application rates; • The layout of the irrigation system shall be designed to avoid watering all moisture-sensitive habitat areas, roadways, and waterways. A long-term stormwater management and monitoring program. The stormwater at the outlets leaving the site shall be sampled on a first flush basis, once a year for the lifetime of the project. If the post-project sample results indicate that the quality of stormwater leaving the site has degraded from the base conditions, then the SWPPP shall be reviewed and revised, based upon consultation with the Regional Water Quality Control Board. A minimum of six parameters including pH, total suspended solids, oil and grease, nitrogen, and appropriate pesticide constituents should be analyzed. In addition, the typical metals found in municipal stormwater shall be sampled and analyzed, such as copper, lead, or zinc, or bacteria.			

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	To prevent potential runoff of chemicals, the application of fertilizers, herbicides, and pesticides shall be avoided during periods of expected rainfall and immediately prior to schedule golf course irrigation. The golf course superintendent shall maintain a log of all pesticide and herbicide purchase and application, which shall be submitted periodically to the City Community Development Department for review. **MM HYD-1.3:** BMPs shall be designed in accordance with engineering criteria in the California Stormwater BMP Handbook for New and Redevelopment (California Storm Water Quality Association, 2003, California Storm Water Best Management Practice Handbook – New Development and Redevelopment) or other accepted guidance and designs shall be reviewed and approved by the City prior to issuance of grading or building permits for the roadway or driveways. **MM HYD-1.4:** All development projects within the Specific Plan shall implement storm water management program measures, such as street sweeping and litter control, outreach regarding appropriate fertilizer and pesticide use practices, and managed disposal of hazardous wastes. The project proponent shall prepare a clearly defined operations and maintenance plan for post-construction water quality and quality control measures. The design and maintenance documents shall include measures to limit vector concerns, especially with respect to control of mosquitoes. The project proponent shall identify the responsible parties and provide adequate funding to operate and maintain stormwater improvements (through a HOA, Geological Hazard Abatement District, CSD, CFD or similar organization). If lot-level BMPs are accepted by the City as a suitable control measure, the project proponent shall establish a mechanism for enforcement to assure that BMP functioning is being maintained as designed. The project proponent shall also establish financial assurances, as deemed appropriate by the Department of Resource Management, enabling the City to maintain the stormwater improvements should the HOA or other entity disband or cease to perform its maintenance responsibilities.			

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
Impact HYD-2: Construction activities could contaminate runoff from the Specific Plan site.	**MM HYD-2.1:** All development projects within the Specific Plan shall file a Notice of Intent (NOI) with the State of California Water Resource Quality Control Board (SWRCB) and prepare a Storm Water Pollution Prevention Plan (SWPPP) prior to commencement of construction. **MM HYD-2.2:** The SWPPP shall include an erosion control plan that prescribes measures such as phasing of grading, limiting areas of disturbance, designation of restricted-entry zones, diversion of runoff away from disturbed areas, protective measures for sensitive areas, outlet protection, and provision for revegetation or mulching. The plan would also prescribe treatment measures to trap sediment once it has been mobilized, at a scale and density appropriate to the size and slope of the catchment. These measures typically include inlet protection, straw bale barriers, straw mulching, straw wattles, silt fencing, check dams, terracing, and siltation or sediment ponds. **MM HYD-2.3:** The Specific Plan developer(s) shall implement Best Management Practices (BMPs) for reducing the volume of runoff and pollution in runoff to the maximum extent practicable during demolitions, site excavation, grading, and construction. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. • Restrict grading to the dry season or meet City requirements for grading during the rainy season. • Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed. • Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff. Cover stockpiles with secure plastic sheeting or tarp. • Implement regular maintenance activities such as sweeping driveways	Prior to construction, the project contractor shall file the NOI with the SWRCB. During construction, the project contractor shall implement all measures identified in the SWPPP.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the developer shall provide the SWPPP to the Community Development Director for review and approval.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area. • Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater. • Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags. **MM HYD-2.4:** BMPs shall be implemented in accordance with criteria in the California Stormwater BMP Handbook for Construction (California Storm Water Quality Association, 2003, California Storm Water Best Management Practice Handbook – Construction) or other accepted guidance and shall be reviewed and approved by the County prior to issuance of grading or building permits. **MM HYD-2.5:** The Specific Plan developer(s) shall identify the SWPPP Manager who will be the responsible party during the construction phase to ensure proper implementation, maintenance, and performance of the BMPs.			
HAZARDS AND HAZARDOUS MATERIALS				
Impact HAZ-1: Implementation of the proposed Area 3 residential component of the Specific Plan may create a significant hazard to the public or the environment from existing hazardous materials contamination by	**MM HAZ-1.1:** Implementation of the following measures will reduce impacts to a less than significant level: A Remediation Plan shall be developed and approved by the City, ACWD, and DTSC prior to issuance of grading permits for the residential development. There are several options available for the mitigation of residual organochlorine pesticides, including 1) capping the impacted soil with 'clean' material: 2) using compounds, such as Gene Expression Factor, to biologically degrade the pesticides; 3) consolidating and capping the impacted soil beneath privately owned areas: and 4) capping the impacted soil with the proposed development so that there would be no significant exposure pathways to future residents. Selection of the most	During construction, the project contractor will implement the measures in the approved Remediation Plan.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the Remediation	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
exposing future occupants or users of the site to contamination in excess of soil cleanup goals developed for the site.	appropriate mitigation method shall be completed with the oversight of the City and an appropriately identified regulatory agency, in this case, DTSC. The oversight agency shall be responsible for overseeing and directing all site investigation and cleanup activities in a manner that ensures that the standards and requirements of the State of California are fully addressed.		Plan shall be reviewed and approved by the City, ACWD, and DTSC.	
Impact HAZ-2: Without remediation, development of the Area 3 school site would construct a school on a property that is subject to hazards from hazardous materials contamination from presence of pesticides in the shallow soil layers.	**MM HAZ-2.1:** Prior to any approval of the potential school site by the Newark Unified School District, the District shall coordinate with DTSC and all available data pertaining to the proposed school site shall be provided to them, so that an appropriate plan for further site evaluation and/or remediation can be developed. The DTSC's School Property Evaluation and Cleanup Division is responsible for assessing, investigating, and cleaning-up proposed school sites. School sites that will receive State funding for acquisition or construction are required to go through an environmental review and cleanup process under DTSC's oversight. A future elementary school developed on the proposed Area 3 school site would be a public school within the Newark Unified School District and, therefore, would be subject to DTSC review and approval. Investigation and remediation of the pesticide impacted soil will be required prior to elementary school development. Options for remediation of pesticide impacted soils would be similar to those described above for MM HAZ-1.1.	Prior to the approval of a school site by the Newark Unified School District, the school site shall be subject to DTSC's School Property Evaluation and Cleanup Division review process.	All measures shall be printed on all construction documents, contracts, and project plans.	Newark Unified School District
Impact HAZ-3: The proposed residential use of Specific Plan Area 4, may create a significant hazard to the public or the environmental from existing hazardous materials	**MM HAZ-3.1:** Implementation of the following measures will reduce Area 4 hazardous material contamination impacts to residential uses to a less than significant level: • All additional testing and remediation described below shall be completed under oversight by the City and an appropriate regulatory agency, DTSC and/or ACWD, prior to issuance of grading permits for the residential development. The oversight agency shall be responsible for overseeing and directing all site investigation and cleanup activities in a manner that ensures that the standards and requirements of the State of California are fully addressed.	During construction, the project contractor will implement the measures in the approved Remediation Plan.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
contamination by exposing future users to contamination related to the former duck club, agricultural activities, and undocumented fill on the site, and the adjacent landfill.	• Prior to the start of any subsurface drilling activities, the project proponent(s) shall obtain a drilling permit from ACWD. Application for a permit may be obtained from ACWD's Engineering Department, at 43885 South Grimmer Boulevard, Fremont or online at http://www.acwd.org/engineering/drillin8-Permit.php5. All permitted work requires scheduling for inspection; therefore, all drilling activities must be coordinated with ACWD prior to the start of any field work. • The area of the former duck club and associated ponds shall be evaluated for lead from lead shot. The results shall be provided to the City of Newark and the regulatory oversight to determine the appropriate remediation, if necessary. This investigation is only necessary in the event on-site mitigation (such as habitat restoration) will occur in this Sub-Area E. ▪ Former fill soil quality of the duck club ponds shall be evaluated prior to issuance of grading permits for the residential development in Area 4. The results shall be provided to the City of Newark and the appropriate regulatory oversight to determine the appropriate remediation, if necessary. This investigation is only necessary in the event on-site mitigation (such as habitat restoration) will occur in this Sub-Area E. ▪ All pesticide impacted soil shall be remediated to ensure all levels are below residential screening levels; ▪ Additional soil samples shall be collected near existing and known former farm structures to test for residual levels of pesticides. The results shall be provided to the City of Newark and the regulatory oversight to determine the appropriate remediation, if necessary. ▪ Soil quality adjacent to on-site wells shall also be analyzed for spilled chemicals including pesticides. The results shall be provided to the City and the appropriate regulatory oversight to determine the appropriate remediation, if necessary. Prior to issuance of a grading permit, the project proponent(s) and ACWD shall identify all abandoned wells within the project boundary. Any wells identified or discovered during construction shall be appropriately destroyed in accordance with ACWD specifications		permit, the Remediation Plan shall be reviewed and approved by the City, ACWD, and DTSC.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	and local standards prior to issuance of a grading permit. ▪ Prior to any ground disturbance and issuance of grading permits at the unnamed parcel located to the west of the southern terminus of Stevenson Boulevard, shall be further evaluated to assess the current environmental conditions of this area. This evaluation shall be provided to the City and ACWD for review and to determine the appropriate remediation, if warranted. ▪ All imported soil to raise the elevation on the site shall document the source and quality of the soil. This documentation shall be provided and approved by the City of Newark, prior to issuance of a grading permit. The DTSC's October 2001 Clean Fill Advisory provides guidance on evaluating imported fill. ▪ The property owner shall periodically review the monitoring data from the TCRDF shall be to assess whether there are any significant changes to the Area 4 conditions. The monitoring results shall be annually provided to the City of Newark. The Perry/Arrillaga property shall be evaluated for soil vapor for contaminants that may have migrated from TCRDF unless monitoring data from the landfill shows that further evaluation is unnecessary.			
Impact HAZ-4: Implementation of the proposed Area 4 golf course uses may create a significant hazard to the public or the environment from existing hazardous materials contamination result in exposure of construction workers or future	**MM HAZ-4.1:** Implementation of the following measures will reduce impacts to the golf course to a less than significant level: • Soil and ground water quality investigations shall be completed at the auto wrecking operation properties prior to issuance of any demolition permits. If impacted soil or groundwater is detected that exceeds commercial screening levels, these parcels shall be remediated under oversight by the City and an appropriate regulatory agency, in this case likely DTSC and/or ACWD. The oversight agency shall be responsible for overseeing and directing all site investigation and cleanup activities in a manner that ensures that the standards and requirements of the State of California are fully addressed. • Any future golf course development activities at the 10-acre Mowry Avenue property shall be coordinated with the City and the appropriate regulatory agency, DTSC and/or ACWD. Additionally, prior to	During construction, the project contractor will implement the measures in the approved Remediation Plan.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a grading permit, the Remediation Plan shall be reviewed and	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
uses to hazardous material impacts.	issuance of grading permits, methane monitoring shall be completed at this property and results shall be provide to the City and the regulatory agency. If impacted methane levels exceeds commercial screening levels, these parcels shall be remediated under oversight by the City and in this case, likely DTSC. • The depth and quality of the former fill areas [Pick-N-Pull Parcel 1, Ace Auto Wrecker's property, and 115-acre Rogers property (filled ponds)] shall be investigated prior to issuance of grading permits. This investigation shall be provided to the City and/or ACWD for review and approval. Options for remediating impacted fill include capping, relocation, over-excavation and off-site disposal, and/or completing a risk assessment to evaluate whether this material is a risk to human health or the environment under the future golf course redevelopment plan. • Prior to any demolition of the existing buildings (Pick-N-Pull, Ace Auto Wrecker's), an asbestos survey is required by local authorities and/or National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines. NESHAP guidelines require the removal of potentially friable Asbestos-Containing Building Material (ACBMs) prior to building demolition or renovation that may disturb the ACBM. The results of the survey shall be submitted to the City for review and approval, prior to issuance of demolition permits.		approved by the City, ACWD, and DTSC.	
Impact HAZ-5: The operation and maintenance of the golf course, if improperly designed and/or managed, could create a significant hazard to the public or the environment as a result of the routine transport,	**MM HAZ-5.1:** With implementation of the following measures, the proposed golf course operation would not create a significant hazard to the public or the environment through reasonably foreseeable upset or accident conditions involving the release of hazardous materials into the environment: • As required through an operational permit issued by the City, a golf course operations plan will be developed prior to opening of the golf course. This plan shall be reviewed and approved by the City prior to issuance of building permits. The plan will include the following elements: ▪ Proper storage, handling, and disposal of chemicals; ▪ Limited use of chemicals;	During operation of the golf course, the golf course operator shall implement the measures in the approved Course Operations Plan.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of building permits, the golf course operator	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
use or disposal of hazardous materials, or through reasonably foreseeable upset or accident conditions involving the release of hazardous materials into the environment.	▪ Strict adherence to manufacturer's recommendations and procedures involving chemical applications; ▪ Application of chemicals only by State-licensed personnel; and ▪ Use of only short-lived pesticides and herbicides • The golf course superintendent shall maintain a log of all herbicide and pesticide purchases and application. • The proposed gasoline storage tanks will be installed and maintained per City, State, and Federal requirements • The proposed golf cart barn and electric golf cart battery charging facilities shall be designed, constructed, and managed to prevent buildup of hydrogen gas and the potential for explosion. The design of the golf cart barn shall be reviewed and approved by the City Fire Department. • Batteries shall be stored in a safe manner, pursuant to current California Building Code and Fire Code requirements.		shall provide the City the Course Operations Plan for review and approval.	
	ENERGY			
Impact ENR-1: Construction could result in a wasteful and inefficient consumption of energy associated with fuel usage and therefore, would result in a significant energy impact.	**MM ENR-1.1:** The project shall utilize local and regional building material in order to reduce energy consumption associated with transporting materials over long distances. This shall be enforced by specifying on construction bid documents that 20 to 50 percent of building materials be manufactured within 500 miles of the project site. **MM ENR-1.2:** Local construction sites shall be utilized for the source of fill material necessary for the development of Area 4. The Community Development Director shall approve all fill source sites to ensure travel distances are local distances. In addition, designated travel routes from the fill source site to the project site shall be determined by the construction manager and approved by the Community Development Director to ensure the haul-truck utilize most fuel-efficient travel path. **MM ENR-1.3:** Reduce equipment and vehicle idle times. Enforce current state law idling restrictions from diesel-fueled trucks by conspicuously posting signs that prohibit excess idling. Construction superintendents shall inform truck drivers to turn engines off when idling	During construction, the project contractor will implement the mitigation measures.	All measures shall be printed on all construction documents, contracts, and project plans.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	times have exceeded or are expected to exceed the idling restrictions (currently five minutes). This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite. **MM ENR-1.4:** Reduce vehicle emissions. Properly tune and maintain equipment for low emissions.			
CUMULATIVE IMPACTS				
CUMULATIVE TRANSPORTATION				
Impact C-TRAN-1: Under cumulative no project conditions, the intersection of Cherry Street/Mowry Avenue would operate at LOS D during the AM peak hour. With the addition of project traffic, the intersection would degrade to LOS E and the average intersection delay would increase by more than 4 seconds during the AM peak hour. This exceeds the City of Newark's LOS threshold of	**MM C-TRAN-1:** Cherry Street and Mowry Avenue mitigation: Add an additional left turn lane on the westbound Mowry Avenue approach and realignment of the intersection. This mitigation measure would return the intersection to an acceptable LOS.	Prior to issuance of a Certificate of Occupancy, the project developer shall make a "fair share" monetary contribution for the improvements.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a Certificate of Occupancy, the Community Development Director shall verify the "fair share" monetary contribution has been made.	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
acceptability and therefore would make a cumulatively considerable contribution to cumulative traffic impacts.				
Impact C-TRAN-2 Under cumulative no project conditions, the intersection of Cherry Street-Boyce Road/Stevenson Boulevard would operate at LOS D during the PM peak hour. With the addition of project traffic, the intersection would degrade to LOS F and the average intersection delay would increase by more than 4 seconds.	**MM C-TRAN-2:** Pay a fair share contribution though the City's Traffic Impact Fee program to add a through lane on the northbound approach of Cherry Street and re-align the intersection. This improvement was identified in the *City of Newark General Plan Tune Up TIA* dated June 7, 2013. There is potentially sufficient roadway right-of-way on Boyce Road/Cherry Street for this improvement. Therefore, the improvement could be implemented by re-striping Cherry Street. Because this impact would occur under cumulative, but not under project conditions, this impact is mitigated by a "fair share" monetary contribution paid from the project to the City's Traffic Impact Fee program toward these improvements. This mitigation would return the intersection to LOS D, the LOS standard.	Concurrent with the development of Areas 3 and 4, the developer shall ensure this measure is implemented.	All measures shall be printed on all construction documents, contracts, and project plans. Prior to issuance of a Certificate of Occupancy, the Community Development Director shall verify this measure is implemented.	Community Development Director
CUMULATIVE NOISE				
Impact C-NOI-4: Implementation of the proposed Specific Plan would measurably contribute to	**MM C-NOI-4:** A combination of mitigation measures would help reduce impacts to affected property owners along Cherry Street between Stevenson Boulevard and Mowry Avenue and along Stevenson Boulevard between Cherry Street and Cedar Boulevard from project-generated cumulative traffic noise. These noise reduction measures include the following:	Prior to full-buildout a qualified acoustical specialist retained by the	The Community Development Director will determine if that the mitigation is feasible, clear	Community Development Director

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
significant cumulative traffic noise increases.	• Noise barriers required under MM NOI 1.1 will reduce noise levels by 5 dBA Ldn for project residents. Final design of such barriers, shall be completed during construction-level project design. Single-family residential receivers east of Cherry Street and north of Stevenson Boulevard (off-site) could be provided with new or larger noise barriers to provide the additional necessary noise attenuation in private outdoor use areas. Typically, increasing the height of an existing barrier results in about one (1) dBA of attenuation per one (1) foot of additional barrier height. The design of such would require additional analysis. • Sound insulation treatments to the impacted buildings, such as sound-rated windows and doors, would reduce noise levels in interior spaces. Affected residential receivers along affected roadways off-site could be provided with sound insulation treatments. • In addition, alternative noise reduction techniques for off-site receivers shall be considered in coordination with the City of Newark. Such techniques could include: installation of traffic calming measures to slow traffic; coordination of routing and other traffic control measures; repaving the affected roadways with "quiet" pavement types such as Open-Grade Asphalt Concrete. The replacement of dense grade asphalt (standard type) with open-grade or rubberized asphalt can reduce traffic noise levels along residential-type streets by 2 to 3 dBA. A possible noise reduction of 2 dBA would be expected using conservative engineering assumptions. Opportunities to lower noise levels through pavement surface treatments can only be identified after an assessment of the current roadway surface with respect to noise. • Final design of such barriers and/or treatments, including an assessment of their feasibility and reasonableness, shall be completed during construction level review. Each of these mitigation measures involves other non-acoustical considerations. While the project noise mitigation measures will also mitigate for on-site cumulative noise levels, the project may not be able to mitigate off-site cumulative noise impacts. Other engineering issues may dictate continued use of dense grade asphalt. Therefore, it may not be	project developer will complete an assessment of the feasibility and reasonableness of different sound treatments. Alternative noise reduction techniques shall be considered in coordination with the City of Newark.	and detailed documentation in the record will be provided.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	reasonable or feasible to reduce project-generated cumulative traffic noise at all affected receivers. If the City of Newark determines that the mitigation is feasible, then with implementation of the mitigation measures, the impact would be less than significant. However, if the City of Newark determines that the mitigation is not feasible, the impact would be considered significant and unavoidable.[2] Due to the uncertainty regarding the feasibility of this mitigation, the impact would be considered significant and unavoidable.			

AVOIDANCE MEASURES
Visual and Aesthetic Resources
AM VIS-1.1: The following avoidance measures shall further reduce light and glare impacts of the Specific Plan. All of these avoidance measures shall be incorporated into the City of Newark's development regulations and design review procedures to reduce potential light and glare impacts to non-significant levels. Design review procedures shall include the following: • Use of low pressure sodium lights where security needs permit; • Restricting height of exterior lighting fixtures to minimize light spill; • Directing exterior lighting on-site to minimize spill-over; • Shielding for exterior lights; • Minimizing use of highly reflective exterior building materials; • Restricting hours of non-security exterior lighting for commercial, industrial, and institutional uses.
Energy Resources
AM ENR-1.1: All residential subdivisions and new commercial buildings within the Specific Plan shall incorporate as many green practices as appropriate and feasible in buildings and structures constructed subject to approval of the City of Newark. **AM ENR-2.2:** All public landscaping areas within the Specific Plan shall follow the City of Newark's Bay Friendly Landscape Guide. Future homeowners associations or similar entity shall be encouraged to incorporate as many bay friendly landscape practices as appropriate and feasible.
Global Climate Change
AM C-GCC-1: All residential subdivisions and new commercial buildings within the Specific Plan shall incorporate as many green practices as appropriate and feasible in buildings and structures constructed subject to approval of the City of Newark.

[2] If the City of Newark determines that the mitigation is not feasible, they should provide clear and detailed documentation in the record.

AM C-GCC-2: All public landscaping areas within the Specific Plan shall follow the City of Newark's Bay Friendly Landscape Guide. Future homeowners associations or similar entity shall be encouraged to incorporate as many bay friendly landscape practices as appropriate and feasible.

AM C-GCC-4.1: The following avoidance measures shall further reduce greenhouse gas emissions. All of these avoidance measures shall be incorporated into the City of Newark's development regulations and design review procedures to reduce potential greenhouse gas emission impacts to non-significant levels. All residential subdivisions and new commercial buildings within the Specific Plan shall incorporate as many green practices as appropriate and feasible in buildings and structures constructed subject to approval of the City of Newark. These measures shall include, but are not limited to:

- Pre-wire (or equivalent most current technology) residences and commercial buildings to facilitate the installation of solar power.
- LEED certification or equivalent for commercial buildings.
- Include plug-ins (or equivalent most current technology) in residences to facilitate the use of electric and hybrid vehicles.

AM C-GCC-4.2: All public landscaping areas within the Specific Plan shall follow the City of Newark's Bay Friendly Landscape Guide. Future homeowners associations or similar entity shall be encouraged to incorporate as many bay friendly landscape practices as appropriate and feasible. These practices shall include, but are not limited to:

- No lawn areas less than 8 foot wide.
- Where practical, utilize underground irrigation systems rather than surface applied irrigation to reduce evaporative loss.
- Minimize mowed lawn areas in residential development neighborhoods and use mowed lawn areas only for active recreation areas in park spaces
- Minimize use of plants that require extensive pruning and/or generate large amounts of green waste.
- Utilize "Integrated Pest Management" principals in the landscape maintenance of the project.
- Employ recycled materials for landscape materials such as headers, paving, street furniture, and mulch wherever practical.
- Landscape lighting to respect dark sky principals, i.e. no light directed up-ward.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AND ADOPTING THE NEWARK AREAS 3 AND 4 SPECIFIC PLAN AND RELATED GENERAL PLAN AMENDMENT

WHEREAS, the existing City of Newark General Plan land use diagram designates the proposed Area 3 residential and school area as *Low-Medium Density Residential*; and

WHEREAS, the 1992 City of Newark General Plan land use diagram designated the proposed Area 3 residential and school area as *Special Industrial*; and

WHEREAS, the Newark Areas 3 and 4 Specific Plan proposes to allow development of single-family residential, multi-family residential, and elementary school within the 78-acre Area A within Area 3 of the Specific Plan, and low-density residential development and recreational uses in Sub-Areas B, C, D, and E of the Specific Plan (Area 4); and

WHEREAS, the *Low-Medium Density Residential* General Plan designation will allow for the development of single-family residential, multi-family residential, and elementary school; and

WHEREAS, residents and other community members have had opportunities to provide comments and suggestions throughout the development of the Newark Areas 3 and 4 Specific Plan Project (the "Project"), through a series of public meetings from 2006 through 2010, by commenting on information posted on the City's website and made available at City Hall and the Library, and by commenting on the Recirculated Draft Environmental Impact Report ("Draft REIR") for the Project; and

WHEREAS, public comments have been used to shape and revise the land use plan for the Project; and

WHEREAS, the proposed Low-Medium Density Residential designation is consistent with the other elements of the General Plan; and

WHEREAS, a Recirculated Environmental Impact Report ("REIR") was prepared for this Project, including the General Plan amendment, planned unit development, and development agreement, and was approved by the City Council on March 26, 2015; and

WHEREAS, the REIR fully discloses all possible environmental impacts of the Project, including the Specific Plan, the designation of Area 3 as *Low-Medium Density Residential* in the General Plan, and the Development Agreement; and

WHEREAS, in accordance with the REIR and Statement of Overriding Considerations adopted by the City Council on March 26, 2015, the City Council has found that the benefits to the community associated with this Project in terms of housing availability and choice, provision

of public school facilities, and creation of a mix of housing options including high quality residential uses such as executive housing types and below market rate housing options, outweigh the unavoidable impacts; and

WHEREAS, the City Council has read, reviewed, and considered the REIR, Newark Areas 3 and 4 Specific Plan, including the proposal to readopt and affirm the designation of Area 3 as *Low-Medium Density Residential* in the General Plan; has conducted a public hearing on the proposed REIR, Newark Areas 3 and 4 Specific Plan and related General Plan affirmation; has discussed, evaluated, analyzed, reviewed and considered the information presented in said hearing, as well as the REIR, Newark Areas 3 and 4 Specific Plan, related General Plan affirmation, Development Agreement, and staff report; and

WHEREAS, pursuant to California Government Code section 6061, 65090, 65091, 65094, and 65353, a public notice was published in the Argus on March 13, 2015, and the City Council held a public hearing on said affirmation of the General Plan, Specific Plan, and Development Agreement at 7:30 p.m. on March 26, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, the City Council resolves as follows:

a. To adopt the Areas 3 and 4 Specific Plan; and

b. To adopt and affirm the designation of Area 3 as *Low-Medium Density Residential* in the General Plan, as supported by the independent analysis in the REIR.

NEWARK SPECIFIC PLAN

AREA 3 & 4 OF THE GENERAL PLAN

PREPARED FOR THE CITY OF NEWARK, CA
March, 2010

LIST OF CONSULTANTS

Planner	**The Frisbie Planning Company** 109 Baldwin Avenue San Mateo, CA 94401 650.696.8440
Architect	**Hunt, Hale, Jones, Architects** 444 Spear Street Suite 200 San Francisco, CA 94105 415.512.1300
Landscape Architect	**The Guzzardo Partnership, Inc.** 836 Montgomery Street San Francisco, CA 94133 415.433.4672
Civil Engineer	**Kier & Wright** 3350 Scott Blvd. Building 22 Santa Clara, CA 95054 408.727.6665
Biologist	**H.T. Harvey & Associates** 983 University Avenue Building D Los Gatos, CA 95032 408.458.3200

CITY OFFICIALS ACKNOWLEDGEMENTS

Community Development Director:	Terrance Grindall
Public Works Director:	Peggy Claasen
Senior Engineer :	Soren Fajean
Economic Development Director:	Clay Colvin
Planner :	Richard Fujikawa

HOW TO USE THIS PLAN

This Plan herein establishes three residential neighborhoods, and the standards and guidelines for development or each of those neighborhoods. The Planning Director is given the authority for Site Plan & Architectural approval for the design of each Neighborhood as long as the designs are in compliance with the provisions in this Plan. City Council approvals are required for all Tentative & Final Maps, which may be processed ahead of or after review by the Planning Director for Site and Architectural approval.

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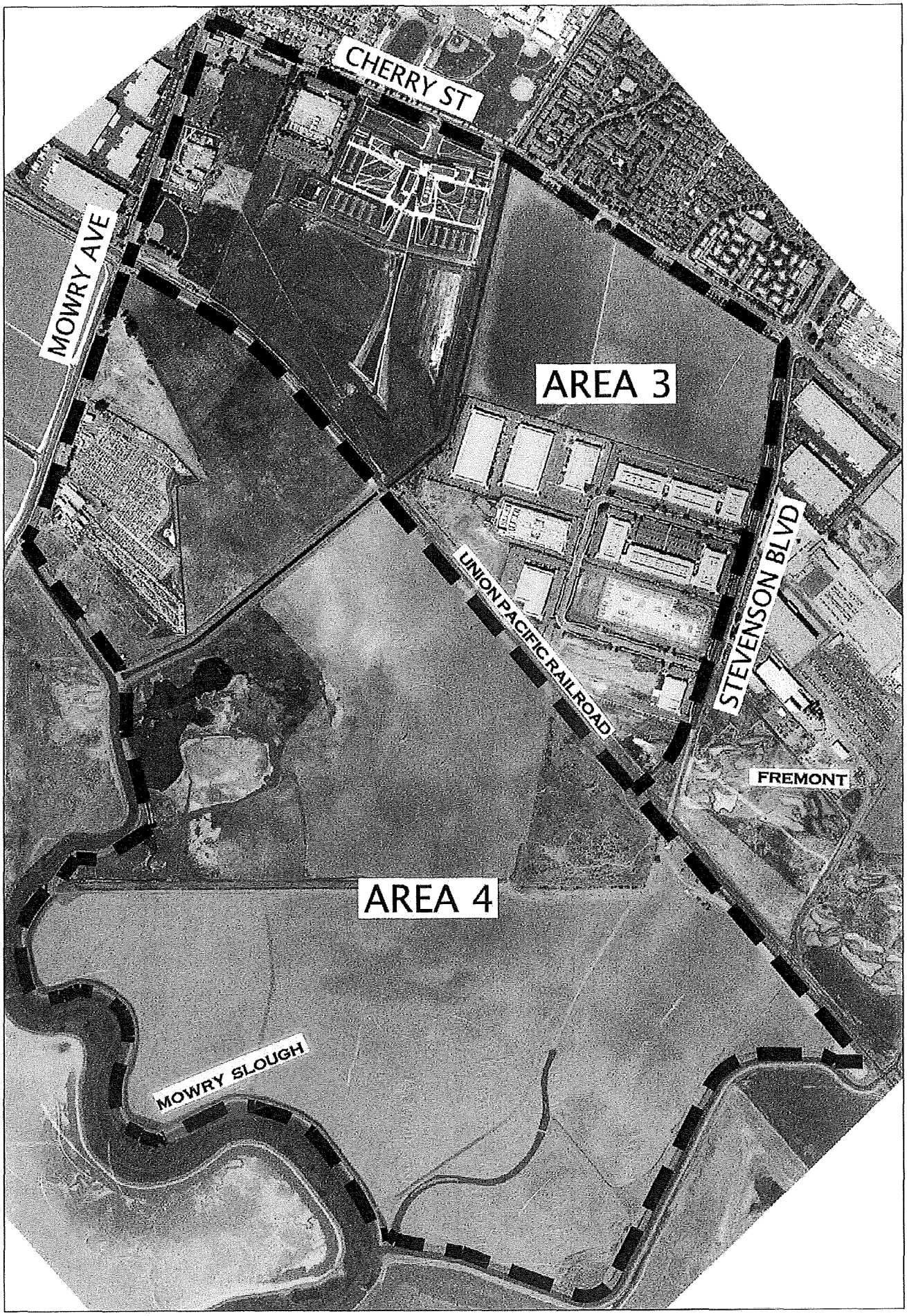


NEWARK SPECIFIC PLAN DELINEATION
AREA 3 & 4 CITY OF NEWARK, CA

N.T.S.

1. Introduction & Background

The Specific Plan covers 856 acres of land in the western edge of Newark. There are two areas currently identified in the General Plan as Area 3, which is 296 acres and Area 4, which is 559 acres. Area 3 is the land bounded by Mowry Avenue, Stevenson Blvd., Cherry Street and the Union Pacific Railroad. The current General Plan for the area is: Special Business Park, Public Open Space and Public Institutional. The Specific Plan guidelines are intended to apply only to the southeastern-most 77 acre portion of Area 3. The remaining portion of Area 3 is not proposed to be changed. Area 4 is the land west of the Union Pacific Railroad extending to the Mowry Slough. Mowry Ave is the northern boundary with a flood control channel and the Durham Road Landfill in Fremont as the southern boundary. The current General Plan designation is Low Density Residential with the requirement of a Specific Plan being adopted prior to development. The General Plan envisions "high quality" residential uses along with a "golf course". According to the General Plan Text" ... if the development of a Golf Course ... is unfeasible as determined by the City, then residential may proceed with other recreation facilities acceptable to the City when a Specific Plan is adopted by the City...".

There are several property owners in Area 3 and 4, but only the "Newark Partnership" holdings are contributing to the costs of the Specific Plan and EIR at this time. As other property owners seek to develop pursuant to the Plan, the City shall recover a pro-rata share of the costs of the preparation of the Plan from them to reimburse the present property owners. The exhibit following, "Specific Plan Property Ownership Map", shows all the relevant ownerships within the Specific Plan's boundary. The Newark Partnership controls the parcels identified as: 9, 10, 11, 28, 33, 34, 35, 38, and 39.

2. Specific Plan Land Use

a. **Introduction.** Major land uses for the Specific Plan include Residential, Golf Course, and reserve land in which no development is planned and no changes in existing designations or zoning are proposed. Their locations are depicted on the "Specific Plan Land Use Diagram". In addition to those land uses, the plan's diagram also shows a new two lane bridge over the railroad connecting Stevenson Blvd with a two lane main entry road on the southwest side of the railroad leading into Area 4.

b. **Sub Areas.** The Specific Plan is divided into six sub areas, as identified on the "Specific Plan Land Use Diagram" as follows:

- **Sub Area A.** Sub Area A is the 77 plus acres of land bounded by Cherry Street, Stevenson Blvd, ACFC & WCD's flood control channel, and the existing and developed Industrial uses located on the southwestern edge of this sub-area. Uses planned for this area include single family detached homes on lots varying in size, attached or stacked housing, and school/park up to 12 acres in size. The school/park area is to take vehicle access from Cherry Street via an internal street connecting directly to Cherry Street. A pedestrian trail will be located adjacent to the Flood Control Channel to connect the School/Park with the residential area. To promote pedestrian and bike traffic from the residential area to the recreation use to the North, a pedestrian bridge across the

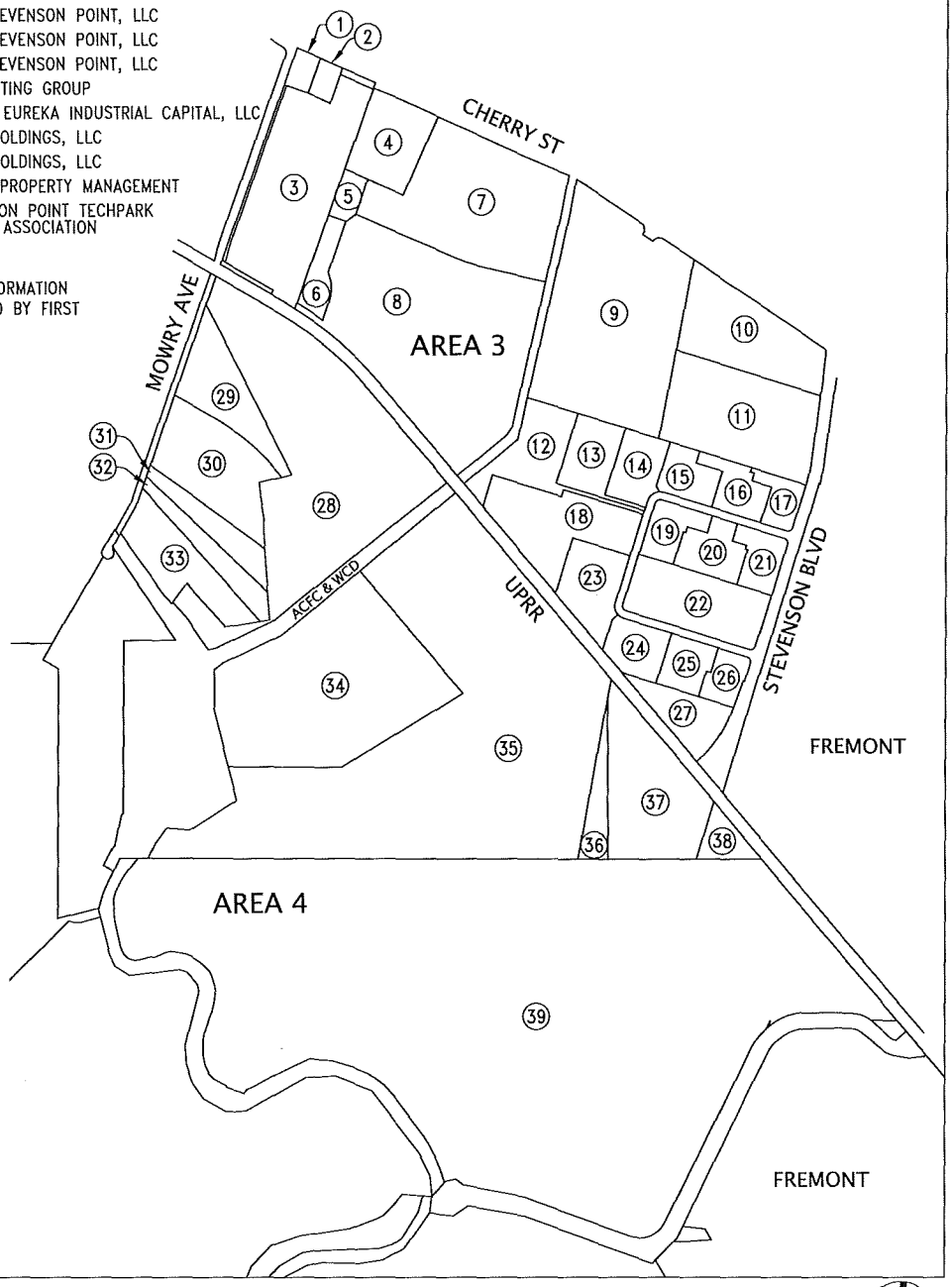
AREA 3 OWNERSHIP TABLE

	ACREAGE	PROPERTY OWNER
1	1.480 ± ACRES	CITY OF NEWARK
2	1.371 ± ACRES	CITY OF NEWARK
3	26.217 ± ACRES	CITY OF NEWARK
4	8.758 ± ACRES	AGILENT TECHNOLOGIES, INC
5	1.800 ± ACRES	CITY OF NEWARK
6	3.343 ± ACRES	CITY OF NEWARK
7	29.984 ± ACRES	OHLONE COMMUNITY COLLEGE DISTRICT
*8	51.766 ± ACRES	FREMONT NEWARK COMMUNITY COLLEGE DISTRICT
9	40.891 ± ACRES	SI XVIII, LLC
10	15.641 ± ACRES	SI XVIII, LLC
11	21.019 ± ACRES	SI XVIII, LLC
*12	8.747 ± ACRES	365 NEWARK DC, LLC
13	5.796 ± ACRES	365 NEWARK DC, LLC
14	4.832 ± ACRES	NEWARK EUREKA INDUSTRIAL CAPITAL, LLC
15	3.927 ± ACRES	BRCP STEVENSON POINT, LLC
16	4.027 ± ACRES	BRCP STEVENSON POINT, LLC
17	2.879 ± ACRES	BRCP STEVENSON POINT, LLC
*18	13.454 ± ACRES	APPLE COMPUTER INC
19	3.780 ± ACRES	BRCP STEVENSON POINT, LLC
20	4.793 ± ACRES	BRCP STEVENSON POINT, LLC
21	3.735 ± ACRES	BRCP STEVENSON POINT, LLC
22	12.309 ± ACRES	TASANN TING GROUP
23	7.199 ± ACRES	NEWARK EUREKA INDUSTRIAL CAPITAL, LLC
24	4.500 ± ACRES	CLARK HOLDINGS, LLC
25	3.714 ± ACRES	CLARK HOLDINGS, LLC
26	2.893 ± ACRES	EUREKA PROPERTY MANAGEMENT
27	5.841 ± ACRES	STEVENSON POINT TECHPARK OWNERS ASSOCIATION

AREA 4 OWNERSHIP TABLE

	ACREAGE	PROPERTY OWNER
28	56.018 ± ACRES	NEWARK PARTNERS, LLC
*29	9.805 ± ACRES	PICK-N-PULL AUTO DISMANTLERS
*30	14.408 ± ACRES	PICK-N-PULL AUTO DISMANTLERS
*31	4.997 ± ACRES	NUNES ALFRED C / NUNES LORRAINE M
*32	4.998 ± ACRES	HEBERT ELMER H / HEBERT PATRICIA J
33	10.000 ± ACRES	NEWARK PARTNERS, LLC
34	45.137 ± ACRES	NEWARK PARTNERS, LLC
35	115.136 ± ACRES	NEWARK PARTNERS, LLC
36	18.550 ± ACRES	KATY S O'CONNOR REVOCABLE TRUST
37	3.657 ± ACRES	KATY S O'CONNOR REVOCABLE TRUST
*38	2.880 ± ACRES	ARQUES INVESTMENT COMPANY, LLC
*39	266.978 ± ACRES	ARQUES INVESTMENT COMPANY, LLC

* DENOTES PROPERTY OWNERS INFORMATION OBTAINED VIA FASTWEB PROVIDED BY FIRST AMERICAN TITLE INSURANCE CO.



NEWARK SPECIFIC PLAN

PROPERTY OWNERSHIP DIAGRAM

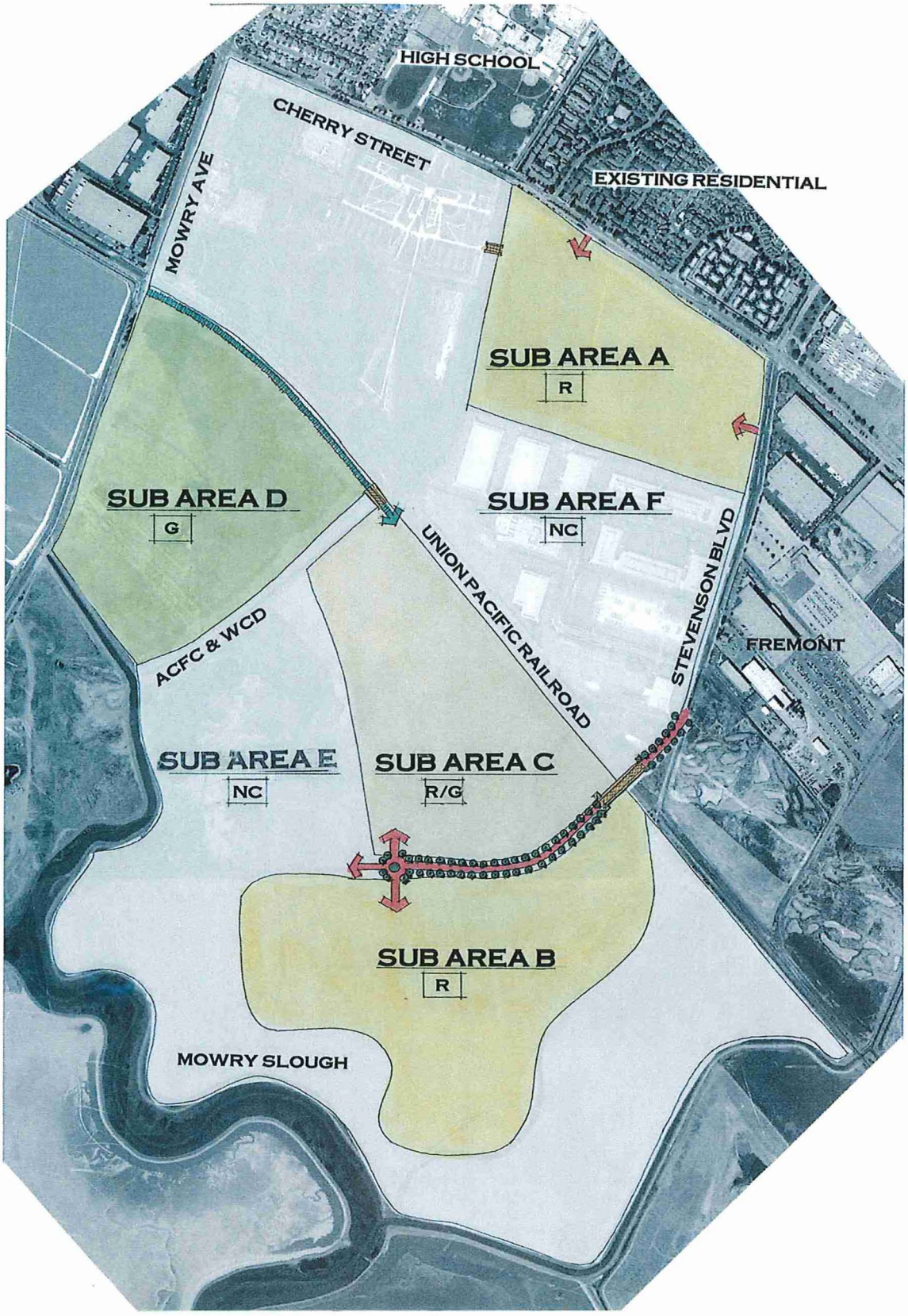
Channel will be provided. The bridge will be carefully placed to line-up with the walkways in the Ohlone College facility next door.

Sub Area A is currently designated as Special Industrial under the General Plan and zoned as MT-1 High Technology Park. The General Plan will be amended to a Medium Density Residential designation, and Sub-Area A will be rezoned to Residential District R-6000 (single family detached homes), as contemplated by this Plan. In anticipation that the majority of the lots will range from 3,000 to 6,000 square feet, a Planned Unit Development permit and a conditional use permit will also be granted simultaneously with the rezoning. These permits will allow for greater flexibility for requirements such as lot size and setbacks and will also allow for a portion of Sub Area A to be developed with high density multifamily housing in order to accommodate the City's affordable housing requirement, should the developer choose to do so on-site. In addition, a conditional use permit will be required for attached and stacked housing. Because the housing density will be averaged over the entire Specific Plan Area, the density required for attached and/or stacked housing will be allowed under the Medium Density Residential designation.

- **Sub Area B.** Sub Area B consists of 125 plus acres of land south of the main entry "Access Road" on the western side of the railroad. Approximately 86 acres are upland and the remaining are "wetlands". The area, except for the Access Road and a short length of the railroad, is bounded by land zoned and currently utilized for agriculture. Only single family detached homes of varying lot sizes, a small "nature Park" are envisioned within this sub area. An 80-foot setback from the centerline of railroad tracks is required for any residential development within this sub area. Vehicular access to this sub area will be via a new two lane bridge from Stevenson Blvd over the railroad connecting with the main entry's two lane access road. An esplanade is planned on the north side of this two lane road.

  Sub Area B is currently designated as Low Density Residential under the General Plan and zoned as Agricultural. The General Plan will be amended to a Medium Density Residential designation, and Sub Area B will be rezoned to Residential District R-6000 (single family detached homes), as contemplated by this Plan. In anticipation that the majority of the lots will range from 3,000 to 6,000 square feet, a Planned Unit Development permit and a conditional use permit will also be granted simultaneously with the rezoning. These permits will allow for greater flexibility for requirements such as lot size and setbacks.

- **Sub Area C.** Sub Area C consists of 90 plus acres of land bounded by the western edge of the railroad, southern edge of the Flood Control Channel, the northern edge of the main entry "Access Road", and the western edge currently zoned and utilized as agriculture. There are about 62 acres of uplands and the remaining are "wetlands" in this sub-area. This area is planned for all single family detached residential, or for single family detached residential land, some golf course, or all golf course. A small nature park will be located on the western edge of any residential usage. An 80-foot setback from the centerline of railroad tracks is required for any residential development within this sub area.



SPECIFIC PLAN LAND USE DIAGRAM

NEWARK, CA AREA 3 & 4

0' 400' 800'

LEGEND

- NC — NO CHANGE IN EXISTING GENERAL PLAN OR ZONING
- R — RESIDENTIAL
- R/G — RESIDENTIAL AND/OR GOLF COURSE
- G — GOLF COURSE OR RECREATIONAL
- TWO LANE ACCESS ROAD
- NEW TWO LANE BRIDGE
- NEW PED BRIDGE
- ACCESS POINT
- EVA/TRAIL
- ROTARY

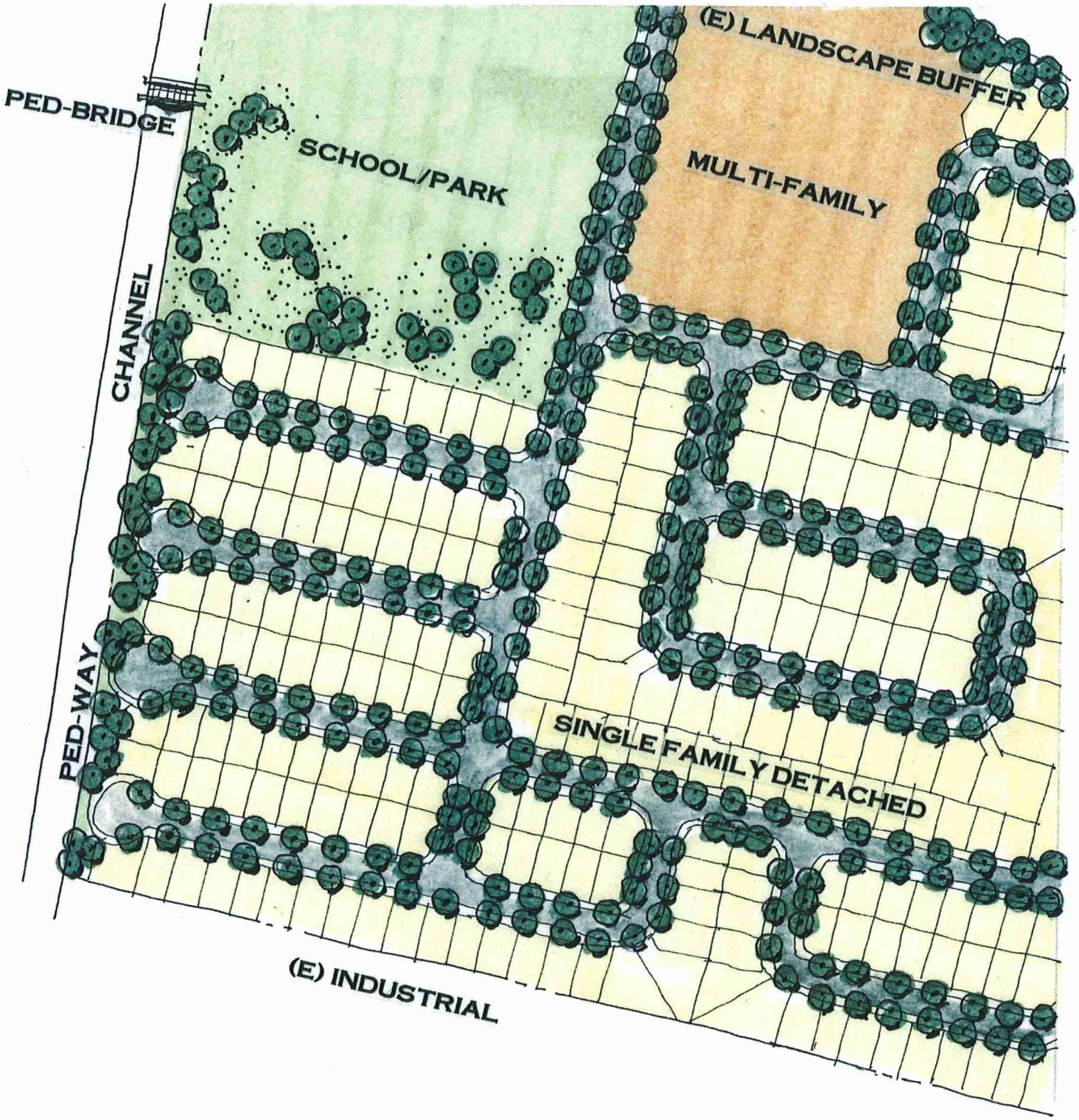
Sub Area C is currently designated as Low Density Residential under the General Plan and zoned as Agricultural, with a small portion zoned Industrial. The General Plan will be amended to a Medium Density Residential designation, and Sub Area C will be rezoned to Residential District R-6000 (single family detached homes or a golf course), in accordance with this Plan. In anticipation that the majority of the lots will range from 3,000 to 6,000 square feet, a Planned Unit Development permit and a conditional use permit will also be granted simultaneously with the rezoning. These permits will allow for greater flexibility for requirements such as lot size and setbacks. The addition of a golf course will also require a conditional use permit. A golf course is in accord with the objectives and purposes of the R-6000 district because it will help to assure there is adequate light, air, privacy, and open space for each dwelling, as it is located in a Residential district. The golf course will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity because it will be located adjacent to existing residential uses, as well as Ohlone College. The golf course design will be of the highest quality, and therefore will produce an environment of stable and desirable character consistent with the objectives of the zoning code. Lastly, the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity as discussed above.

- **Sub Area D.** Sub Area D consists of 100 plus acres of land on the north side of the flood control channel, west of the railroad tracks, and the south side of Mowry Avenue. There are approximately 75 acres of uplands and the remaining are "wetlands" in this area. The entire sub area is reserved for a Golf Course or other recreational uses.

  Sub Area D is currently designated as Low Density Residential under the General Plan and zoned as Agricultural. Sub Area D will remain zoned Agricultural to allow construction of a golf course or other recreational uses in accordance with this Plan. A conditional use permit for the addition of a golf course or other recreational uses will be granted simultaneously with the approval of this Plan. A golf course or facility for other recreational use is in accord with the objectives and purposes of the Agricultural district because it reserves appropriately located lands for agricultural and natural resource production uses. The golf course or facility for other recreational use will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity because it will be located adjacent to existing residential uses, as well as Ohlone College. The golf course design will be of the highest quality, and therefore will produce an environment of stable and desirable character consistent with the objectives of the zoning code. Lastly, the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity as discussed above.

- **Sub Area E.** Sub Area E is the remaining area on the western side of the railroad and contains 244 plus acres of land. There are approximately 53.5 acres of uplands with the remaining being "wetlands" in this sub area. Both the existing General Plan designation and Zoning will continue to apply.

- **Sub Area F.** Sub Area F is the remaining 221 plus acres of land on the northeastern side of the railroad in Area 3. The current General Plan designation for Sub Area F is Special Industrial and it is zoned as Industrial Technology Park and High Technology Park. No

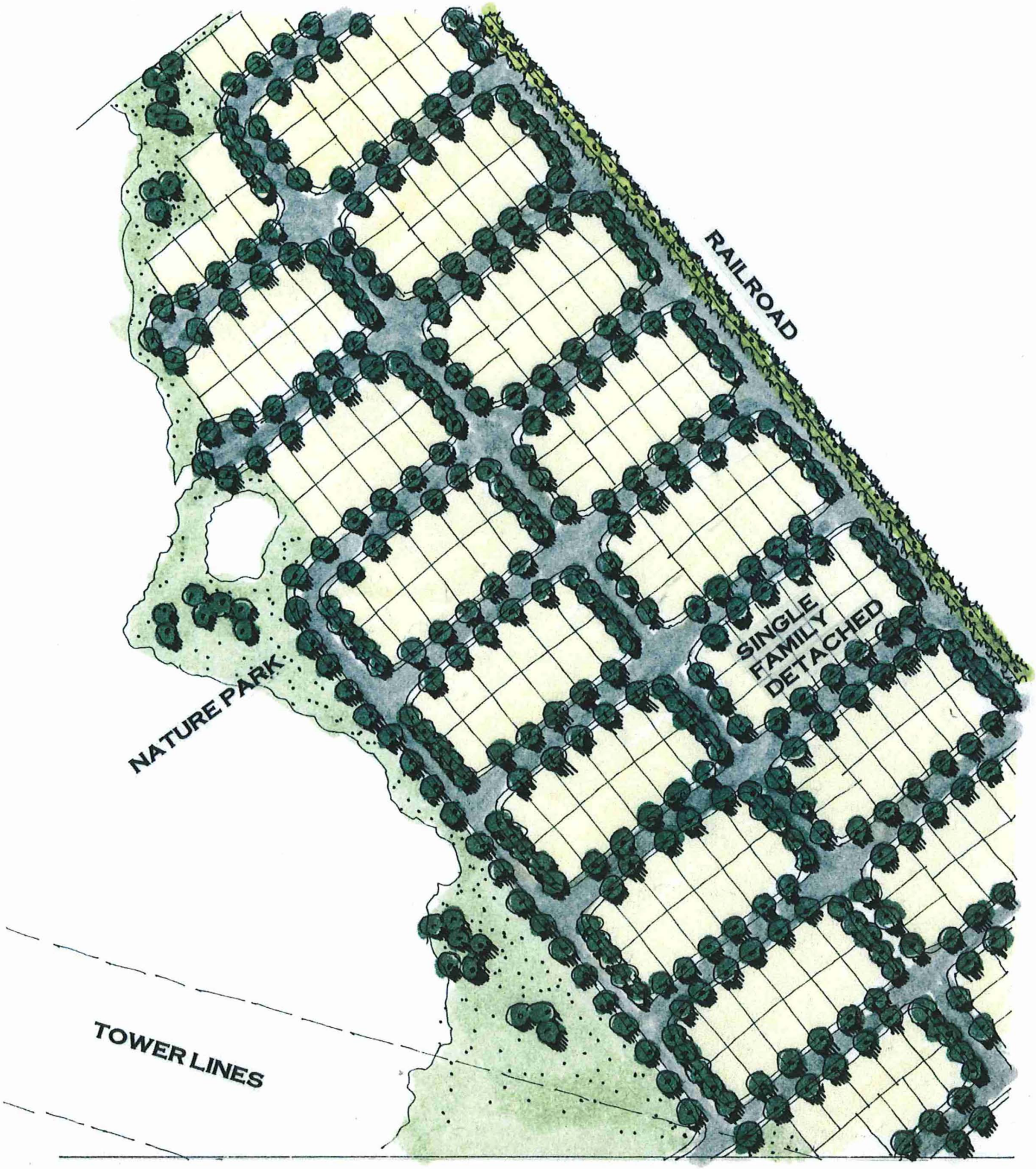


NEWARK SPECIFIC PLAN
CONCEPT SKETCH SUB AREA A

N.T.S.

NEWARK SPECIFIC PLAN
CONCEPT SKETCH SUB AREA B

N.T.S.



NEWARK SPECIFIC PLAN
CONCEPT SKETCH SUB AREA C

N.T.S.

change in the current usage is envisioned by this Specific Plan with this sub area. Both the existing General Plan designations and the Zoning limitations will continue to apply.

c. **Residential Density.** The Residential holding capacity for the Specific Plan is set at 1,260 dwelling units. Housing may only be located within the residential designated sub areas A, B, and C of the Land Use Plan. At this time the 1,260 units are allocated only to the "Newark Partnership" holdings. Any other Owner of property within the residential portions of the plan may obtain appropriate density through a major amendment to this Specific Plan.

d. **Conceptual Neighborhood Sketches.** On the plates that follow, several conceptual layouts for the various residential neighborhoods are shown. These are presented **only for visualization purposes** to depict how these neighborhoods could develop.

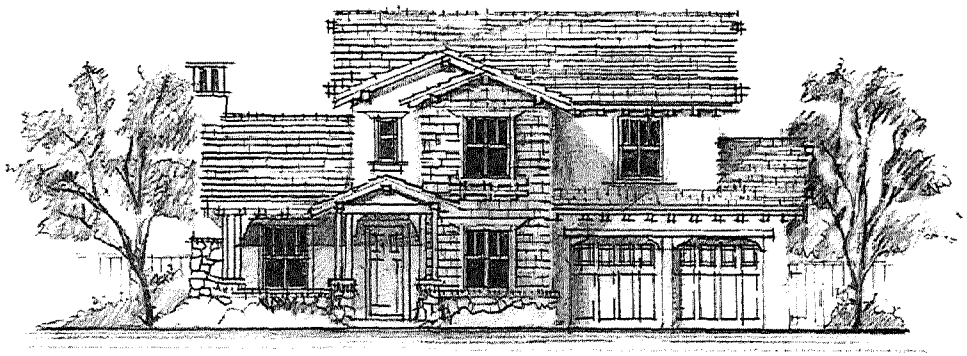
3. **Siting Standards & Architectural Design Guidelines**

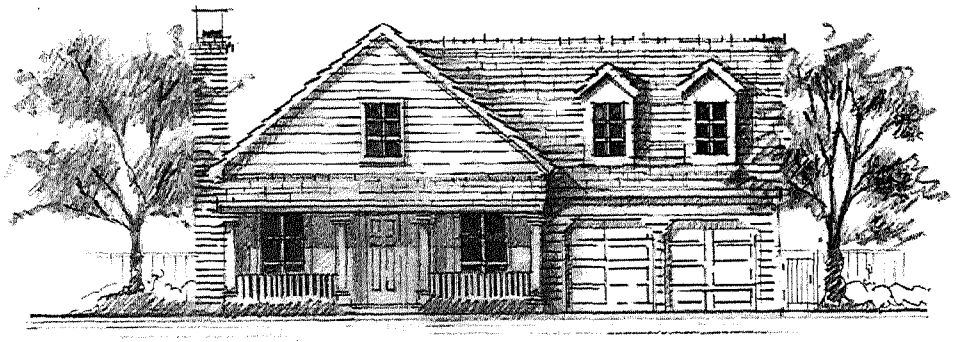
a. **Introduction. Single Family Lot Standards.** Five lot sizes are contemplated in the Specific Plan along with attached or stacked housing. The four plates that follow provide the lot criteria for 45'x70' lots, 50'x80' lots, 55'x80' lots, and 60'x80' lots. No criteria are provided for custom lots since they will be irregularly shaped. The Planning Director will establish appropriate setbacks during site and architectural review of a particular home on a custom or irregular lot. The standards for the attached and/or stacked housing criteria are listed following the SFD standards.

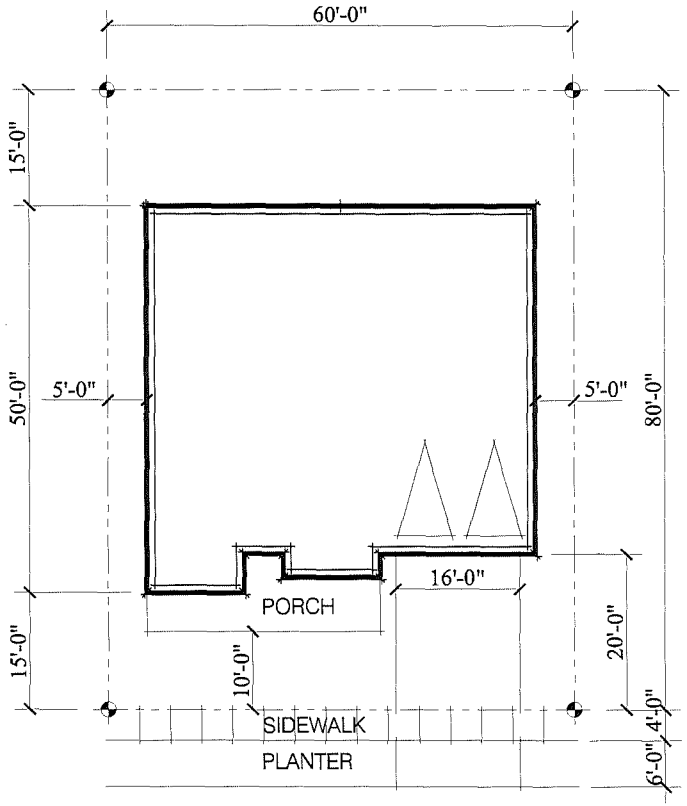
The architectural design concept of any housing is also shown on the plates. Custom and attached and/or stacked housing should be designed to be compatible with these design concepts. Other compatible design concepts may be considered as a minor amendment to the Specific Plan if they are deemed to be of equal or better quality than the ones presented herein.

b. **Multi-Family Siting Standards.** The Standards listed below are minimum, except for when they refer to a maximum allowed item. The architectural theme should be compatible and related to the Single Family Detached Themes.

- Maximum Height: Sixty feet
- Front and street side setbacks: Twenty feet
- Interior and rear setbacks: Ten feet or 75 feet for each foot of height when adjacent to a single family residence.
- Between parking or circulation areas and a public street right of way or private street easement: Fifteen feet
- Maximum Lot coverage: Fifty percent
- Common open space can be indoors or out
- Common open space shall be provided at 500 sq. ft. for the first five units and an additional fifty square feet for each additional unit
- Common open space shall not be located within required setbacks
- Balconies (above ground level) Minimum sixty square feet with at least interior dimension of six feet
- Patios (at ground level) Minimum one hundred square feet with at least interior dimension of ten feet







NOTES:

A. ALL DIMENSIONS ARE MINIMUM.
B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.
C. PORCHES MAY ENCROACH TO WITHIN 10' OF STREET R.O.W. MINIMUM PORCH DEPT OF 7' REQUIRED.

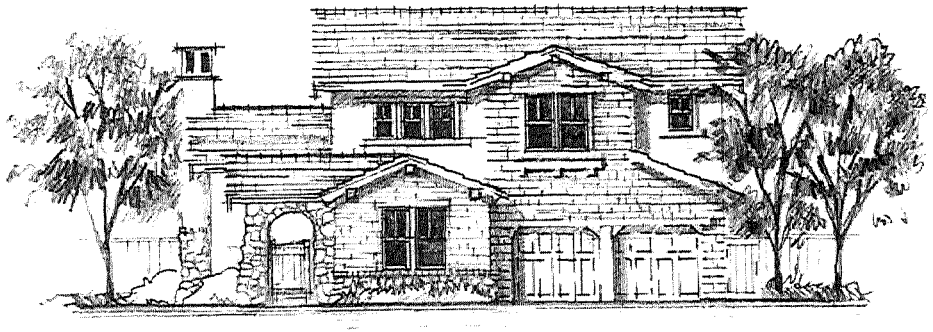
NEWARK SPECIFIC PLAN AREA

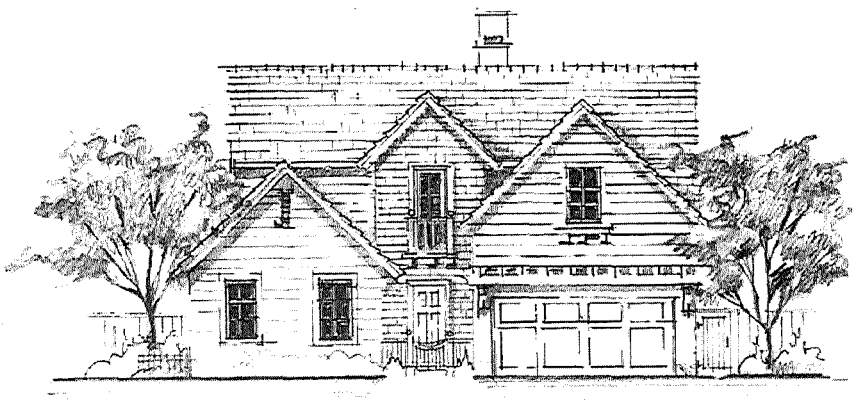
ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

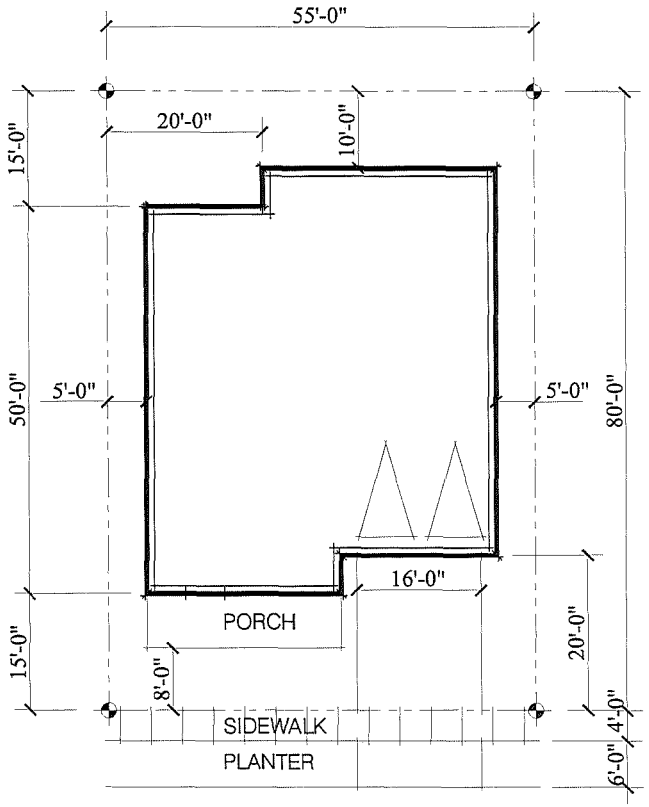
NEWARK, CA

SINGLE FAMILY DETACHED
60' x 80' CONVENTIONAL HOMES

©HUNT HALE JONES ARCHITECTS







NOTES:

A. ALL DIMENSIONS ARE MINIMUM.
B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.
C. PORCHES MAY ENCROACH TO WITHIN 8' OF STREET R.O.W. MINIMUM PORCH DEPT OF 7' REQUIRED.

NEWARK SPECIFIC PLAN AREA

ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

NEWARK, CA

SINGLE FAMILY DETACHED
55' x 80' CONVENTIONAL HOMES

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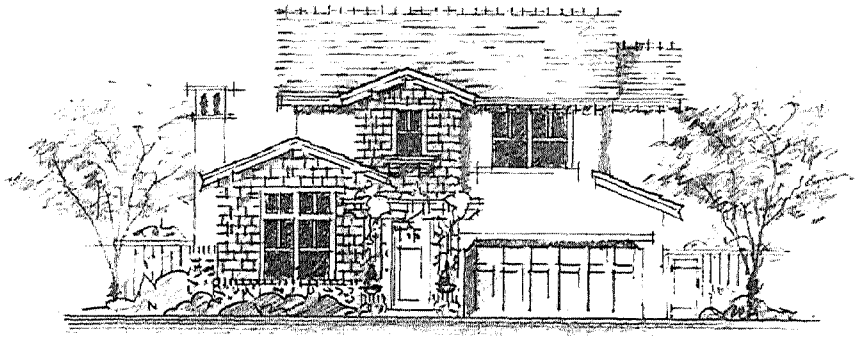
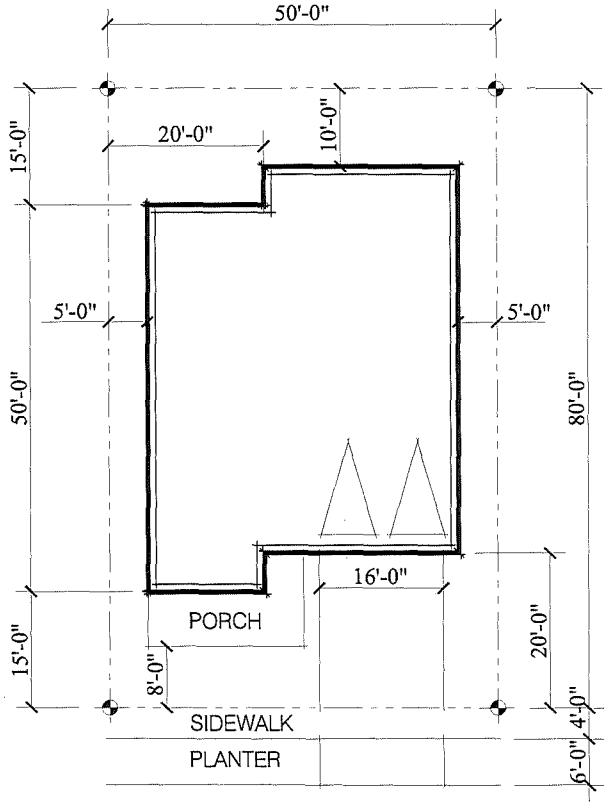




NOTES:

A. ALL DIMENSIONS ARE MINIMUM.

B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.

C. PORCHES MAY ENCROACH TO WITHIN 8' OF STREET R.O.W. MINIMUM PORCH DEPT OF 7' REQUIRED.

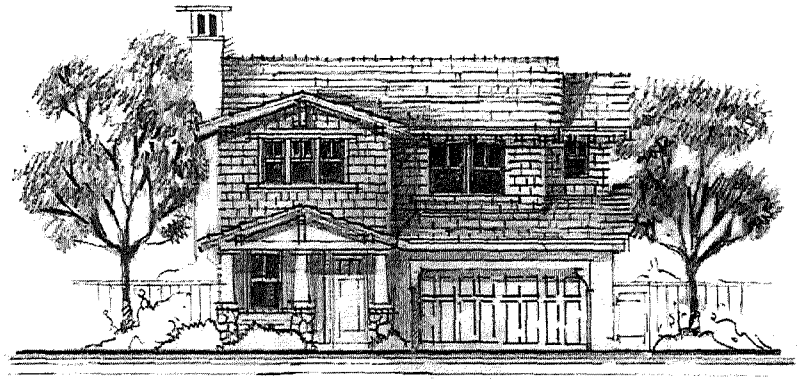
NEWARK SPECIFIC PLAN AREA

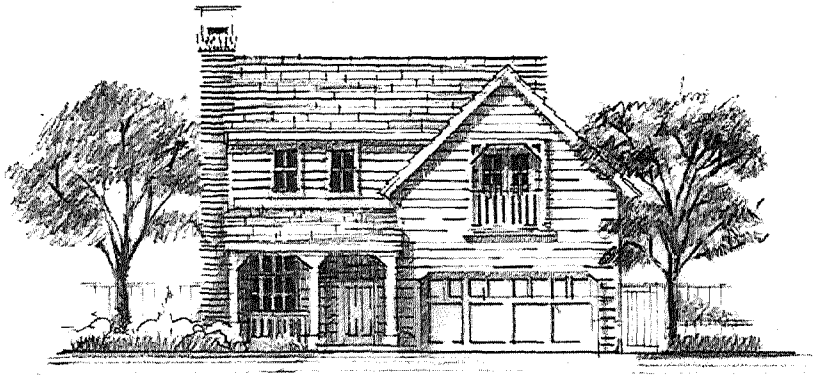
ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

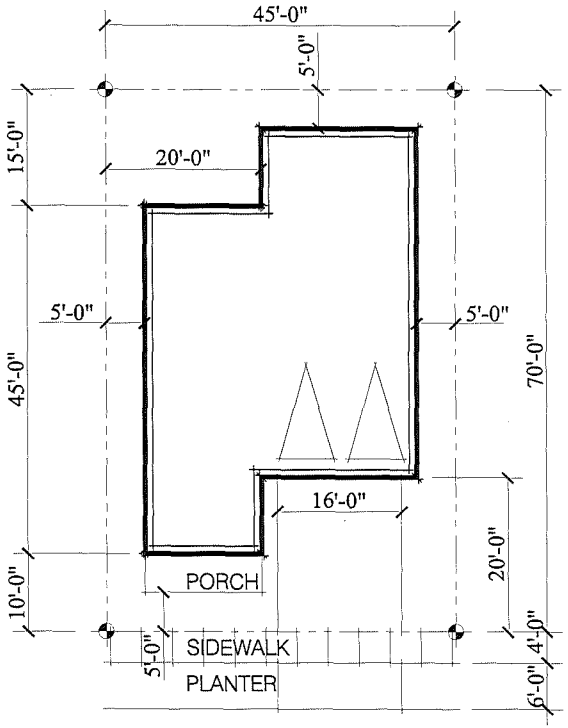
NEWARK, CA

SINGLE FAMILY DETACHED
50' x 80' CONVENTIONAL HOMES

©HUNT HALE JONES ARCHITECTS







NOTES:

A. ALL DIMENSIONS ARE MINIMUM.
B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.
C. PORCHES MAY ENCROACH TO WITHIN 5' OF STREET R.O.W. MINIMUM PORCH DEPT OF 5' REQUIRED.

NEWARK SPECIFIC PLAN AREA

ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

NEWARK, CA

SINGLE FAMILY DETACHED
45' x 70' CONVENTIONAL HOMES

©HUNT HALE JONES ARCHITECTS

- Studio and one bedroom: One covered parking space for residents and one-half uncovered guest space
- Two bedroom and larger: One covered space for residents, one-half space for residents, plus one uncovered guest space
- Seniors: One-half covered space for residents and one-half uncovered space for guests.

4. Engineering & Improvements

a. **Introduction.** The majority of the Sub-Areas within the Specific Plan are undeveloped requiring new infrastructure including public street networks, underground utility systems, grading of the topography and other infrastructure. The Specific Plan is located within the City of Newark Urban Service Area, with several utility districts governing various aspects of public utility infrastructure. The plan area is bounded by three public streets with existing utility infrastructure: Mowry Avenue, Cherry Street, and Stevenson Boulevard. The overall capacity and existing condition of this public infrastructure is adequate to serve the planned uses, however, some improvements and upgrading of existing utilities are necessary. This section establishes standards and policies for the design and installation of new engineered infrastructure for the Specific Plan. It takes into account long-term development objectives for the complete build-out of the plan and establishes the proper framework necessary for future development.

b. **Street Design Standards.** The residential street networks within the Specific Plan are designed to be dedicated as public streets maintained by the City of Newark. With the exception of the esplanade within Area 4, the remainder of the street network will be designed In accordance with the street sections provided in this plan and City of Newark standards. Any deviations from these standards will require review and approval by the City of Newark.

- **Residential Streets.** All residential streets will match City of Newark standard right-of-way width of 56 feet. Cul-de-sacs will be designed per city standards as well with a curb radius of 45 feet and right-of-way radius of 50 feet.

- **Stevenson Boulevard Overpass.** Due to the at-grade railroad crossing at the entrance into Area 4 on Stevenson Boulevard, an overpass bridge needs to be constructed for vehicular and pedestrian traffic. This is the preferred option with respect to public safety at an existing at-grade crossing. This will completely separate street traffic from rail traffic further enhancing this intersection. Design and construction of this overpass will require close coordination with various public agencies including the City of Newark, Union Sanitary District, the Public Utilities Commission, and Union Pacific Corporation. The overpass location faces several significant design considerations including the railroad, wetlands, high-voltage transmission lines and large sanitary sewer force mains in the area. Advanced preliminary designs have been completed for the overpass including catenary surveys of the transmission lines by PG&E, structural design of the overpass with respect to traffic load and structural support, and embankment design of the approach ramps. The engineered design of the bridge section for a single 12 foot travel lane in each direction adjacent to 5 foot wide bicycle lanes. Each direction is separated by a center median island. Both sides of the bridge will have pedestrian sidewalks with safety rails attached to the edge of the overpass. Within the span of the

Figure 4b.3
Stevenson Boulevard Overpass Street Section

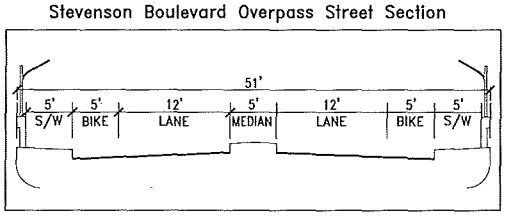


Figure 4b.4
PG&E High-Voltage Transmission Line Improvements

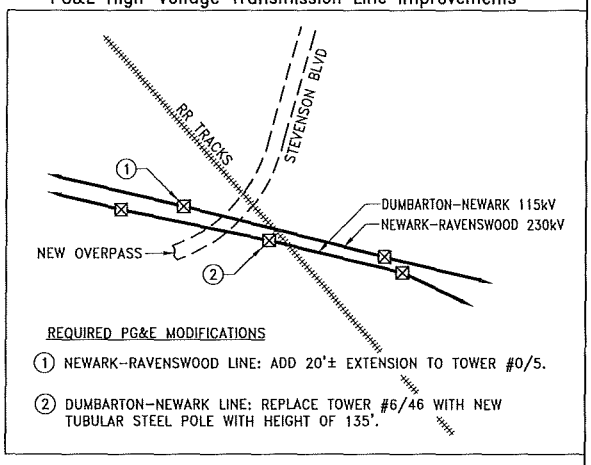


Figure 4b.1
Standard Residential Street

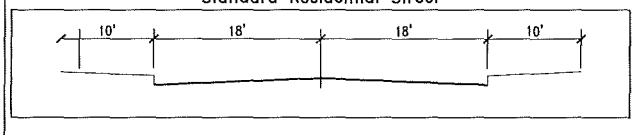


Figure 4b.2
Standard Cul de Sac

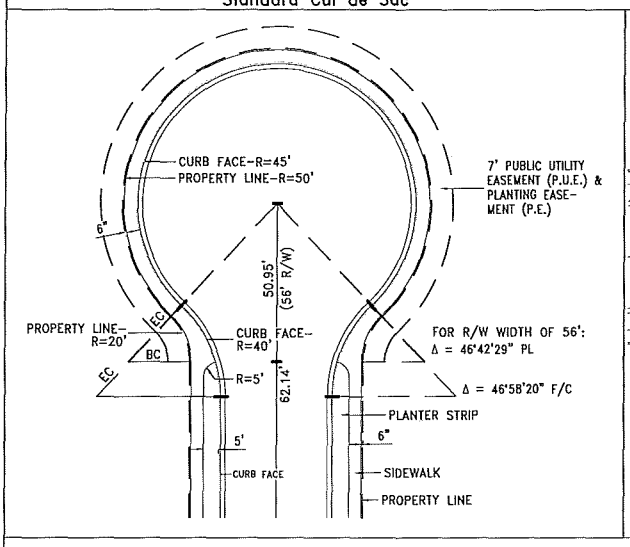
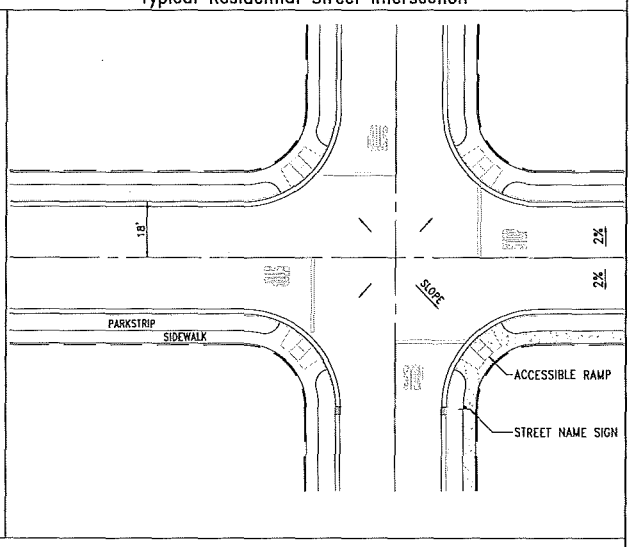


Figure 4b.5
Typical Residential Street Intersection



NEWARK SPECIFIC PLAN
STREET STANDARDS DIAGRAM

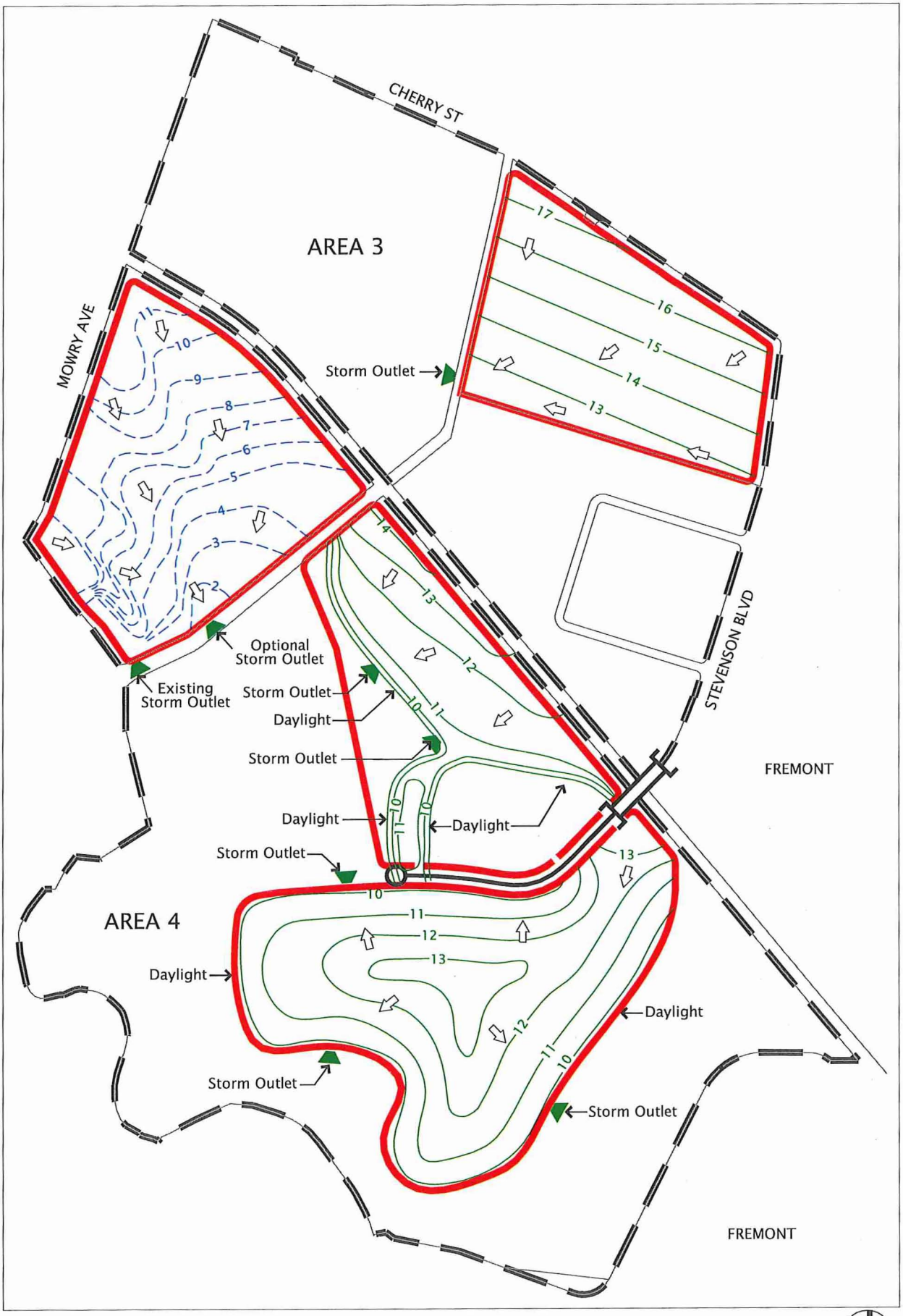
bridge, utility sleeves will accommodate public utility systems to serve the Area 4 including possible sanitary sewer, water, gas, electric, and communication facilities. The bridge spans across the Union Pacific Railroad right-of-way and directly beneath the high-voltage transmission lines. PG&E performed survey and design review of their lines, and concluded that The Dumbarton Newark 115 kV line will require replacement of one tower with a new tubular steel pole. It also concluded that the other line, The Newark Ravenswood 230 kV line, will require an extension of the nearest tower to raise it approximately 20 feet. These improvements allow the construction of the bridge to meet minimum clearance safety requirements above the railroad tracks and beneath the transmission lines.

- **Intersection Design.** The residential intersections and cul-de-sacs require specific design implementations to meet drainage, accessibility, and emergency requirements. A typical intersection of two residential streets with a 56 foot right-of-way is shown on the street standards Plate. MVTCD standard signage and striping will be used at all four-way intersections to include stop bars and stop signs in each direction as required by the City Engineer. Streets will be crowned with a typical 2% cross slope and should be designed to provide adequate drainage through the intersection of crowns.

- **Multi-Use Trail.** In Sub-Area D, along the east side of the trail, a vandal-resistant fence will separate the trail from the railroad right-of way, and along the west side of the trail, a post and rail fence is proposed to separate the trail from the golf course. The trail in Sub-Area D is located proximate to the railroad tracks, in order to provide the maximum development area of the proposed golf course. In the event an alternative recreation use is pursued on Sub-Area D, the location of the trail will be reconsidered. At the time Sub-Area C is developed, the fencing in the vicinity of the flood control channel will be reviewed, to ensure public and railroad safety.

c. **Topography & Grading.** The areas covered by the Specific Plan contain various topographic and drainage features that require specific guidelines in order to ensure conformance with local agency requirements as well as minimal impact to natural topography. The existing elevations within Sub Area A range from approximately 9 to 20 feet above mean sea level. The existing elevations within Area 4 range from approximately 0 to 16 feet above mean sea level. Existing drainage patterns within both sites currently drain runoff to various locations. Sub Area A discharges into the man-made Alameda County Flood Control Channel Line D abutting the western portion of this sub area. Area 4 discharges towards Mowry Slough generally from northeast to southwest. Drainage is collected within ditches that discharge at an existing pump, which in-turn lifts the water over the top of the levee where it discharges to Mowry Slough. The grading and drainage designs for the various aspects of the Specific Plan need to take into account the following goals and policies:

- **Flood Elevation Requirements.** Sub Area A is classified as Zone X. This indicates that the area has shallow flooding of less than one foot for the 100-year base flood or is prone to 500-year flooding. Area 4 is largely classified as Zone AE. In the event of 100-year flooding conditions, water up to an elevation of eight feet NGVD would flood that area. Development within the Specific Plan is required to comply with the City of Newark flood elevation standards for residential construction. The building pads of all occupied structures will be elevated to a minimum of 11.25 feet above mean sea level with the finished floor being a minimum of 6 inches above the building pad. The top of



NEWARK SPECIFIC PLAN

CONCEPTIVE GRADING & DRAINAGE DIAGRAM

LEGEND:

- STORM OUTLET
- DIRECTION OF FLOW
- 4 EXISTING GROUND ELEVATIONS
- 4 FUTURE MINIMUM GROUND ELEVATIONS

NOTE: FUTURE MINIMUM ELEVATIONS SHOWN ARE BASED ON THE DEVELOPMENT OF THE RESIDENTIAL CONCEPTS WHERE ALLOWED WITHIN THIS SPECIFIC PLAN.

curb grades for residential streets will be no less than 10.00 feet above mean sea level. All un-occupied structures (i.e. golf storage areas, sheds etc.) will either be elevated above the base flood elevation or flood proofed per City requirements.

- **Grading & Drainage.** Sub Area A will be designed to honor existing drainage patterns and release locations on the subject property. The residential pads will be elevated above the 100-year flood zone elevations mapped for Flood Channel Line D, where applicable across the site. The existing dual 42" outfall at the southwest corner of the site will be used to discharge storm water from the site. Because of the elevation requirements of the flood zone certain areas of Sub Area A require fill where existing elevations are too low. Overall approximately 56,000 cubic yards of fill is required based on the Conceptive Grading Plan. Due to the large size of Sub Area A this will be mitigated with cuts from existing portions of the site where elevations are higher than necessary.

  Area 4 will need to be elevated above the minimum City and FEMA base flood elevation requirements. Due to these elevation requirements significant amounts of imported fill will be necessary to elevate the site. Area 4 will need between 1.1 and 2.1 million cubic yards of fill. This fill can be achieved by a combination off off-site import and on-site excavation from elevated areas. The elevated site will be utilized to provide discharge outfalls at various locations to convey stormwater runoff out of the underground pipe network. This runoff will then discharge via natural drainage courses to the existing drainage pump and out to Mowry Slough.

  The golf course design in Area 4 will be graded along the existing terrain dependent on the ultimate layout of the course. The clubhouse and other buildings will be required to be elevated above the base flood elevations; however, the course will be constructed along the natural terrain to achieve an earthwork balance within the course.

  The drainage systems within the plan area are similar to most new developments. Lots, streets, and parks will be graded to convey surface runoff to new inlets within the development, which will then transport the storm water through underground piping networks to the discharge outlets. All public and private streets are to be designed to comply with the requirements of the City of Newark. All grading should conform with the general intent Conceptive Grading & Drainage Diagram. Changes to the grading as shown on the conceptual plan should follow the same general patterns and be subject to review and approval by the city.

  All grading should conform with the general intent of the Conceptive Grading & Drainage Diagram. The diagram portrays potential grading intents for the maximum potential fill necessary to develop the sub areas. This includes a potential for residential development within Sub Area C. Should a golf course alternative be pursued in that area then different elevation requirements apply as described above. Changes to the grading as shown on the conceptual plan should follow the same general patterns and be subject to review and approval by the city.

- **Soil Import & Stockpiling Operations.** Due to the significant quantity of fill material required to raise elevations across the site, a potentially long-term import operation

may be required to acquire the dirt necessary. This import operation will require preparation of grading plans, long-term erosion control plans, and other documents necessary to design and implement proper import requirements and best management procedures. A Grading Plan will be developed for mass-grading operations and soil stockpile management, which will require review and approval of the city and appropriate local agencies. This plan will be prepared in conjunction with a geotechnical investigation with recommendations for fill materials, import sources, earthwork guidelines, settlement monitoring, and other criteria.

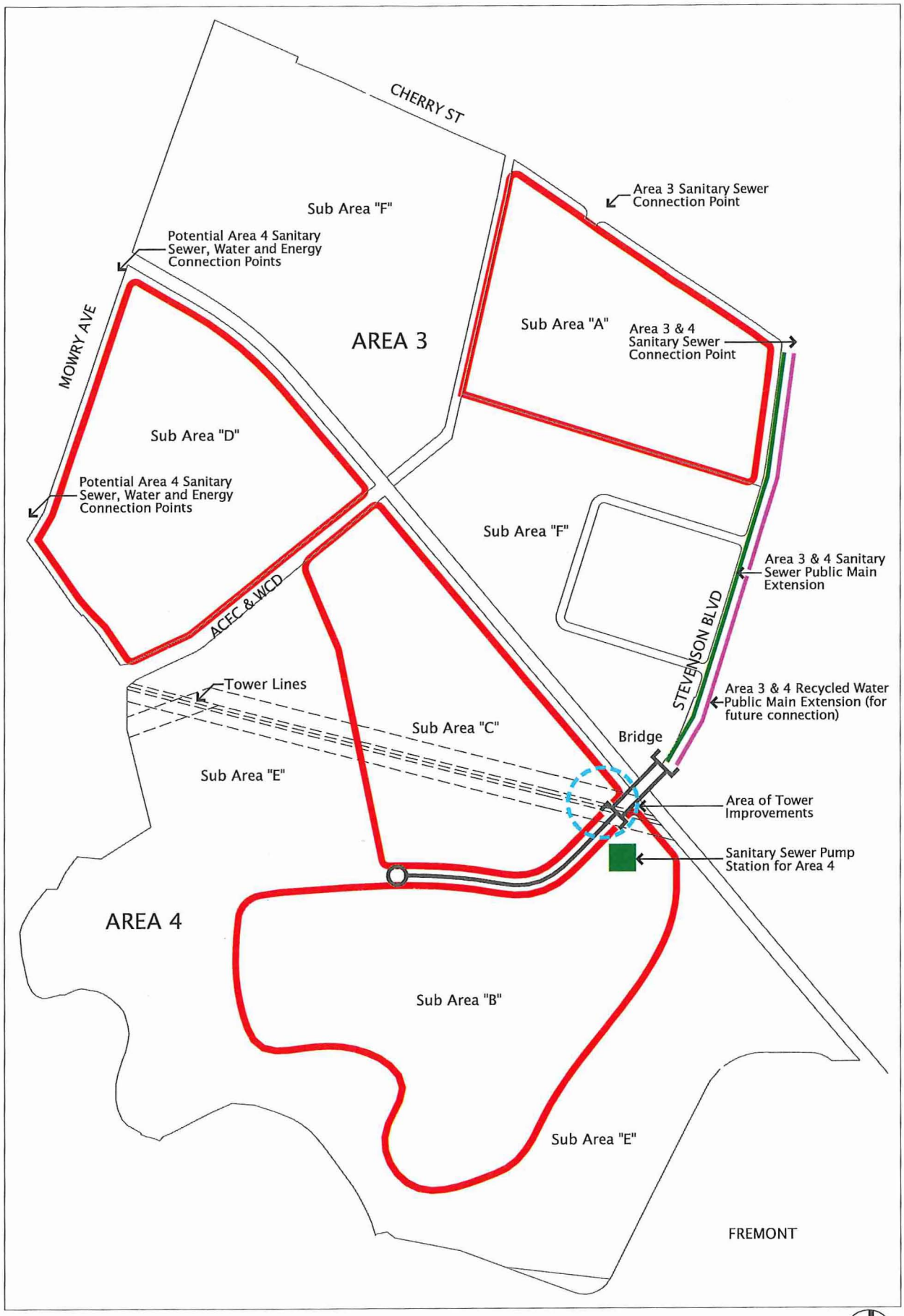
- **Storm Water Treatment. Storm Water Treatment.** All development projects within the Specific Plan are required to comply with water quality standards as administered through the National Pollution Discharge Elimination System (NPDES) permit requirements, the City of Newark's ordinances, policies, and processes, and other applicable local, state, and federal requirements. Under the currently effective municipal permit, development of Areas 3 and 4 will be subject to low impact development requirements and numeric sizing criteria for pollutant removal treatment systems.

  Developments will utilize a combination of various storm water treatment options for post-development treatment measures. These include the use of vegetated bio-swales, infiltration trenches, media filtration devices, hydrodynamic separators, retention/detention ponds, and other potential measures. Dependent on design constraints, one or all of these measures will be implemented. "Green-Treatment" methods will also be evaluated and implemented with first priority in accordance with the guidelines of the NPDES Regional Permit.

d. **Infrastructure & Utilities.** The Specific Plan requires new public and privately maintained utility infrastructure to serve the uses. The existing sites are primarily undeveloped land; therefore, almost no existing infrastructure resides within the development envelopes. The utility goals and policies in this section are broken down for Sub Area A and Area 4 separately in some portions, due to the variety of requirements between each. All discussion in this section refers to the Conceptive Utility Diagram.

- **Storm Drainage – Area 3.** Sub Area A currently discharges via overland release towards the southwest corner to an existing dual-42" concrete culvert. This culvert releases into the existing flood channel and is permitted to a maximum discharge rate by Alameda County Flood Control & Water Conservation District, (who maintains the channel.) A conventional underground storm drainage system, designed to City of Newark design standards, will include trunk and collector lines that convey surface runoff to the existing outfall. The future development of Sub Area A will not create new storm drain connections to Stevenson Boulevard or Cherry Street. Should additional new outlets be required to the flood channel, approval will be required by the ACFC&WCD.

- **Storm Drainage – Area 4.** Existing drainage in this Area is collected via drainage ditches that terminate at an existing pump, which then discharges the runoff above the existing levees surrounding the southern perimeter of the area. The existing pump system is intended to remain unchanged and pump at or below it's current capacity.



NEWARK SPECIFIC PLAN

CONCEPTIVE UTILITY DIAGRAM

Future storm drain systems will be designed to discharge at or below pump capacity. Modifications to these existing drainage patterns are required to serve the individual proposed uses. The various sub areas will be served by a conventional underground storm drainage systems, which will convey surface runoff to new outfalls located at various locations around the perimeter of the whole area. Due to the elevation requirements for residential pads, Area 4 should not require any pump systems to convey the underground drainage adequately. However, should pumps be necessary, they would be privately owned and maintained. The ultimate locations and quantities of the outlets will be dependent on the future residential layouts of the sub areas, but should conform to the Conceptive Grading & Drainage Diagram. The golf course within Area 4 will utilize on-site storm water treatment systems that can possibly function as storm water retention and/or detention basins well-integrated within the golf course landscape design.

- **Sanitary Sewer – Area 3.** Sanitary Sewerage within the City of Newark is operated and maintained by Union Sanitary District (USD). Area 3 is within the existing jurisdictional boundaries of USD, however, Area 4 will have to be annexed into the district. Existing sanitary sewer mains exist within Mowry Avenue, Cherry Street and Stevenson Boulevard to serve the proposed development areas. Existing force mains also exist within the railroad right-of-way which pump sewerage from the Cherry Street Pump Station located within Area 3 northwestward towards the Newark Pump Station and USD Treatment Plant in Union City. The future developments of Area 3 and 4 will not be allowed to connect to this existing force main due to capacity and maintenance issues with the existing system. Sub Area A will have conventional underground sewer systems within the public streets that will connect to the existing system within the intersection of Cherry Street and Stevenson Boulevard. Dependent on the ultimate design and layout of the Sub Area the new system may or may not require a pump system to convey flow to the existing public systems. Multiple connections will be made to this system off Cherry Street and Stevenson Boulevard. The development of Sub Area A may require improvements or contribution to improvements within Stevenson Boulevard to extend a new public sewer main to the intersection of Cherry Street and Stevenson Boulevard. This extension will need to be designed to take into consideration depth and sizing needs of the future Area 4 development, as well as existing infrastructure clearance requirements.

- **Sanitary Sewer – Area 4.** Development of the Sub Areas within Area 4 will require new privately owned and maintained pump stations primarily due to the lack of existing public infrastructure near the development envelopes, as well as the existing railroad crossing at Stevenson Boulevard. The development of the golf course and/or residential portions of the sub areas will contain conventional underground sanitary sewer systems, which will drain towards Stevenson Boulevard to a new lift station. This will pump the sewage either through the new overpass span or beneath the railroad tracks to Stevenson Boulevard. This new system will ultimately connect to the existing systems located within the intersection of Stevenson Boulevard and Cherry Street. New underground public infrastructure is required within Stevenson Boulevard to accomplish this. Sub Area D will require coordination with ACFC&WCD for any utility crossings above or below the existing flood control channel. Sewer connections will be possible at the termination of Mowry Avenue if future design analysis concludes adequate capacity

and depth is available. Coordination with USD, Union Pacific Railroad Company, the California Public Utilities Commission, and the City of Newark is required to ensure adequate design and minimal impacts to existing improvements.

- **Water Supply & Service.** Water service for the City of Newark is provided by Alameda County Water District (ACWD). Both Sub Area A and Area 4 are within the existing jurisdictional boundaries of ACWD. In accordance with Senate Bill 610, a Water Supply Assessment was prepared by ACWD for the proposed uses. This assessment concluded that there is adequate water supply. Existing water mains reside within the adjacent public streets surrounding the Specific Plan area and new underground infrastructure will be constructed within the Sub Areas to serve the proposed uses. These new mains will be separate for domestic and fire water service in one system, and recycled water in a separate system. The recycled water system will be fed from domestic water connections until a future recycled water system is constructed within Cherry Street and/or is available to serve the Specific Plan sub areas. This way the developments will be ready to switch over as recycled water becomes available. Only Area 4 will utilize an existing permitted underground well for irrigation needs until recycled water becomes available.

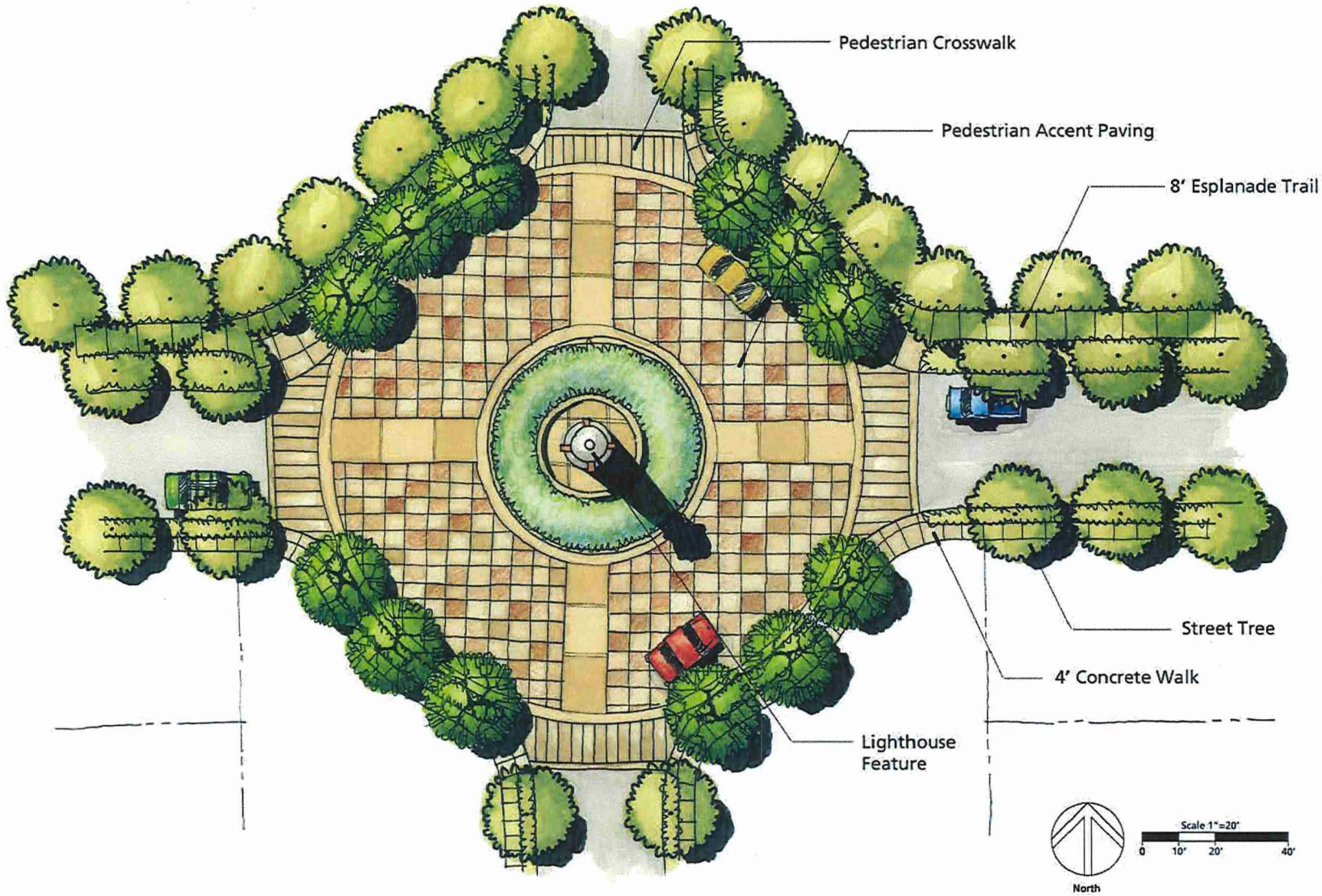
- **Gas and Electricity.** Pacific Gas & Electric Company (PG&E) provides electrical and natural gas service to the Specific Plan areas. Existing natural gas and electric infrastructure exists within the surrounding public streets. Existing above-ground high-voltage lines also exist within Area 4. New underground primary and secondary infrastructure will be designed with the development of uses within the various sub areas. This infrastructure will be primarily located within the new public street right-of-ways; however, easements may be necessary within private property to provide service to various aspects of the plan. The improvements to the high-voltage lines within Area 4 will need to be designed and completed prior to construction of the new overpass at Stevenson Boulevard.

5. Landscape Architectural Guidelines

a. **Introduction and Landscape Concept**. The landscape concept emphasizes the new urban streetscape for pedestrians, bicycles, and vehicles and places the new neighborhoods in that context. The open spaces and community parks will provide the visual center to this urban village, and are the heart of the landscape uses of the site. The esplanade entry with lighthouse turnaround will create a strong identity for this new community. A strong sense of entry is provided for visitors and residents alike.

The landscape must respond to the significant site climate issues including wind, poor soils, and cooler bayside climate. In order to carry out the landscape goals, plant selections must be resilient and tolerant of these conditions. Massed tree and shrub plantings are used in localized areas to allow for a more usable outdoor space. Dense plantings are proposed along the site perimeters to aid in screening off-site light and views toward the railroad.

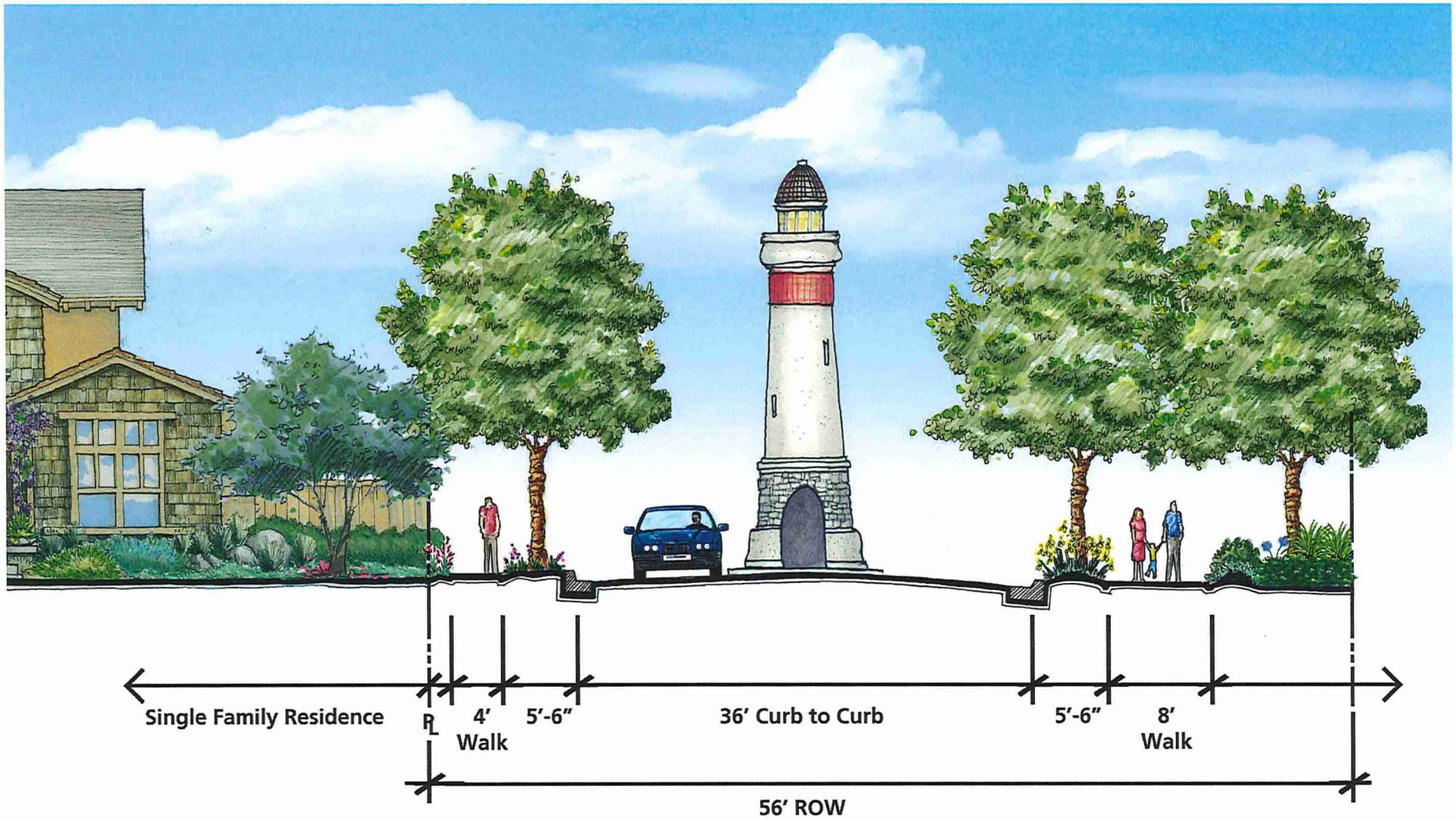
Landscape planting is used to reinforce the walkways, vista points and parks, and to help create smaller variations in texture and color as well as low maintenance will be considered in their selection. The individual neighborhoods will be designed to create a sense of individual place as an aid to way-finding and identity for the residents.



NEWARK SPECIFIC PLAN

Entry Circle

"For Illustrative Purposes Only"

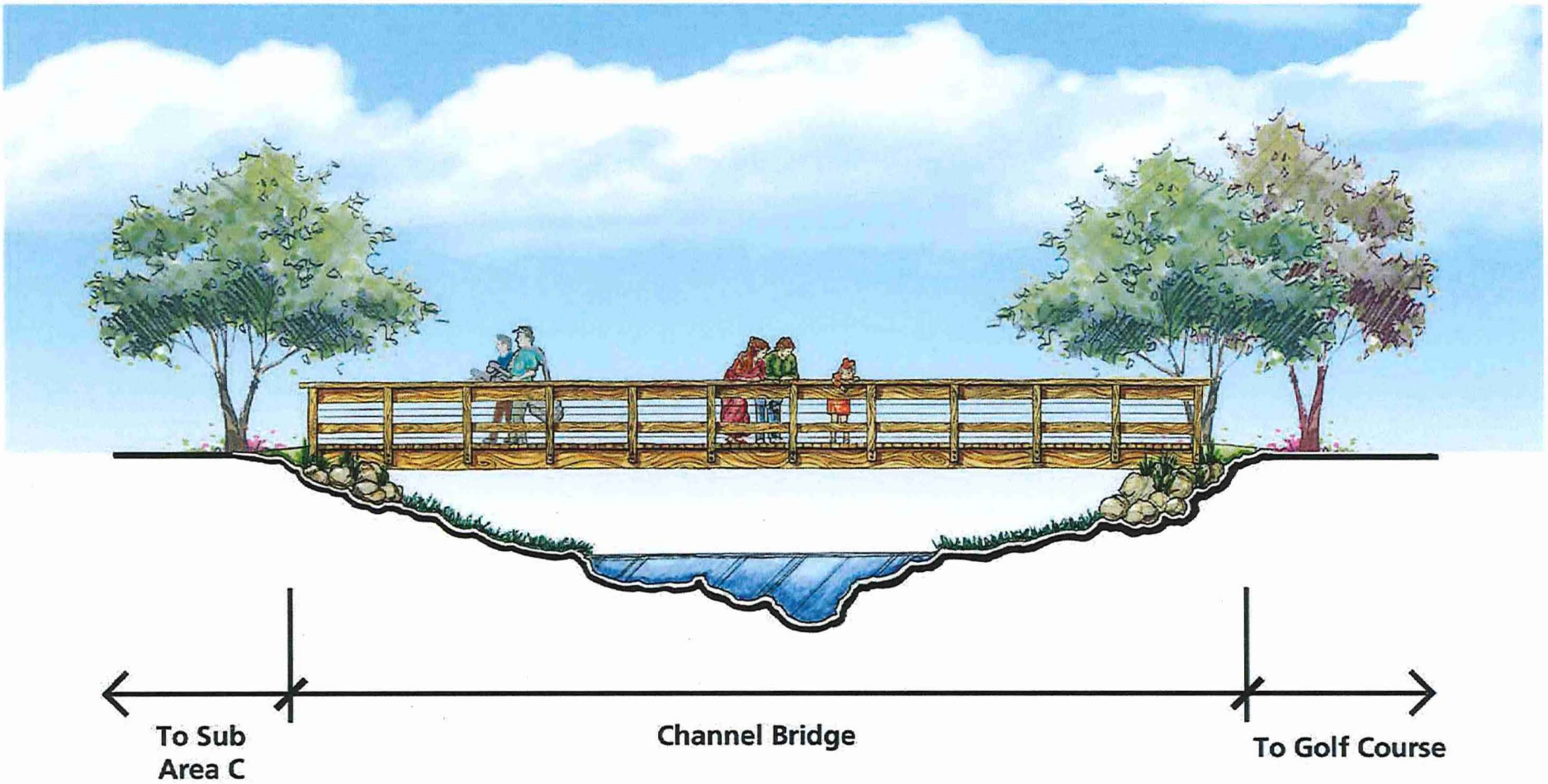


NEWARK SPECIFIC PLAN
Section at Area 4 Entry Drive

"For Illustrative Purposes Only"

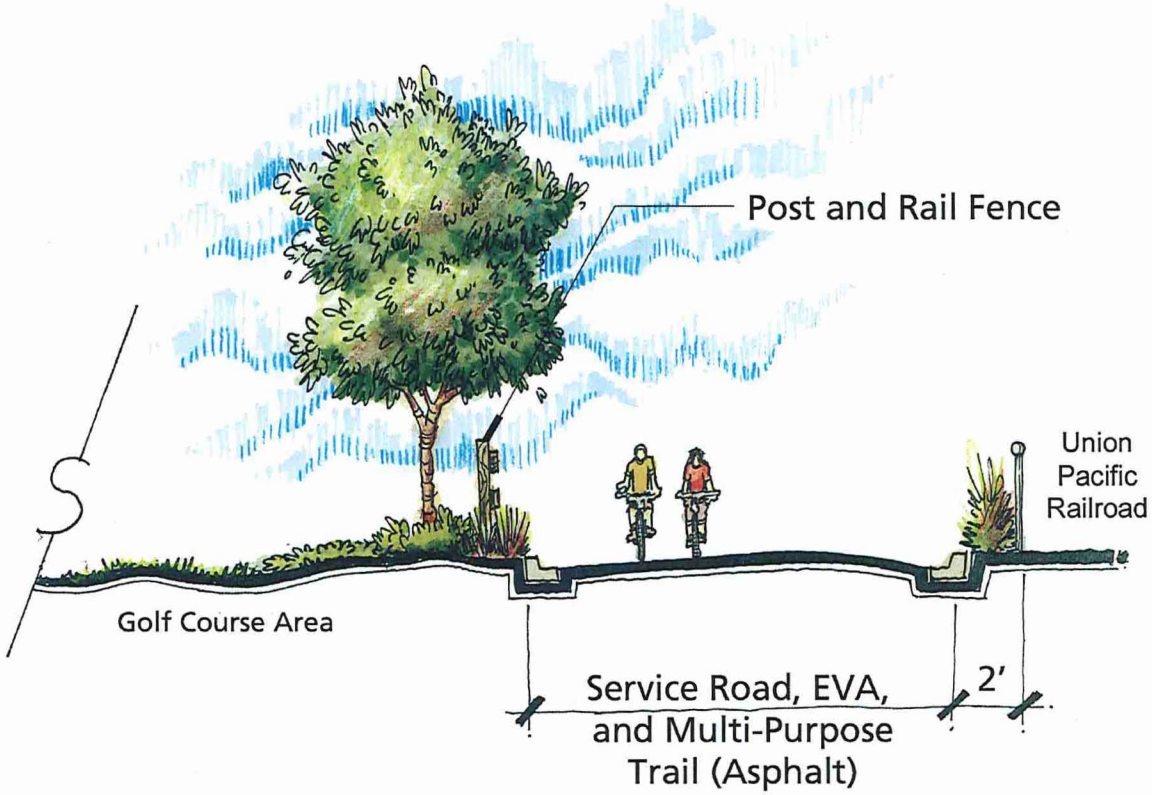
NEWARK SPECIFIC PLAN
Sub Area C Park

"For Illustrative Purposes Only"



NEWARK SPECIFIC PLAN
Section at Alameda County Flood Control Channel

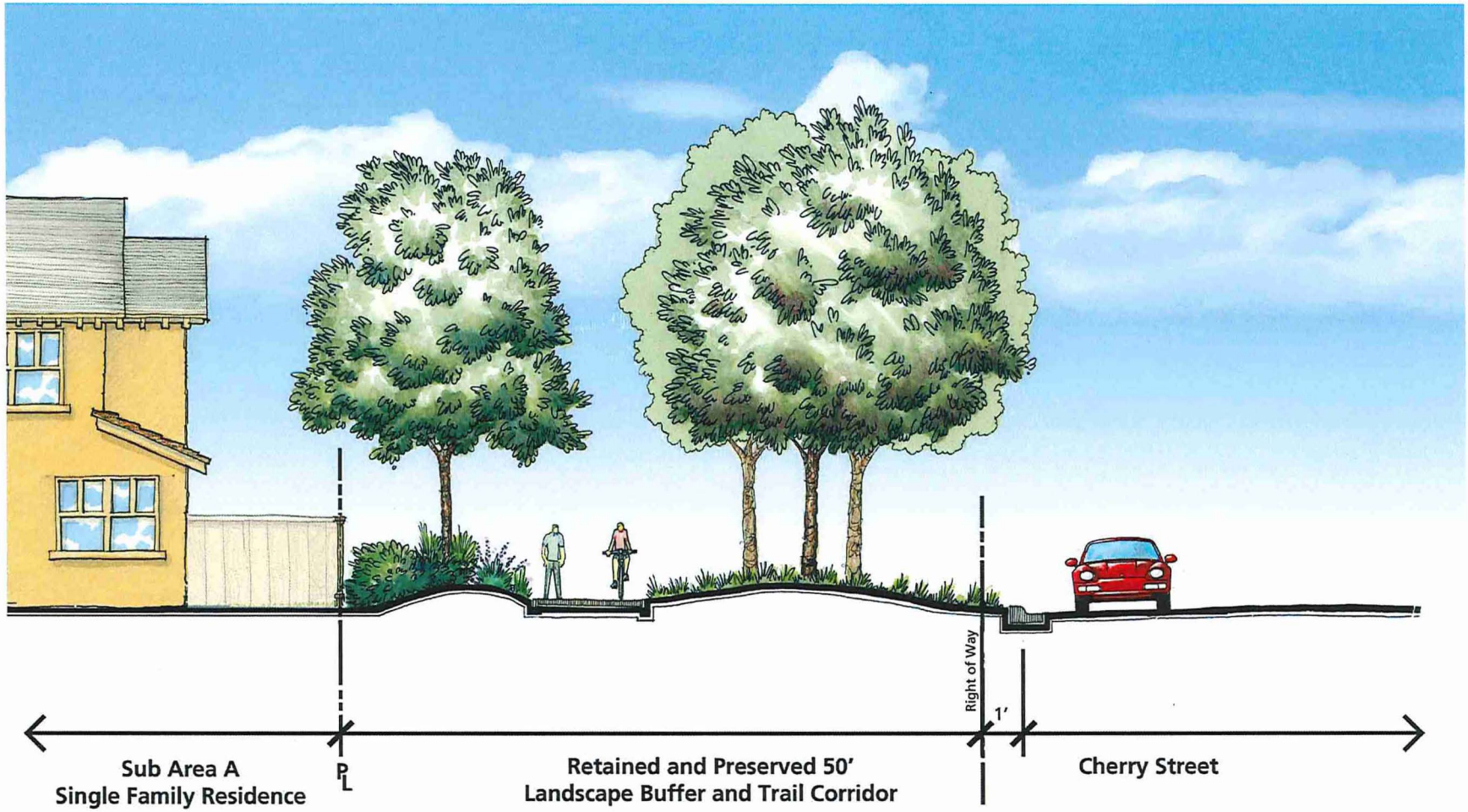
"For Illustrative Purposes Only"



NEWARK SPECIFIC PLAN

EVA Trail Section

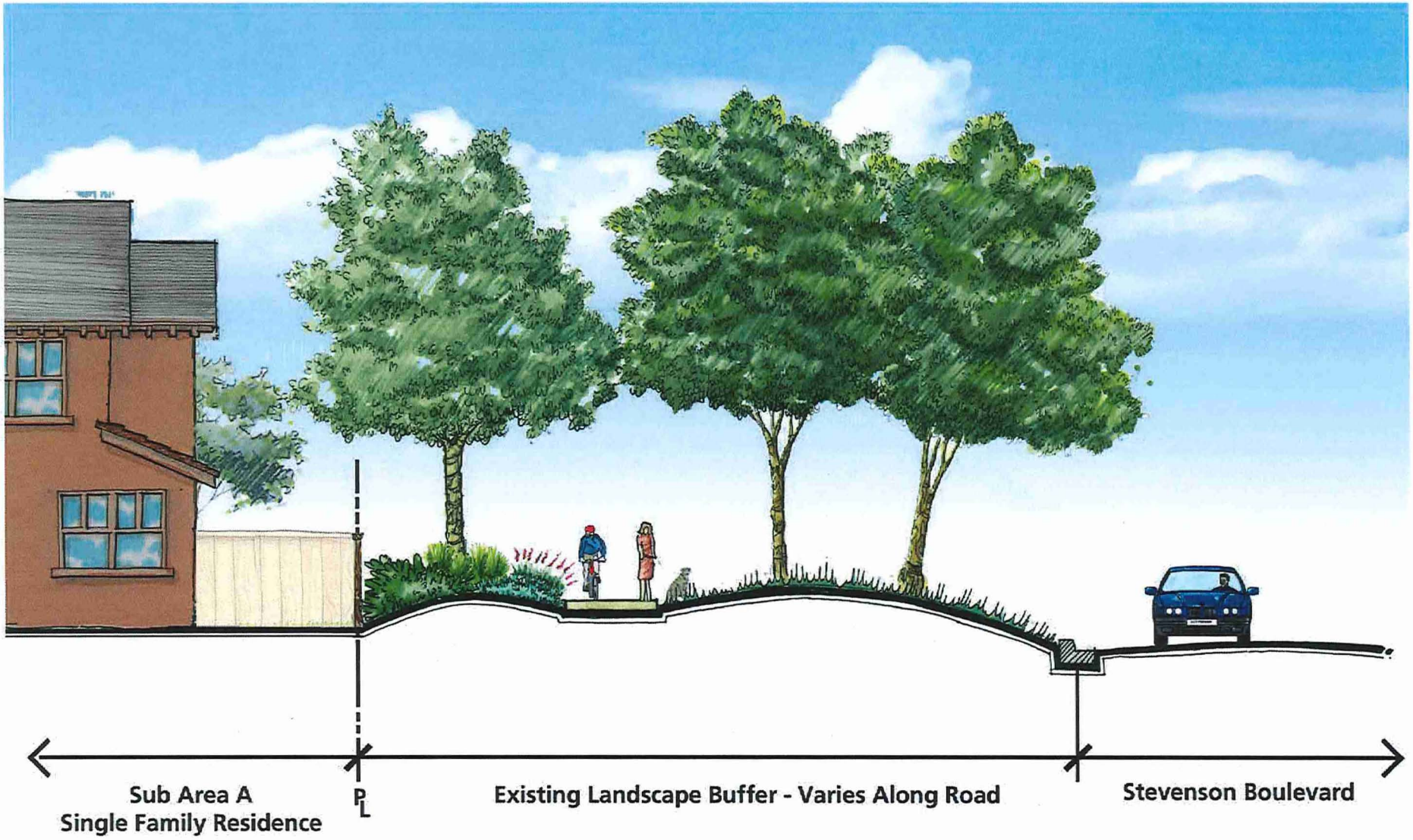
"For Illustrative Purposes Only"



NEWARK SPECIFIC PLAN

Section at Cherry Street and Trail Corridor

"For Illustrative Purposes Only"



NEWARK SPECIFIC PLAN

Section at Stevenson Boulevard

"For Illustrative Purposees Only"

Lawn will be used only in spaces where there is an expectation of play use or a need to frame the foreground of site entry features. The grass shall be double dwarf fescue sod to allow for water conservation and ease of long-term maintenance. Groundcover planting and mulch will cover all other soft landscape areas, designed to produce full coverage within 2 years after planting. The majority of the plant material must be low water use, drought tolerant or native. Of special interest is the use of filtering grasses in the linear spaces along greenways and pedestrian/parking areas in grassy swales. The linear treatment allows the lawn areas to be unencumbered by added water in the rainy season so they can be used for active play with less negative impact on the lawn surface.

The irrigation system on the site will be automatic, underground, state of the art systems using the latest water conservation and monitoring technologies available. The project will include a separate irrigation water distribution system to utilize recycled water when it is available from the Alameda County Water District. The irrigation controllers will be "weather based" and have the capability to be radio operated for maintenance ease. Spray irrigation near buildings will be minimized. A five to ten foot zone around the buildings will have drip irrigation to minimize issues related to sprayed water on buildings and finishes. Water features, if any, must use recycled water. Spray irrigation is to be minimized in all areas of the site.

b. **Exterior Hardscape Materials**. The site is envisioned as being paved with a hierarchy of materials, including gray concrete, beige concrete, interlocking paving stones with patterns in selected areas, decomposed granite which will serve to complement the architectural and landscape architectural palette. Seat walls, feature walls or retaining walls will have finishes that continue building ground plane materials which are most likely to be concrete block or stucco finishes. Other project wide design vocabulary items are described in the illustrations.

c. **Plant Palette** The plant materials for the new neighborhoods shall be selected from a palette approved by the City of Newark that is consistent with adopted City of Newark Bay Friendly Landscape Guidelines, the City's water Efficient Landscape Ordinance, and any other standards applicable at the time of development. In all cases, continuity, simplicity and ease of maintenance are to be considered as prime criteria for any detailed planting plans created for the site. The majority of the plant materials to be used are low water use, drought tolerant or natives.

6. Standards for the Conservation, Development, and Utilization of Natural Resources.

a. **Introduction.** The approximately 889-acre (ac) Project site is located in the City of Newark in Alameda County, California. The site is comprised of the 314-ac area known as Newark Specific Plan Area 3 and the 575-ac area known as Newark Specific Plan Area 4. Areas 3 and 4 are the largest remaining tracts of relatively undeveloped land in Newark.

The Newark Areas 3 and 4 Specific Plan proposes the development of a golf course, residential areas, a school, a park, and related infrastructure on two planning areas in the City of Newark, Alameda County, California. Area 3 is bounded by Cherry Street to the north, Stevenson Boulevard to the east, the Southern Pacific Railroad tracks to the south,

and Mowry Avenue to the west. Area 4 is located immediately to the southwest of Area 3, and is bounded by Mowry Avenue and Alameda County Flood Control and Water Conservation District (ACFC&WCD) Line B to the northwest, the Southern Pacific railroad tracks to the northeast, Mowry Slough to the west and southwest, and ACFC&WCD Line N to the southeast.

The Project elements for Area 3 and 4 will be phased, with residential development in Area 3 occurring before the development of Area 4. Development within Area 4 is conceptual at this time, and may include a golf course, single-family detached houses, and neighborhood parks. Areas inside and outside the development envelope in Area 4 could be utilized for wetland preservation, wetland creation/enhancement or remain unchanged (continued agricultural operation).

Existing developed land uses on Area 3 include the City's George M. Silliman Recreation Complex, City of Newark Fire Station No. 3, Ohlone College Campus, and light industrial/commercial buildings. All of these existing uses are included in the proposed Specific Plan. The specific plan includes proposed activities only in the northeastern corner of Area 3. A new residential development is proposed west of Cherry Street and north of Stevenson Boulevard. Land uses adjacent to Area 3 include residential development and Newark Memorial High School to the northeast, industrial development to the northwest, and industrial development and the Pacific Commons wetland and vernal pool tadpole shrimp (*Lepidurus packardii*) mitigation site to the southeast.

The Specific Plan development envelope in Area 4 includes up to 305 acres of potential development. Three ACFC&WCD channels are located within or adjacent to the Project site: ACFC&WCD Line D runs through the center of Areas 3 and 4, ACFC&WCD Line B runs along the western boundary of Area 4 (eventually becoming Mowry Slough), and ACFC&WCD Line N runs along the southeastern boundary of Area 4. Development within the envelope may include a golf course, single-family detached houses, and neighborhood parks. No residential uses, only golf course, or other recreational land uses are proposed in the area north of ACFC&WCD Line D. Detailed and precise development in Area 4 with respect to the exact location and configuration of residential lots and golf course and the configuration of the remaining agricultural areas will be determined at the time of subdivision map approval. As mentioned above, residential, golf course or neighborhood park use development will only occur within the development envelope, up to a maximum of 1260 residential units. Areas inside and outside the development envelope in Area 4 could be utilized for wetland preservation, wetland creation/enhancement or remain unchanged (continued agricultural operation).

Auto-wrecking yards, a private residence, and associated farm outbuildings constitute existing facilities within Area 4. Otherwise, agriculture is the main land use. Land uses immediately surrounding Area 4 include salt production in Cargill's active salt pond evaporators to the northwest, a former test track for Peterbilt trucks and lands owned by the ACFC&WCD across Mowry Slough from (west of) Area 4, active salt ponds M7 and M6 to the south, the Tri-Cities Landfill to the southeast, and the Pacific Commons vernal pool mitigation site to the northeast.

b. **Existing Natural Resources.** The majority of Area 4, and the portion of Area 3 where residential construction is proposed, is in active agricultural use, with much of the land regularly disked and graded. Historically, habitats in Area 4 were quite different from the site's current conditions. Most of Area 4 supported extensive coastal salt marshes, but the installation of levees, placement of fill, construction of numerous drainage channels as part of agricultural production, and the construction of salt ponds in the early 1900s immediately to the west of the site has removed or muted tidal influence. Most notably, the construction of the outboard levee that separates the site from Mowry Slough prior to salt production in the late 1800s has allowed the area to be actively farmed for decades. Depending on the yearly precipitation and inputs from groundwater, some areas of the site may not be farmed until late in the season, if at all. Aerial photographs have shown that disking and planting occur to greater extents in dry years than in wet years, and in some areas planting and the subsequent harvest may be delayed until late summer in wet years.

Thirteen biotic habitats were identified in Areas 3 and 4. These include upland agricultural, agricultural field/seasonal wetland (saline to brackish), agricultural field/seasonal wetland (brackish to fresh), ruderal, developed, aquatic, diked salt marsh, muted tidal salt marsh, freshwater marsh, brackish marsh, seasonal wetland, coastal scrub, and wrecking yard detention basins. Area 3 is dominated by developed, ruderal, and upland agricultural habitats. Agricultural fields variously characterized as uplands or seasonal wetlands (saline to brackish and brackish to fresh) comprise the majority of Area 4. Area 4 is mostly undeveloped, consisting primarily of cultivated fields. However, large portions of Area 4 are too wet for productive agriculture and support extensive marsh habitat exhibiting various degrees of tidal influence. A large wetland complex is located in the west-central part of Area 4.

The frequent, ongoing nature of disturbance of the upland agricultural habitats in the Specific Plan Areas limits the development of wildlife habitat and the ability of wildlife to nest and burrow within these areas. Raptors such as the red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), northern harrier (*Circus cyaneus*), and barn owl (*Tyto alba*) forage over agricultural habitats, primarily when they contain vegetation. As rain moistens the ground and low vegetation grows, American pipits (*Anthus rubescens*) savannah sparrows, and killdeer (*Charadrius vociferus*) feed in upland fields in small numbers. Mammals such as the western harvest mouse (*Reithrodontomys megalotis*), California vole (*Microtus californicus*), black-tailed hares (*Lepus californicus*) and desert cottontails (*Sylvilagus audubonii*) occur commonly in grasses associated with upland agriculture. California ground squirrels dig burrows in and around such areas, and these burrows provide roosting and nesting sites for burrowing owls (*Athene cunicularia*) which are known to occur within the Project area. Garter snakes (*Thamnophis* spp.), gopher snakes (*Pituophis melanoleucus*), and western fence lizards (*Sceloporus occidentalis*) are examples of reptiles common to habitats in the Specific Plan Areas.

In some parts of the San Francisco Bay area, seasonal wetlands near the bay provide important foraging and loafing habitat for waterbirds (LSA Associates 1989, Goals Project 1999). Waterfowl and some shorebird species forage in wetter areas regardless of the tidal stage in adjacent estuarine areas. Other shorebirds prefer to forage on intertidal mudflats at low tide and use seasonal wetlands as alternate foraging and roosting areas during high tide when their favored foraging habitat is inundated. Long-billed curlews (*Numenius americanus*) and killdeer often forage in fields, including cultivated seasonal wetlands.

Although seasonal wetlands in their dry condition (e.g., in summer and fall) can be used by roosting birds, the hard nature of the dry substrate and low prey availability during dry conditions make these areas useful to foraging shorebirds primarily when wet in late fall, winter, and early spring.

Although moist-soil conditions likely provide suitable foraging habitat for many waterbirds, the vast majority of observations of these species in the Specific Plan Areas have been in seasonal wetlands that support open water, such as the large wetland complex located in the west-central part of Area 4; such wetlands represent a minority of the seasonal wetlands areas on the site.

Eight special-status plant species were considered to potentially occur on the site: Contra Costa Goldfields (*Lasthenia conjugens*), alkali milk-vetch (*Astragalus tener* var. *tener*), Brittlescale (*Atriplex depressa*), Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*), prostrate vernal pool navarretia (*Navarretia prostrata*), Delta woolly-marbles (*Psilocarphus brevissimus* var. *multiflorus*), and San Joaquin Spearscale (*Atriplex joaquiniana*). While these species are absent from all of the proposed direct impact areas on the Project site, they may occur in natural habitat areas that were not surveyed and that could be indirectly impacted by the project.

Some special-status wildlife species may occur on the Project site only as uncommon to rare visitors, migrants, or transients, or may forage on the site in low numbers while breeding in adjacent areas, migrating or over wintering. These species include the California least tern (*Sterna antillarum browni*), black tern (*Chlidonias niger*), western snowy plover (*Charadrius alexandrinus nivosus*), bank swallow (*Riparia riparia*), American white pelican (*Pelecanus erythrorhynchos*), golden eagle (*Aquila chrysaetos*), Vaux's swift (*Chaetura vauxi*), California yellow warbler (*Dendroica petechia brewsteri*), grasshopper sparrow (*Ammodramus savannarum*), western red bat (*Lasiurus blossevillii*), and Townsend's big-eared bat (*Corynorhinus townsendii*).

Other special-status wildlife species may or are known to occur on the site more regularly and some may breed on the site. These include northern harrier (*Circus cyaneus*), white-tailed kite (*Elanus caeruleus*), peregrine falcon (*Falco peregrinus*), burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), Alameda song sparrow (*Melospiza melodia pusillula*), Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), San Francisco common yellowthroat (*Geothlypis trichas sinuosa)*, tricolored blackbird (*Agelaius tricolor*), pallid bat (*Antrozous pallidus*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), and salt marsh harvest mouse (*Reithrodontomys raviventris*). Limited areas of potential habitat for the vernal pool tadpole shrimp (*Lepidurus packardi*), California tiger salamander (*Ambystoma californiens*) occur in Area 4, however, recent surveys for both have not found them to be present on the site. California clapper rail (*Rallus longirostris obsoletus*) and California black rail (*Laterallus jamaicensis coturniculus*) may occur in the adjacent Mowry Slough. A Pacific harbor seal (*Phoca vitulina*) pupping site is located along lower Mowry Slough, approximately 2 miles (mi) (4 stream mi) downstream from the Specific Plan areas. The Yuma myotis (*Myotis yumanensis*), while not on the California Department of Fish and Game's list of California species of special concern, is relatively rare in bayside areas in the South Bay and could occur in Area 4.

The more uncommon wetland and aquatic habitats provide habitats for uncommon and rare species in addition to some more common species. For example, the diked salt marsh provides high-quality habitat for the federally endangered salt marsh harvest mouse and possibly the salt marsh wandering shrew. Birds also nest within this habitat such as the song sparrow (*Melospiza melodia*), San Francisco common yellowthroat, Bryant's savannah sparrow, western meadowlark (*Sturnella neglecta*), and red-winged blackbird (*Agelaius phoeniceus*), and possibly the northern harrier. Freshwater marsh emergent vegetation on the site supports breeding birds such as San Francisco common yellowthroats, marsh wrens (*Cistothorus palustris*), song sparrows (*Melospiza melodia*), and red-winged blackbirds.

c. **Environmental Measures**

Goal: maintain, protect and enhance the planning areas' natural biological resources particularly sensitive habitats and associated rare plants and animals while integrating development and human uses.

- **Sensitive Habitat Areas**

  Given the declines in regional availability of seasonal wetland habitat around the South Bay, wetland, marsh, and aquatic habitats that occur in Specific Plan Area 4 are valuable habitat types. Seasonal wetlands, even in agricultural areas, have been increasingly lost to development in the South Bay (LSA Associates 1989, Goals Project 1999). Open, moist field habitat that was historically used as alternate foraging habitat for shorebirds during high tides (when favored intertidal foraging habitat was inundated) has also declined. Although salt ponds currently serve as surrogates for these seasonal wetlands from the perspective of high-tide use by shorebirds, planned restoration of at least some salt ponds in the South Bay by the South Bay Salt Ponds Restoration Project (which does not include the Newark salt ponds closest to the site) may reduce the extent of such salt ponds, albeit while enhancing other ponds for shorebird use.

  In addition, diked salt marsh, muted tidal salt marsh, freshwater marsh, and brackish marsh, of the kind found within Area 4, are significant as habitat for species listed as threatened or endangered under federal and state laws, like the California clapper rail and the salt marsh harvest mouse.

  While the City of Newark General Plan has identified development that is projected to occur within Area 4, this area has also been identified for its ecological value by regional planning efforts. The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the [former] Pintail Duck Club." Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands. Upland habitats provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides

that inundate most of the marsh plain. Even in nontidal areas, such upland habitat can provide refugia for wetland species during periods of flooding.

The City of Newark commissioned the ranking of the value of various wetland, aquatic, and upland habitats on the site based on the hydrology, floristic composition, level of on-going disturbance through agricultural use, and observed levels of use by wildlife species in Specific Plan Area 4 (H. T. Harvey & Associates 2006a). These rankings were used to guide decisions regarding where the golf course and residential areas should be planned, so as to avoid direct impacts to the highest-quality habitats. Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that will be directly filled by this Project were determined to be of poor or marginal quality, primarily due to intensive agricultural disturbance and the resulting effects on plant communities and wildlife use.

In addition to wetland, marsh, and aquatic habitats that will be filled directly, indirect impacts to wetlands in several areas may be great enough so as to result in the functional loss of these habitats. Some wetland/aquatic habitats that will not be filled may still be functionally lost due to the level of disturbance associated with development activities that is expected to occur, as well as the potentially small or isolated nature of remaining features (which allows no buffer from such disturbance). Some species can no longer subsist in these smaller fragments, the fragments may be heavily influenced by surrounding stressors, or species may not reproduce successfully without exchange with other populations. If remaining fragments of undeveloped habitat are isolated from larger areas of contiguous habitat, the remaining habitats are expected to have lower biological values than those prevailing before development. Therefore, large contiguous habitat areas are important and isolation and fragmentation can severely affect wildlife and, in some cases, plant populations in preserved or remnant habitat areas.

Wetland, marsh and aquatic habitats are recognized as rare and declining by state and federal agencies charged with protection of natural resources. Due to the value of these sensitive habitats, it is important that this Specific Plan incorporate policies to protect and enhance these habitats.

Policy 6-1: Disturbance to and loss of all wetland and aquatic habitats should be avoided to the maximum extent feasible.

Policy 6-2: Wetland habitat should be created or enhance within non-development areas of Specific Plan Area 4 to offset functional or actual loss of existing sensitive wetland and aquatic habitat to the maximum extent feasible. These created and enhance habitat areas should be large, contiguous matrices of wetland and upland that maintain or increase habitat value and provide habitat opportunities for rare plant and wildlife species and that, by adjoin existing or preserved habitats adjacent to Area 4, may be functionally larger.

Policy 6-3: Development of the golf course should contain as much natural habitat as is feasible, such as unmaintained native grassland areas rather than turf and native trees and other vegetation where appropriate.

- **Hydrology Supporting Natural Resources**

  There are three primary sources of hydrology acting on the site, including incidental rainfall, groundwater table fed by springs, and lateral seeps. Area 3 is primarily affected by incidental rainfall. Some areas of Area 4 are also mainly influenced by surface precipitation which flows to slight depressions, including the areas within Area 4 proposed for residential development. The Specific Plan area is relatively flat, with little elevation change across large portions of the property. Small gradients in elevation (less than 1 ft difference between upland areas and potential wetland areas) at this site result in subtle depressions. The landscape surrounding these slight depressions then becomes the contributing watershed to these potential wetlands. However, subsurface flow within disked soils also allows water to move generally towards the pump in draining the site slowly.

  Groundwater does not appear to influence all areas of Area 4. Rather, the localized groundwater occurring within several perennial wetlands/ponds located in the western portion of Area 4 allows water in the top several inches of the soil to move laterally away from the ponds into the adjacent agricultural fields. The source for the groundwater appears to be a large aquifer that is recharged far upslope by the Fremont Percolation Ponds (which contribute to the Niles Cone Groundwater Basin which includes three aquifers: the deep aquifer, the Fremont aquifer, and the Newark aquifer). Recharge of the seasonal wetland and marsh habitats that are part of the large wetland complex located in the west-central part of Area 4 is from groundwater seeps and occurs in mid-to late-summer. The presence of surface and subsurface water deriving from underground seeps appears to influence seasonal wetland habitat within Area 4 east and south of the proposed golf course. The remaining areas of Area 4 are influenced by a combination of these hydrologic features.

  The portion of Area 3 where development is proposed as part of this Project drains westward to ACFC&WCD Line D. Portions of Area 4 northwest of ACFC&WCD Line D drain south/southwestward to a one-way outlet culvert on Line B near its confluence with Line D. This culvert allows water to drain from the site but does not allow water from Line B to enter the site. Lines D and N receive no runoff from Area 4. Portions of Area 4 southeast of ACFC&WCD Line D drain generally to the south/southeast through ditches that have been constructed on the site, including a large ditch that surrounds the southwestern portion of the site, to a large pump which continually pumps water from the site into Mowry Slough. Due to the relative ground within Area 4 and water levels within Mowry Slough and the Bay, pumping will be required even to preserve natural wetland habitats to move water into Mowry Slough.

  The exiting hydrology of Area 4, along with topography, determines the locations and extent of natural wetland or aquatic habitats. Currently, wetland habitat on the site is influenced by groundwater, seeps, and incidental rainfall. A change in the hydrology of the site, whether to increase or decrease the amount of water reaching wetland, marsh, and aquatic habitats, will affect the persistence and quality of these sensitive habitat types. Typically, development affects hydrology by 1) increasing impervious surfaces and thereby increasing the rate and amount of runoff entering undeveloped areas, 2) decreasing the amount of water entering undeveloped areas with the addition of features that retain or use additional water through ponding or vegetation, and 3)

adding nuisance flows into undeveloped areas during the dry summer months from landscape watering. In addition, runoff from development areas, including golf courses can impact the water quality in natural wetland and aquatic habitats on site and, subsequently, into Mowry Slough and the San Francisco Bay due to contamination from landscape chemicals, roadway contaminants, and sediments. After completion of construction, stormwater runoff from the Project's developed areas may contain eroded earthen materials or dissolved chemicals (from debris, landscaping fertilizers and pesticides, and vehicular traffic debris, including abraded tire and brake lining materials) that could affect the surrounding aquatic habitats through siltation, erosion, or contamination. In addition, siltation within these habitats may change the existing vegetation community present and/or eliminate any previously undisturbed habitat that could provide suitable habitat for special-status plant species in the future. In addition, if improperly conducted, remediation of any contamination in the auto wrecking yards could allow contaminants to leach into adjacent natural habitats from the auto wrecking yard area clean-up. These hydrologic alterations could affect the wetland and marsh habitats that will not be directly filled during site development and those preserved and enhanced in response to Policy 6-1.

These combined effects of development on the amount, location, velocity, and timing of water movement on the site would alter the character, quality, and distribution of natural habitats surrounding development features. Any reduction in the amount of water entering seasonal wetland or marsh habitats (i.e., through diversion of stormwater runoff) could reduce the hydroperiod and ponding depth of these wetlands, altering their functions and values for plants and animals. Additional water moving into natural habitat may result in seasonal wetland habitat becoming perennial wetland habitat after Project implementation or brackish and salt water marshes becoming fresher. In addition, this greater amount of water flow may be concentrated in fewer areas and/or smaller areas, causing erosion and channelization resulting in the creation of perennial aquatic habitat in channels in what is currently upland habitat or seasonal wetland habitat. Contaminants from development could also reduce water quality significantly.

These habitat effects could impact special-status species such as the salt marsh harvest mouse, salt marsh wandering shrew, Alameda song sparrow, Bryant's savannah sparrow, and San Francisco common yellowthroat. In addition, if special-status plants such as the alkali milk-vetch, Congdon's tarplant, Delta woolly-marbles, Hoover's button-celery, prostrate vernal pool navarretia, brittlescale, San Joaquin spearscale, and Contra Costa goldfields are present in areas of marsh, changes in hydrology could affect these species as well.

Policy 6-4: Maintain site hydrology and water quality in remaining or preserved natural habitats through incorporation of design features to duplicate existing hydrologic conditions and maintain or improve the current quality of water leaving the site. Such features may include the use of grassy swales to treat runoff, capture contaminants and allow water to infiltrate into the soil; surface materials to allow for infiltration on individual residential (private) properties (including permeable driveway material and individual detention features); water conservation; xeric (preferably native) landscaping; properly sized conveyance

structures; distribution of runoff (not narrowly focused); and the retention of water (particularly off-season nuisance flows) within the development footprint.

Policy 6-5: To maintain hydrology and water quality as currently exists in natural habitat areas, development of the golf course should use state of the art management methods such as a computerized irrigation system connected to an on-site weather station to limit watering to the exact needs of the course, sprinkler head designs to ensure a very even distribution of water to reduce water use and runoff, unmaintained native grasses in the outer roughs, designated irrigated and non-irrigated areas, retention of runoff (particularly off-season) within the golf course, accurate application of fertilizer to that required to eliminate contaminated runoff and retention of nuisance or off-season flows within the development area.

- **Wildlife Use and Wildlife Movement**

  Areas 3 and 4 are two of the three largest remaining tracts of relatively undeveloped land in Newark. Area 4 in particular provides habitat for wildlife. Upland portions of the site support wildlife species that are relatively common throughout the South Bay region. The frequent, ongoing nature of disturbance of the upland agricultural habitats on the site limits the development of wildlife habitat and the ability of wildlife to nest and burrow within these areas.

  The more uncommon wetland and aquatic habitats provide habitats for uncommon and rare species in addition to some more common species. For example, the diked salt marsh provides high-quality habitat for the federally endangered salt marsh harvest mouse and possibly the salt marsh wandering shrew. Birds also nest within this habitat such as the song sparrow (*Melospiza melodia*), San Francisco common yellowthroat, Bryant's savannah sparrow, western meadowlark (*Sturnella neglecta*), and red-winged blackbird (*Agelaius phoeniceus*), and possibly the northern harrier. Freshwater marsh emergent vegetation on the site supports breeding birds such as San Francisco common yellowthroats, marsh wrens (*Cistothorus palustris*), song sparrows (*Melospiza melodia*), and red-winged blackbirds.

  In parts of the San Francisco Bay area, seasonal wetlands near the bay provide important foraging and loafing habitat for waterbirds (LSA Associates 1989, Goals Project 1999). Although moist-soil conditions in the existing agricultural wetlands likely provide suitable foraging habitat for waterbirds, the vast majority of observations of waterbirds have been in seasonal wetlands that support open water; such wetlands are present in the large wetland complex is located in the west-central part of Area 4.

  In some areas, the upland habitats on the site provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides that inundate most of the marsh plain. Even in nontidal areas, such upland habitat can provide refugia for wetland species during periods of flooding.

  As described previously (see *Existing Natural Resources* above), several special-status wildlife species may occur on the Project site as occasional visitors, migrants, or transients but do not breed on the site. Other special-status species could potentially

breed on or adjacent to the site such as the northern harrier, white-tailed kite, loggerhead shrike, Alameda song sparrow, Bryant's savannah sparrow, and San Francisco common yellowthroat. Northern harriers may nest on the ground in the diked salt marsh in Area 4 and along the adjacent Mowry Slough. The Alameda song sparrow, Bryant's savannah sparrow, and San Francisco common yellowthroat nest primarily in marsh habitat. Several pairs of burrowing owls have also been recorded breeding in ruderal habitats on the Project site, both along the sides of levees and in vacant lots. Peregrine falcons can nest on electrical transmission towers in Area 4 and forage for waterbirds in seasonal wetland and marsh habitats on the site and on salt ponds nearby. The diked salt marsh provides high-quality habitat salt marsh harvest mouse and possibly the salt marsh wandering shrew. Pallid bats and Yuma myotis might roost in one or more of several buildings or trees on the site.

The ACFC&WCD channels that flow into Mowry Slough, and Mowry Slough itself, represent the primary aquatic movement pathways on and in the vicinity of the Project site. Development of the Specific Plan Areas will not disrupt these pathways, and thus will have little effect on movement by aquatic species. Although Area 4 supports important aquatic habitats, particularly in the large wetland complex located in the west-central portion, these habitats have little connectivity to off-site aquatic habitats (from the perspective of aquatic species movements) since water southeast of ACFC&WCD Line D has to be pumped into Mowry Slough and water northwest of Line D enters Mowry Slough through a one-way culvert.

While Specific Plan Areas 3 and 4 are the largest remaining tracts of relatively undeveloped land in Newark and natural habitats are available, the Specific Plan areas are surrounded by development to the north and east and salt production ponds to the northwest and west. Salt ponds and urban development prevent any substantive movement of terrestrial wildlife such as mammals, reptiles, and amphibians to or from the northwest (i.e., in the direction of the Refuge headquarters and Coyote Hills Regional Park). Likewise, extensive urban development to the north and east prevent movement of these species between the site and the undeveloped hills nearly 5 mi to the east. The only connectivity to open, upland wildlife habitat occurs to the southeast. However, the upland habitat areas southeast of the site are limited in size and isolated from extensive open space habitat (e.g., east of Interstate 880) by urban development. As a result, any movement by mammals, reptiles, and amphibians through the Project site would facilitate exchange of individuals or genes only locally, along the immediate edge of the Bay in the Fremont-Newark area; however, this movement is locally important. Within the immediate Specific Plan Areas, the footprint of the development will limit the movement of animals within the site, but wildlife will still be able to move through undeveloped areas and, to some extent, through the golf course. Development in the northeastern corner of Area 3 will have little effect on wildlife movement. The proposed residential area footprint will reduce the available connected habitat areas and constrict the corridors between them. The golf course, should it be built, will allow wildlife to traverse most of the northern portion of Area 4 to the extent they are not inhibited by human activity. However, as under existing conditions, the ACFC&WCD Line D will continue to impede terrestrial wildlife, and northwest/southeast wildlife movement must be at levee connection points.

Policy 6-6: Development of residential and golf course areas should be configured to optimize habitat areas (e.g., contiguous and large) for wildlife in remaining or preserved wetlands to provide needed habitat elements; limit disturbance from residences, the golf course, and recreational activities (e.g., hiking or dog walking along levees); avoid, to the extent feasible, or replace and enhance habitat for endangered species habitat lost; and allow for adequate movement for wildlife species within Area 4 with particular attention paid to waterbirds and special-status species found in the area: burrowing owls, peregrine falcons, tricolored blackbirds (colonies), salt marsh harvest mice, salt marsh wandering shrews, pallid bats, and Yuma bats and breeding northern harriers, Alameda song sparrows, Bryant's savannah sparrows, and San Francisco common yellowthroats.

- **Construction**

  As mentioned previously, there is habitat within Area 4 that should be avoided when planning development. This habitat itself, plants and wildlife, including Special-status Species, that reside in that habitat can be detrimentally affected during construction. For example, if burrowing owls are using burrows on or immediately adjacent to the site when Project construction commences, construction activities could result in the mortality or injury of individual owls in burrows, or cause the abandonment of active nests.

  Grading could result in mobilization of dust and introduction of silt and contaminants into aquatic habitats. Due to the presence of at least marginal-quality nesting habitat for tricolored blackbirds and this species' tendency to nest in large colonies, there is some potential for construction related impacts to nesting tricolored blackbirds too. The endangered salt marsh harvest mouse is known to occur in the diked salt marsh habitat in the large wetland complex located in the west-central portion of Area 4 (Shellhammer et al. 1985). Tidal salt marsh along Mowry Slough adjacent to the site and the muted tidal salt marsh in the northwestern part of Area 4 also provide suitable habitat for this species, and salt marsh harvest mice may also occur in the agricultural field/seasonal brackish marsh adjacent to the diked salt marsh habitat. Salt marsh wandering shrew may also be present in these habitats.

  Water quality affects during construction can also affect any of these habitats or species in remaining or preserved habitats. Construction may result in temporary impacts to water quality in several ways. Soil disturbance during soil stockpiling and grading can result in mobilization of dust that coats plants (possibly including special-status species) in areas that are not directly impacted, potentially adversely affecting their health. Soil disturbance can also result in soil erosion, transport, and siltation of wetlands that are not intended to be filled. Contamination of aquatic and wetland habitats can occur as a result of fuel leaks in construction equipment, abrasion of materials used in construction, and inputs of debris and runoff of concrete byproducts or slurry. Construction in and near seasonal wetland habitat, salt marsh habitat, any of the existing agricultural ditches present on the site, or the ACFC&WCD channels could have a substantial adverse effect on water quality due to increased turbidity and siltation from soil, if ground-disturbing activities occur during the wet season, or if soil is allowed to enter these habitats, or from chemical, particulate or debris contaminants. Soil or contaminants could also potentially be transported to aquatic habitats from activities in

upland habitats a considerable distance away from these habitats, for example, in storm runoff or accidental discharge of water. There is also the potential to add to construction-period water quality degradation during removal and clean-up of the auto wrecking yards in the northwest portion of Area 4. Chemicals, particularly petroleum-based chemicals, and particulates, such as asbestos brake lining materials, typically contaminate auto wrecking yards. If this cleanup is improperly conducted, these contaminants can leach into adjacent natural habitats during removal of the yards and construction of the golf course in the area. Degradation of water quality on and downstream from the site resulting from construction could adversely affect prey availability, foraging conditions, or the health of a variety of wildlife species, including harbor seals and fish within Mowry Slough; aquatic invertebrates that support foraging and breeding waterbirds in the sloughs, channels or wetland habitats; and terrestrial wildlife species including rare salt marsh associated species as well as common species that use wetland habitat for drinking water, foraging, and refugia.

Grading or importation of fill material can cause the spread of invasive non-native plant species. Of particular concern are species such as fennel (*Foeniculum vulgare*), pampas grass (*Cortaderia selloana*), perennial pepperweed (*Lepidium latifolium*), and small-flower tamarisk (*Tamarix parviflora*). Several non-native, invasive species occur on the site, including perennial pepperweed, black mustard, and prickly ox-tongue. Invasive species, particularly fast-growing herbaceous invaders, are often disturbance-adapted, and soil disturbance of the type that will occur during the construction is often followed by an aggressive invasion of the disturbed area by these species.

Under existing conditions, there are small populations of many invasive species throughout the Specific Plan Areas; however, ground disturbance associated with construction would create vast new areas suitable for recruitment of these non-native species (e.g., along the fill embankments), many of which form dense, monotypic stands, eliminating any natural habitat that the area previously supported. Expansion of these invasive plant populations on the site will also increase the seed bank on the site allowing spread to unimpacted natural habitats on the site. While the areas of the site that are in agricultural production contain some of these non-native, invasive plant species, the most damage would be caused by an increase in species that can have a severe ecological impact (fennel, pampas grass, perennial pepperweed, and smallflower tamarisk). Invasion by these non-native species will degrade the functions and values of preserved natural habitat for native plants and wildlife species and reduce the potential for native species to use the landscaped areas within the new development. In Area 3 and 4, fill material for the proposed residential construction may contain seed from non-native plant species not already found on the site, and site grading will likely spread non-native, invasive plant species imported in fill or already present on the site. In Area 4, there are already populations of fennel, pampas grass, perennial pepperweed, and small flower tamarisk within areas proposed for development that may be spread during construction, potentially resulting in substantial impacts to remaining natural habitats. Under existing conditions in Area 4, the levee banks are dominated by black mustard, forming dense thickets that are sprayed periodically with herbicide

Policy 6-7: Temporary disturbance to all wetland and aquatic habitat should be avoided to the maximum extent feasible during construction activities using

measures such as demarcation of construction areas with Environmentally Sensitive Area fencing

Policy 6-8: Minimize construction related impact on rare, threatened, endangered or other special-status species particularly in natural, created or enhanced habitat areas remaining or preserved on site such as burrowing owls, salt marsh harvest mice, salt marsh wandering shrews, pallid and Yuma bats, and nesting northern harriers, peregrine falcons, Alameda song sparrows, Bryant's savannah sparrows, San Francisco common yellowthroats, and tricolored blackbird colonies. Measures may include conducting pre-construction/pre-disturbance surveys, establishing buffer zones, avoiding habitat, creating alternate habitat, salvaging individuals, and during the breeding season: avoiding construction activities, excluding individuals from construction areas, removal of vegetation.

Policy 6-9: Minimize construction related impact water quality degradation in natural, created or enhanced habitat areas remaining or preserved on site using measures such as incorporating best management practices, minimizing soil disturbance adjacent to wetland and marsh habitat, suppressing dust during construction, and avoiding contamination of adjacent natural habitats during environmental cleanup of the auto wrecking yards.

Policy 6-10: The City of Newark shall require design and implementation of and must review and approval an Invasive Plant Species Management Plan prior to grading or importation of fill material as part of any proposed development in Specific Plan Areas 3 and 4 to reduce the potential establishment or spread of non-native, invasive weed populations as a result of development activities. This management plan will outline methods to control the existing populations of non-native, invasive weed species that are not a severe ecological threat and to remove those weed species present that pose a severe ecological threat from the accessible portion of the site to prevent the spread of their seed during and after construction and to prevent the invasion of graded area by invasive species.

- **Human Disturbance**

  After construction has been completed, residential and golf course development will be in close proximity to seasonal wetland, marsh, and aquatic habitats in Area 4. To the extent that these sensitive habitats currently support waterbirds and special-status species, it is likely that proximity to developed areas will result in diminished wildlife use after construction is completed. This decrease in habitat value of the wetlands that are not proposed to be directly impacted may occur for a variety of reasons. Noise, movement of people, domestic animals, and vehicles within the developed area; artificial lighting, and encroachment of people and domestic animals from the developed area into the natural area have the potential to render portions of the "preserved" wetlands unusable by wildlife, at least in areas near the source of disturbance while the disturbance is ongoing. In the absence of such sources of disturbance, wildlife that might otherwise use the site's wetland and aquatic habitats may avoid areas in close proximity to developed areas due to concerns about sight distance and predation risk (e.g., buildings and fill may reduce the distance at which foraging animals can detect predators).

Even if their habitat is not directly impacted, isolation of habitat for species such as the salt marsh harvest mouse and salt marsh wandering shrew resulting from development could adversely affect these species as well. Burrowing owls will be subject to disturbance of nesting and roosting birds by golfers, people walking along levees, and domestic animals, and possible predation by domestic animals and urban-adapted nuisance species. Suitable roosting and nesting habitat for these owls would most likely occur along levees or at the edges of the golf course, therefore, areas occupied by any owls that remain in Area 4 would be accessible to humans and other animals and would thus be subject to recreational disturbance and predation and harassment by pets and urban-adapted predators.

Domestic pets, cats in particular, will stray from the residential areas in both Areas 3 and 4 and may depredate salt marsh harvest mice or salt marsh wandering shrews and breeding special-status bird or their nests. Urban-associated non-native mammals such as house mice and black and Norway rats, as well as urban-adapted natives such as raccoons, are likely to increase on the Project site following development. These species also may compete with or, like pets, prey on salt marsh harvest mice or salt marsh wandering shrews. These species may compete with or prey on some of these special-status species.

Recreational activities in close proximity to sensitive habitats, etc have the potential to adversely affect sensitive habitats and species. Residential development will increase the number of people in this part of Newark who might use the golf course in Area 4 or who might walk or bike on levees adjacent to higher-quality habitats in Area 4. Thus, development in Area 3 and 4 will likely result in an increase in recreational disturbance of sensitive habitats and species in Area 4.

Due to the close proximity of the areas of potential recreational use (formal recreation on the golf course and informal recreation on levees) to sensitive habitats that are known to support special-status species and large numbers of foraging and roosting waterbirds (in the large wetland complex located in the west-central portion of Area 4), recreational activities have the potential to impact sensitive habitats and species. Two types of recreational activities are anticipated to occur, or increase in frequency and intensity, near sensitive habitats in Area 4 as a result of the Project: golfing on the new golf course and recreational use of the levees along the ACFC&WCD channels and along Mowry Slough.

Because the golf course abuts sensitive habitats such as wetlands, marsh, and aquatic habitats containing sensitive species, golfers are likely to disturb these habitats and species. Golfers may enter these habitats looking for stray balls, and the noise and human activity associated with golfing may disturb sensitive species in adjacent habitats or reduce the use of adjacent habitats by these species. Use of a golf cart bridge over the wetlands northwest of ACFC&WCD Line D to connect separate portions of the golf course will result in disturbance of wetland-associated wildlife species. These activities may result in degradation of wetland, marsh, and aquatic habitats; crushing of special-status plants, salt marsh harvest mice, and salt marsh wandering shrews; disturbance of nesting birds, including special-status species such as northern harriers, burrowing owls, San Francisco common yellowthroats, and Alameda song sparrows; and disturbance of nesting, foraging, and roosting waterfowl, shorebirds, and other species.

Although there are no official trails, people currently walk along the levees that line the ACFC&WCD channels and along the levee that follows the eastern side of Mowry Slough infrequently and in small numbers, but with the residential development in Areas 3 and 4 and the presence of the golf course, more visitors to these levees are anticipated. Levee users may enter sensitive habitats, and the noise and human activity associated with levee use may disturb sensitive species in adjacent habitats or reduce the use of adjacent habitats by these species. These activities may result in degradation of wetland, marsh, and aquatic habitats; crushing of special-status plants, salt marsh harvest mice, and salt marsh wandering shrews; disturbance of nesting birds, including special-status species such as northern harriers, burrowing owls, San Francisco common yellowthroats, and Alameda song sparrows; and disturbance of nesting, foraging, and roosting waterfowl, shorebirds, and other species. Levee users may also bring dogs to these areas, and the dogs have the potential to harass or even depredate bird and mammal species in the sensitive habitats along these levee. Development of the area is likely to be followed by formalizing levees as designated trails, increasing use and disturbance.

Policy 6-11: The design of the golf course should minimize, to the extent practicable, disturbance by golfers of adjacent sensitive natural resources such as sensitive habitats, vegetation wildlife, and rare plant or animals with such measures as having high-use areas such as tees and greens set back from the edge of the golf course, broad rough/out-of-bounds areas along the interface between the golf course and sensitive habitats, "out of bounds" areas clearly marked, and focused lighting that does not extend into natural or habitat areas.

Policy 6-12: Minimize disturbance from residential and recreational uses including refraining from developing recreational use areas near sensitive natural resources, educating the public about the importance of preserving the ecological integrity of the adjacent natural areas, instructing recreational users to stay on top of the levees out of sensitive habitats and keep dogs on leashes, developing signage along the ACFC&WCD levees and along Mowry Slough to educate users the ecological value of adjacent wetland areas and protection measures, avoiding artificial light pollution of habitat areas, and setting aside habitat areas sufficiently large that undisturbed areas are available to wildlife.

7. Implementations Programs and Measures.

a. **Development Phasing.** Both Area 3 and Area 4 will be developed independently of each other. Area 4 will not be developed until the bridge over the railroad is constructed. Phasing within each Area will be based on the provision of appropriate infrastructure.

b. **Public/Private Financing**. The residential portions of the plan will be solely financed by private funds. The various developers within areas of the plan will work closely with the City to bring public improvements on-line at the earliest possible date. The developers will fund all facilities needed to support the development.

c. **Allocation of Specific Plan Costs**. Costs will be proportionately allocated to the property owners with Sub Areas A, B, and C based on their ownership of developable land within those Areas.

d. **Affordable Housing Implementation Strategy.** The Specific Plan will comply with the affordable housing elements required by Chapter 17.18 of Newark's Municipal Code. The Plan will provide for the development and maintenance of 15% of the total number of dwelling units within the residential development as inclusionary units. These units may be provided in phases as senior ownership or rental, multifamily ownership or rental, or single family ownership or rental at the developer's discretion. In the alternative, the City will allow off site construction of the required units for the affordable housing requirement.

e. **Implementation Policies and Strategies/Action Plan.**

- **General Plan Amendment** – the General Plan will be amended simultaneously with the adoption of this Plan.
- **Zoning Changes** – the zoning changes will occur simultaneously with the adoption of this Plan.
- **Planned Unit Development Permits** – the requisite PUD permits will be granted simultaneously with the adoption of this Plan and will not expire during the term of the Development Agreement.
- **CUPs** – the requisite CUPs will be granted simultaneously with the adoption of this Plan.
- **Development Agreement** – the Development Agreement will be entered into simultaneously with this Plan.
- **Tentative Map** – the tentative map will be approved at a later date.

f. **Review and Approval Process.** Tentative and Final maps will go through the City's normal subdivision procedure with ultimate City Council approval required. Subdivisions conforming to the Specific Plan shall be approved and shall be deemed exempt from CEQA. See Public Resources Code § 21083.3 and Government Code § 65457. Any major changes in Land Use distribution or increase in intensity of development are not anticipated in the Specific Plan and will be processed as **major** amendments to the Specific Plan, and total cost allocation for such change will be borne solely by the entity requesting such change.

The Planning Director will have the authority to approve all **minor** changes to the Specific Plan within the context and guidelines contained within this document. All Site Plan and Architectural approvals will be made by Planning Director based solely on the standards and guidelines enumerated in this document. The minimum materials submitted to the Planning Director for review and approval shall be:

- Precise Site Plan at 1" = 40" – 00" scale
- Floor Plans and Elevations at ¼" = 1' – 00" scale
- Appropriate Engineering drawings
- Preliminary Landscape Plan at 1" = 40' – 00" scale with larger scale typicals.

Upon receipt of a completed submittal package, the Planning Director will act on the submittal within 30 days.

8. Relationship to the General Plan

a. **Area 3, Sub Area A.** Sub Area A is designated as Special Industrial under the General Plan, and will be amended to a designation of Medium Density Residential. As discussed above in section 2(b), Area 3, Sub Area A is currently zoned as MT-1 High Technology Park and will be rezoned to Residential District R-6000, and with a Planned Unit Development permit and conditional use permit to allow for greater flexibility in terms of requirements such as lot size, setbacks, and limited multifamily development.

b. **Area 4, Sub Area B.** Sub Area B is designated as Low Density Residential under the General Plan and will be amended to a designation of Medium Density Residential. As discussed above in section 2(b), Sub Area B is currently zoned as Agricultural and will be rezoned to Residential District R-6000, with a Planned Unit Development permit and conditional use permit to allow for greater flexibility in terms of requirements such as lot size and setbacks.

c. **Area 4, Sub Area C.** Sub Area C is designated as Low Density Residential under the General Plan and will be amended to a designation of Medium Density Residential. As discussed above in section 2(b), Sub Area C is currently zoned as Agricultural with a small portion zoned Industrial, and will be rezoned Residential District R-6000, with a Planned Unit Development permit and conditional use permit to allow for greater flexibility in terms of requirements such as lot size and setbacks. In addition, a conditional use permit will be granted to allow the construction of a golf course.

d. **Area 4, Sub Area D.** Sub Area D is designated as Low Density Residential under the General Plan, which provides for predominantly single-family homes. Consequently, the proposed uses are compatible. As discussed above in section 2(b), Sub Area D is currently zoned as Agricultural and will remain zoned Agricultural. However, a conditional use permit will be granted to allow construction of a golf course or another recreational use.

e. **Area 4, Sub Areas E** will remain designated as Low Density Residential in the General Plan and zoned predominantly Agricultural with a small area of General Industrial. No changes are proposed and therefore, it will remain consistent with the General Plan.

f. **Area 3, Sub Area F** will remain designated as Special Industrial in the General Plan and zoned Industrial Technology Park and High Technology Park. No changes are proposed and therefore, it will remain consistent with the General Plan.

g. **Conflicts with the General Plan and the Newark Municipal Code.** There are no Specific Plan conflicts with the General Plan.

h. **Consistency with other City Policies and Programs.** The Specific Plan significantly furthers two of Newark's Major Community Goals, as they are stated in the General Plan:

- **Goal 1:** Maintain a desirable quality of life in the community through preservation of the small town neighborhood atmosphere and the promotion of balanced land use that takes into account the need for economic diversity and future financial well being of the city.

  This development will not result in undue burdens upon the City. The Specific Plan makes accommodations for any resultant increase in traffic and utilities. The development will also be of the highest quality and complement existing adjacent uses, as discussed above in section 2(b).

- **Goal 2:** Promote high quality development that establishes the City's character as distinctive from that of other cities in the Bay area.

  The planned development will be of the highest quality and will not have significant impacts on adjacent properties. In fact, the planned uses complement the adjacent uses which include residential and Ohlone College.

APPENDIX

LITERATURE CITED

Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. First Reprint. San Francisco, CA/Oakland, CA: U.S. Environmental Protection Agency/San Francisco Bay Regional Water Quality Control Board. 209 p.

H. T. Harvey & Associates. 2006a. Newark Specific Plan Areas 3 & 4 Biotic Constraints and Opportunities Analysis. Prepared for David J. Powers & Associates, San Jose, California.

LSA Associates, Inc. 1989. Seasonal wetlands in San Francisco and San Pablo Bays. Current status, project losses, and cumulative losses since 1975. Prepared for National Audubon Society and Bay Area Wetland Activists.

Shellhammer, H., V. Jennings, V. Johnson, S. Muench, and M. Newcomer. 1985. Studies of the Salt Marsh Harvest Moust (Reithrodontomys raviventris raviventris) in Marginal and Other Sites in the South San Francisco Bay, 1983-1985. Prepared for State of California, Department of Fish and Game.

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE NEWARK AREAS 3 AND 4 SPECIFIC PLAN PROJECT DEVELOPMENT AGREEMENT

WHEREAS, the Newark Areas 3 and 4 Specific Plan proposes to allow development of single-family residential, multi-family residential, and an elementary school within the 78-acre Area 3; and

WHEREAS, the Development Agreement for the Specific Plan Project will facilitate the implementation of the Project and all related approvals; and

WHEREAS, residents and other community members have had opportunities to provide comments and suggestions throughout the development of the Newark Areas 3 and 4 Specific Plan Project (the "Project"), through a series of public meetings from 2006 through 2010, by commenting on information posted on the City's website and made available at City Hall and the Library, and by commenting on the Recirculated Draft Environmental Impact Report ("Draft REIR") for the Project; and

WHEREAS, a Recirculated Environmental Impact Report ("REIR") was prepared for this Project, including the General Plan amendment, planned unit development, and development agreement, and recommended for approval by the Planning Commission on February 10, 2015; and

WHEREAS, on March 26, 2015, the City Council found that the REIR fully discloses all possible environmental impacts of the Specific Plan Project and related approvals and therefore certified the REIR; and

WHEREAS, in accordance with the REIR and Statement of Overriding Considerations adopted by the Newark City Council on March 26, 2015, the City Council found that the benefits to the community associated with this Project in terms of housing availability and choice, provision of public school facilities, and creation of a mix of housing options including high quality residential uses such as executive housing types and below market rate housing options, outweigh the unavoidable impacts; and

WHEREAS, the City Council has read, reviewed, and considered the Newark Areas 3 and 4 Specific Plan Development Agreement; has conducted a public hearing on the proposed Development Agreement; has discussed, evaluated, analyzed, reviewed and considered the information presented in said hearing, as well as the REIR, Newark Areas 3 and 4 Specific Plan, related General Plan affirmation, and staff report; and

WHEREAS, the Development Agreement will provide key benefits to the City, including (1) the dedication to the City of an approximately 66-acre parcel along Mowry Avenue in Area 4, (2) the dedication and improvement of a 3-acre neighborhood/school park in Area 3, (3) the dedication and improvement of the approximately 1-acre park in Sub-Area C, (4) provide for the reservation of land to the City for the development of a potential new elementary school with a 600 student capacity, (5) provide up to 1,260 new residential units within Area 3 and 4, (6) ensure that 15 percent of the new units developed will be built either on- or off-site as Moderate

Income household units or, alternately, provide for the payment of in-lieu fees for these affordable housing units; and

WHEREAS, pursuant to California Government Code sections 65090, 65091 and 65867, a public notice of the City Council's intent to consider adoption of the Development Agreement was published in *The Argus* on March 13, 2015.

NOW, THEREFORE, BE IT RESOLVED that the City Council does ordain and find:

a. To approve the Development Agreement between the City and Newark Partners LLC relating to the development of the Newark Area 3 and 4 Specific Plan Project; and

b. That the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan, the Newark Area 3 and 4 Specific Plan, and the regulations prescribed for the zoning districts in which the Specific Plan Project will be located; and

c. That the Development Agreement will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area of the Specific Plan Project, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole; and

d. That the Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and

e. That the Development Agreement will facilitate the implementation of the Newark Area 3 and 4 Specific Plan; and

f. That the Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65868.5; and

g. Pursuant to City Municipal Code Section 17.18.050(E) the Development Agreement contains an alternative means of compliance with the City's inclusionary housing requirements which fulfill the purposes of Chapter 17.18 and will further affordable housing opportunities in the City, would better address the City's needs than compliance with the requirements of Section 17.18.030, and will not unduly concentrate below market rate housing in one geographic area.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

(No fee per Government Code Section 27383)

(Space Above This Line Reserved For Recorder's Use)

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF NEWARK
AND
NEWARK PARTNERS, LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of _____, ~~[date]~~ 2015 by and between NEWARK PARTNERS, LLC, a California limited liability corporation ("Developer"), and the CITY OF NEWARK ("City"), pursuant to California Government Code § 65864 *et seq*.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code § 65864 *et seq*. (the "Development Agreement Statute"), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Pursuant to California Government Code § 65865, City has adopted procedures and requirements for the consideration of development agreements (City Ordinance No. 338). This Development Agreement has been processed, considered and executed in accordance with such procedures and requirements.

C. Developer has a legal and/or equitable interest in certain real property consisting of approximately 583 acres located in the southwest corner of the City, as more particularly described in **Exhibit A** and as diagrammed in Exhibit A (the "Project Site"), which comprises a portion of the Newark Area 3 and 4 Specific Plan, as defined below. This Agreement applies to and is binding on the owners of the Project site only and not to all of the parcels included within the Specific Plan.

D. City has taken several actions to review and plan for the future development of the Project. These include, without limitation, the following:

1. Environmental Impact Report. The environmental impacts of the Project, including the Project Approvals and the Subsequent Approvals, and numerous alternatives to the Project and its location, have properly been reviewed and assessed by City pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq*.; and California Code of Regulations Title 14, Section 15000 *et seq*. (the "CEQA Guidelines"). On ~~February 10[____]~~, 2015, pursuant to CEQA and in accordance with the recommendation of the Planning Commission for the City of Newark (the "Planning Commission"), the City Council certified a final environmental impact report covering the Project (the "EIR"). As required by CEQA, the City adopted written findings and a mitigation monitoring program (the "Mitigation Monitoring Program") prior to approving the Project Approvals.

2. General Plan Amendment. Following review and recommendation by the Planning Commission and after a duly noticed public hearing and certification of the EIR, the City Council, by Resolution _____, approved amendments to the Newark General Plan (the "General Plan Amendment").

3. Specific Plan. Following review and recommendation by the City Planning Commission, City Council certification of the EIR, and adoption of the General Plan Amendment, the City Council at a duly noticed public hearing, adopted Resolution No. ____, _____, approving the Newark Area 3 and 4 Specific Plan ("Specific Plan").

4. Rezoning. Following City Planning Commission review and recommendation, certification of the EIR and adoption of the General Plan Amendment at a duly noticed public hearing, the City Council adopted City Ordinance No. ___, rezoning portions of the Project Site to City's Residential District R-6000.

5. Planned Unit Development and Conditional Use Permit. Following City Planning Commission review and recommendation, certification of the EIR and adoption of the General Plan Amendment, Specific Plan, and Rezoning, at a duly noticed public hearing, the City Council adopted City Resolution No. ___, approving a Planned Unit Development and Conditional Use Permit for residential development in Area 3.

The approvals and development policies described in this Recital E are collectively referred to herein as the "Project Approvals."

E. City has determined that the Project presents certain public benefits and opportunities which are advanced by City and Developer entering into this Agreement. This Agreement will, among other things, (1) reduce uncertainties in planning and provide for the orderly development of the Project; (2) mitigate many significant environmental impacts; (3) provide public services and infrastructure; (4) provide for and generate substantial revenues for the City in the form of one time and annual fees and exactions and other fiscal benefits; (5) provide a variety of needed housing, including affordable housing and/or funds in furtherance of affordable housing opportunities; and (6) otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. In exchange for the benefits to City described in the preceding Recital, together with the other public benefits that will result from the development of the Project, Developer will receive by this Agreement assurance that it has vested rights to proceed with the Project (including the development of a maximum of 1260 housing units on Developer's property with all but the fifteen percent affordable units being detached housing units) in accordance with the "Applicable Law" (defined below), and therefore desires to enter into this Agreement.

G. On ~~February 10, [____],~~ 2015 following a duly noticed public hearing, the Planning Commission adopted Resolution No. ~~1902[____]~~, recommending that the City Council approve this Agreement. Following City Council certification of the EIR, adoption or approval of the General Plan Amendment, adoption of the Newark Area 3

and 4 Specific Plan, and the rezoning, the City Council at a duly noticed public hearing adopted Ordinance No. ~~[ ]~~, approving and authorizing the execution of this Agreement.

H. The City Council, after conducting a duly noticed public hearing, has found that this Agreement is consistent with the General Plan and with the Specific Plan and has conducted all necessary proceedings in accordance with the City's rules and regulations for the approval of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. DEFINITIONS

"Administrative Project Amendment" shall have that meaning set forth in Section 7.01(a) of this Agreement.

"Administrative Agreement Amendment" shall have that meaning set forth in Section 7.02(a) of this Agreement.

"Affiliate" shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning or controlling ten percent or more of the outstanding voting securities of such Person, (iii) any officer, director, manager or general partner of such Person, or (iv) any Person who is an officer, director, manager, general partner, trustee or holder of ten percent or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence.

"Agreement" refers to this Development Agreement and all its exhibits and attachments.

"Applicable Law" shall have that meaning set forth in Section 6.08 of this Agreement.

"Assessed Property" shall have that meaning set forth in Section 5.07(c) of this Agreement.

"Changes in the Law" shall have that meaning set forth in Section 6.09 of this Agreement.

"City" is the City of Newark, California.

"City Law" shall have that meaning set forth in Section 6.05 of this Agreement.

"Default Notice" shall have that meaning set forth in Section 10.01 of this Agreement.

"Deficiencies" shall have that meaning set forth in Section 9.02(a) of this Agreement.

"Developer" refers to Newark Partners, LLC and successors or assigns.

"Development Agreement Statute" shall have that meaning set forth in Recital A of this Agreement.

"Effective Date" shall have that meaning set forth in Section 2.01 of this Agreement.

"Judgment" shall have that meaning set forth in Section 9.02(a) of this Agreement.

"Mitigation Monitoring Program" shall have that meaning set forth in Recital D(1) of this Agreement.

"Moderate Income Households" means households with incomes no greater than the maximum income for moderate income households, as annually defined by the California Department of Housing and Community Development for each household size.

"Mortgagee" shall mean the beneficiary of any deed of trust relating to the Project.

"Non-Assuming Transferee" shall have that meaning set forth in Section 8.03 of this Agreement.

"Notice of Compliance" shall have that meaning set forth in Section 8.04 of this Agreement.

"Periodic Review" shall have that meaning set forth in Section 10.03(a) of this Agreement.

"Person" shall mean any individual, any partnership, limited liability company, corporation, trust or other entity.

"Project" shall mean the improvements to the Project Site and associated off-site improvements, as particularly described by the Project Approvals, subject to any modifications or amendments that may be agreed upon by the City and Developer pursuant to Section 7 of this Agreement.

"Project Approvals" shall have that meaning set forth in Recital D of this Agreement.

"Project Site" shall have that meaning set forth in Recital C and Exhibit A of this Agreement.

"Subsequent Approvals" shall mean those certain other land use approvals, entitlements, and permits other than the Project Approvals that are necessary or desirable for the development of the Project. The Subsequent Approvals may also include, without limitation, the following: amendments of the Project Approvals, planned unit development permits, conditional use permits, subdivision maps, design review approvals, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, preliminary and final development plans, rezonings, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing.

"Term" shall have that meaning set forth in Section 2.02 of this Agreement.

"Transfer Agreement" shall have that meaning set forth in Section 8.02 of this Agreement.

"Transferee" shall mean the recipient of a transfer or assignment by Developer as set forth in Section 8.02 of this Agreement.

ARTICLE 2. EFFECTIVE DATE AND TERM

Section 2.01. Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").

Section 2.02. Term. The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years.

ARTICLE 3. OBLIGATIONS OF DEVELOPER

Section 3.01. Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer's long term obligations set forth in this Agreement are in addition to Developer's agreement to perform all the mitigation measures identified in the Mitigation Monitoring Program.

Section 3.02. Fees Paid by Developer. As a material consideration for the long term assurances and vested rights provided by this Agreement, Developer shall pay certain fees and exactions to City all as described below. No other fees shall be imposed during the term of this Agreement except as set forth in this Section of this Agreement.

(a) Except as otherwise provided in this Agreement, only those fees and charges of City in effect as of the Effective Date and as described on attached **Exhibit B** (the "Existing Project Impact Fees") may be applied to the Project or the Project Site. The Existing Project Fees may be increased in rate by the City, if at all, only after eight (8) years after the Effective Date of the Agreement, at which time the fees may be increased by City during the Term but only in a manner consistent with this Agreement and California law concerning development fees (Gov. Code § 66000 *et seq.* or a successor statute) and only to the extent that fees are imposed on a City-wide basis and are at identical levels as imposed against other Projects. No new category of fee other than these listed on Exhibit B shall be imposed on the project for any purpose. All Project Fees shall be paid on a per unit basis at the time City issues certificates of occupancy for the Project.

(b) With respect to residential development in Area 4, Developer agrees to pay, at the issuance of each building permit for each residential unit in Area 4, a project-specific Community Benefit Fee of $24,500 per housing unit in addition to Existing Project Impact Fees as set forth above. This amount shall not increase by more than the Consumer Price Index or 2 % (two percent), whichever is less, for 8 (eight) years following the Effective Date of this Agreement, and, at the end of this period, to the extent not yet paid on any unit, the City may increase this fee on an annual basis based on the Consumer Price Index.. No other fees for parks, recreation, or community benefit, or land dedication for such purposes shall be required except as set forth in Section 3.02 of this Agreement.

Section 3.03. Dedications by Developer

(a) No other land dedication shall be required except as set forth in this Section.

(b) In lieu of payment of park fees for development in Area 3 and Area 4 as set forth in Chapter 16.30 of the Subdivision Title (Title 16) of the Newark Municipal Code, Developer shall dedicate to the City an approximately sixty-six (66) acre parcel along Mowry Avenue in Area 4, as such parcel is more particularly described as parcels 4 and 5 in attached **Exhibit C** (the "Recreational Parcel"). Such dedication shall be subject to a forty foot (40') reserved easement for ingress and egress for construction, pedestrian and emergency vehicle access use along the western edge of the parcel parallel to the Union Pacific line as shown on Exhibit C. This dedication shall occur upon the issuance of the first residential building permit for Area 3, and the City shall accept dedication of the property in its entirety subject to all vested rights. Upon dedication, the City shall assume all obligations related to the Recreational Parcel, including maintenance and management of the Parcel, and including all monitoring and reporting obligations related to the six (6) groundwater monitoring wells located on the ten-acre portion of the Recreational Parcel identified in Exhibit C. The location of the wells and the precise monitoring and reporting obligations are described in the

approved Work Plan for the monitoring activities, a copy of which has been provided to the City. Following dedication of the Recreational Parcel, Developer shall have no further obligations or liability with respect to the Parcel, and the City shall defend, indemnify, and hold harmless the Developer from all actions, claims, costs, liabilities, proceedings and/or requirements relating to or arising in connection with the Recreational Parcel.

(c) Also, in lieu of the payment of park fees for development in Area 3 as set forth in Chapter 16.30 of the Subdivision Title (Title 16) of the Newark Municipal Code, Developer shall improve and dedicate a three (3)-acre shared use (neighborhood/school) park in Area 3 ("Park Parcel") upon the issuance of the 250th building permit in Area 3. The City and Developer shall mutually agree upon the exact location of the Park Parcel and the improvements to be constructed, but, in any event, the Park Parcel must located adjacent to the acreage offered for donation as a school site in Section 3.03(e). The Developer's cost to improve the Park Parcel shall not exceed $6.50 (six dollars and fifty cents) per square foot. The City shall promptly accept the dedication of the Park Parcel, including all responsibility for on-going maintenance of the park and any improvements therein.

(d) Upon issuance of the 150th building permit for residential construction in Area 4, Developer shall improve and dedicate to the City, in lieu of the payment of park fees for development in Area 4 as set forth in Chapter 16.30 of the Subdivision Title (Title 16) of the Newark Municipal Code, the "Sub Area C Park," a linear park, which shall be no less than two acres and no greater than four acres in size and which may include portions of wetland, and similar in improvements to the conceptual Sub Area C Park plan depicted in the Specific Plan upon completion of the improvements. The City shall accept the dedication of the Park Parcel, including all responsibility for on-going maintenance of the park and any improvements therein.

(e) Developer shall offer for dedication to the City, in an "as is" unimproved condition, six (6) acres of land for the construction of an elementary school adjacent to the Park Parcel. The school site will be located with the cooperation of the Newark Unified School District ("School District"), City, and Developer on land unimpacted by residual pesticides or other constituents of concern for school use. The City and Developer shall mutually agree upon the exact location of the land to be offered for dedication, but, in any event, it must located along Cherry Avenue and must allow for shared use of the improvements on the Park Parcel by the elementary school. This offer of dedication shall be made upon the City's issuance of first building permit for Area 3, and shall not be rescinded for 7 years or the 200th Building Permit, which ever is later. In the event that the City accepts the dedication and transfers the land to the School District, the

City must impose a deed restriction on the land limiting its use to public educational purposes, and providing that should the School District dispose of the land, it must first offer to sell the land, at the appraised value described in Section 3.03(f) below, back to the Developer, and, if declined, next to the City. The Developer shall not market the Project to any party as including the development of an elementary school until such time as the construction of the school is assured.

(f) At the City's sole option, during that 7 year period or the 200th Building Permit, which ever date is later, and in lieu of the dedication described in this section, the City may elect to receive a monetary payment from the Developer in an amount equivalent to the fair market value of the six (6) acre parcel in 2010 as raw unimproved land zoned for High-Tech development, without interest, as that value is established according to a written appraisal prepared by an MAI appraiser of the City and Developer's mutual selection ("School Land Payment"). The appraisal must be prepared and delivered to the City within 60 (sixty) days of the effective date of this Agreement. The City must review and issue its concurrence with the appraisal, or provide an alternate written appraisal prepared by a MAI appraiser, within 60 (sixty) days of receipt of the Developer's appraisal. If City and Developer cannot agree on which appraisal to follow, each party's appraiser will select a third, mutually agreed-upon, MAI appraiser to prepare a final, binding written appraisal. The cost of preparation of such an appraisal shall be shared equally between the parties. If construction of a permanent elementary school campus (not portable buildings) does not commence within this 7 year period, the offer of dedication shall terminate and the Developer shall make the School Land Payment to the City.

Section 3.04. Golf Course. Other than those facilities and parcels described herein, Developer is not responsible for additional land assemblage, design, construction, operation, or maintenance of any golf course or community facilities that the City may pursue in the future. Developer shall not market the Project to any party as including the development of a golf course unless the City agrees in writing to such marketing.

Section 3.05. Affordable Housing. Developer shall provide for the development of 15% of the total number of dwelling units within the residential development as Moderate Income Household units anywhere within Areas 3 or 4. These units may be provided in phases as senior ownership or rental, multifamily ownership or rental, or single family ownership or rental at the developer's discretion, or any combination of the above. Completion of construction of all Moderate Income Household units must occur before the completion of construction of the last market-rate unit in Area 3 or the 500th market-rate unit constructed anywhere in the Specific Plan Area, whichever comes first. These units shall be consistent with the Specific Plan design guidelines for on-site development. In the alternative, and in the sole discretion of the Developer, the City shall allow off-site construction of all or

a portion of the required units in any location in the City of Newark zoned for residential use, provided the units are of the same quality as those that would be constructed on site. Any off-site units shall be subject to the City's design review requirements.

Alternately, the Developer may, in its sole discretion, opt to pay an affordable housing in-lieu fee to the City in the amount of three million dollars ($ 3,000,000.00). Under this alternative, the Developer shall make an initial lump sum payment of one and a half million dollars ($1, 500,000.00) within 10 days of the City's issuance of the 50th building permit for residential construction or sooner at the Developer's sole discretion, followed by a per lot payment of fifteen hundred dollars ($1,500.00) for each of the next one thousand (1,000) residential lots.

Section 3.06. First Right of Donation.

(a) If Developer decides in its sole discretion to make a charitable contribution of the land it owns in Sub-Areas B, C and E of Area 4~~, and has been issued a building permit and commenced construction of the first residential unit in Area 3~~, Developer (or its transferee) shall first offer to donate the Developer-owned areas of Sub-Areas B, C and E of Area 4 to the City or the City's designee, which designee must be an organization for which the donation by Developer will qualify as a charitable contribution under Internal Revenue Code Section 170. The City or the City's designee shall have up to thirty (30) days from Developer's offer to accept the donation. If the City or the City's designee reject the offer, or fail to respond in writing within thirty (30) days, Developer has fulfilled it's obligation to first offer to donate the land to the City or its designee and will not be obligated to offer the land for donation again. Once the Developer has commenced filling pursuant to a City grading permit of Area 4, Sub-Areas B and C, Developer shall have no obligation to first offer to donate Sub-Area E of Area 4 to the City or the City's designee. Once the Developer has substantially completed construction of the overpass to Area 4, Developer shall have no obligation to first offer to donate the Developer-owned areas of Sub-Areas B, C and E of Area 4 to the City or the City's designee. For purposes of Section 3.06 "substantially completed construction" shall mean that Developer shall have expended sixty percent (60%) of the structural construction budget of the overpass.

(b) If, at the end of the term of the Agreement, the Developer has not substantially completed construction of the overpass to Area 4, Developer shall offer to donate the Developer-owned areas of Sub-Areas B, C of Area 4 to the City or the City's designee. In that event, Developer shall also offer to donate the Developer-owned areas Sub-Area E, but only if during the term of the Agreement, the Developer has not commenced filling pursuant to a City grading permit of Area 4, Sub-Areas B and C. The City or the City's designee shall have up to thirty (30) days from Developer's offer to accept

the donation. If the City or the City's designee reject the offer or fail to respond in writing within thirty (30) days, Developer has fulfilled it's obligation to first offer to donate the land to the City or its designee and will not be obligated to offer the land for donation again. However, if, at the end of the term of the Agreement, the Developer has substantially completed construction of the overpass to Area 4 and the Developer has not made a first offer to donate the Developer-owned Sub-Areas B, C and E of Area 4 to the City or the City's designee, the Developer shall have no further obligation to make this offer.

(c) In the event the City or its designee elects to accept the gift described above, the City (or its designee) shall enter into a Donation Agreement with Developer in substantially the same form as the attached **Exhibit D**.

(d) Following donation and acceptance of Developer's land in Sub-Areas B, C and E of Area 4 by the City pursuant to this Section, Developer shall have no further obligations or liability with respect to those areas, and the City shall defend, indemnify, and hold harmless the Developer from all actions, claims, costs, liabilities, proceedings and/or requirements relating to or arising in connection with those area claims, with the exception of any claims, costs, liabilities, proceedings and/or requirements arising from Developer's State or Federal tax liability concerning the donation.

ARTICLE 4. OBLIGATIONS OF CITY

Section 4.01. Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to develop the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.

Section 4.02. Protection of Vested Rights. To the maximum extent permitted by law, City shall take any and all actions as may be necessary or appropriate to ensure that the vested rights provided by this Agreement can be enjoyed by Developer and to prevent any City Law, as defined below, from invalidating or prevailing over all or any part of this Agreement. City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect.

Section 4.03. Issuance of Grading Permits. Subject to the City's ministerial review process, the City shall issue all grading and fill permits, necessary to fill the land in Area 3 and 4 to prepare it for residential development upon approval of the EIR, Specific Plan, and this Agreement.

Section 4.04. Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Developer in

reserving such capacity for sewer and water services as may be necessary to serve the Project.

Section 4.05. Overpass Right of Way. Upon Developer's written request, the City shall acquire sufficient right of way for the overpass, at a location mutually agreed upon by City and Developer, to provide vehicular access into Area 4 in the most legally expeditious manner available to the City, including the use of eminent domain. Developer shall reimburse City for all expenses related to the acquisition of the right of way, including but not limited to acquisition through eminent domain, provided such expenses, including all appraisals, offers, engineers, consultants, and legal contracts and agreements, are pre-approved by Developer in writing. Developer may make improvements in Area 4 prior to the City's acquisition or possession of the overpass right of way, but in no event may seek more than ten (10) building permits for the construction in Area 4 prior to that acquisition or possession.

Section 4.06. Developer's Right to Rebuild. Developer shall have the right to renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

Section 4.07. Additional Development. Within sixty (60) days of approval of this Agreement, the City shall consider adoption of an ordinance imposing a Project Planning Fee on all land in Area 4 not owned by Developer that allocates the costs of development of the Specific Plan to land not covered by this Agreement in accordance with Government Code section 65456. To the extent additional development within the Specific Plan area has or will benefit from the Specific Plan, the ordinance shall provide that the City shall collect from future developments fees reflecting that development's fair share of the cost of specific plan preparation, environmental review, impact fees, and dedication of land associated with the Specific Plan. Such reimbursed costs shall include but not be limited to the Developer's purchase, acquisition, and improvement costs (in excess of Quimby Act requirements) associated with the dedication of the 66-acre Recreational Parcel, the Park Parcels, and the School Site; as well as the overpass acquisition costs and design costs. The ordinance shall provide that the City shall pay such fees to Developer as such fees are collected.

ARTICLE 5. COOPERATION - IMPLEMENTATION

Section 5.01. Processing Application for Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project

is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary authority in considering any application for a Subsequent Approval, including, but not limited to, the City's administrative consideration of planned unit development permits, conditional use permits and subdivision maps, within the Project Site to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law and are not inconsistent with the Project Approvals as set forth above.

Section 5.02. Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary required materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

Section 5.03. Timely Processing By City. Upon submission by Developer of all appropriate applications and payment of the then current City-wide processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. City shall ensure that adequate staff is available, and shall authorize overtime staff assistance as may be necessary, to timely process such Subsequent Approval application.

Section 5.04. Review of Subsequent Approvals. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or is necessary to make this Subsequent Approval consistent with the

Project Approvals. If City denies any application for a Subsequent Approval, City must specify in writing the reasons for such denial and may suggest a modification which would be approved. Any such specified modifications must be consistent with this Agreement, Applicable Law and the Project Approval, and City shall approve the application if it is subsequently resubmitted for City review and addresses the reason for the denial in a manner that is consistent with this Agreement, Applicable Law and the Project Approvals.

Section 5.05. Specific Subsequent Approvals. City acknowledges that timing and financial constraints preclude City from acting on certain Subsequent Approvals as of the Effective Date, including but not limited to tentative and final maps. In addition to the other general covenants concerning processing of Subsequent Approvals set forth in this Agreement, City shall, to the maximum extent permitted by law, promptly and diligently commence and complete all steps (including noticing and public hearings) necessary to act on these contemplated Subsequent Approval applications. City shall, to the maximum extent permitted by law, not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals.

Section 5.06. Other Government Permits. At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to obtain such permits and approvals and shall, from time to time at the request of Developer, use its best efforts to enter into binding agreements with any such entity as may be necessary to ensure the timely availability of such permits and approvals.

Section 5.07. Assessment Districts or Other Funding Mechanisms.

(a) The parties understand and agree that as of the Effective Date there are no City assessments applicable to the Project Site. City is unaware of any pending efforts to initiate, or consider applications for new or increased assessments covering the Project Site, or any portion thereof.

(b) City understands that long term assurances by City concerning fees, taxes and assessments were a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay long term fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district or increased assessment. In the event as assessment district is lawfully formed

to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Developer under the Project Approvals or this Agreement, such fees or assessments to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such fees or assessments to be paid by Developer under the Project Approvals or this Agreement.

(c) At the request of Developer, City shall cooperate in the formation of assessment districts, community facilities districts, tax-exempt financing mechanisms, or other funding mechanisms related to traffic, sewer, water or other infrastructure improvements (including, without limitation, design, acquisition and construction costs) within the Project Site. City shall diligently and expeditiously process applications by Developer necessary to establish funding mechanisms so long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are standard in the industry and reasonably acceptable to City, and which will result in no commitment of City funds. Developer may initiate improvement and assessment proceedings utilizing assessment mechanisms authorized under the law of the State of California where the property subject to assessment (the "Assessed Property") provides primary security for payment of the assessments. Developer may initiate such assessment proceedings with respect to a portion of the Assessed Property to provide financing for design or construction of improvements for such portion. City shall allocate shortfalls or cost overruns in the same manner as the special taxes or assessments for construction of improvements (as opposed to assessments for maintenance) are allocated in the community facilities district or other financing mechanism so that each lot and/or parcel within the benefited area shall bear its appropriate share of the burden thereof as determined by City and construction or acquisition of needed improvements shall not be prevented or delayed.

ARTICLE 6. STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

Section 6.01. Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project Site in accordance with the terms and conditions of this Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.

Section 6.02. Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the

maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals, including the development of a maximum of 1260 housing units on Developer's property with all but the fifteen percent affordable units being detached housing units, and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals. Permitted uses shall include, without limitation, residential, agricultural, recreational, open space, industrial, and technology park.

Section 6.03. Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the Project (the "Applicable Law") shall be those set forth in this Agreement and the Project Approvals, and, with respect to matters not addressed by this Agreement or the Project Approvals, those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, design, heights, fees, exactions, and taxes in force and effect on the Effective Date of this Agreement, as long as such rules are consistent with this Agreement and Project.

Section 6.04. No Conflicting Enactments. City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "City Law") that is in conflict with Applicable Law or this Agreement or that reduces the development rights or assurances provided by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to conflict with Applicable Law or this Agreement or reduce the development rights provided hereby if it would accomplish any of the following results by specific reference to the Project, as part of a general enactment which applies to or affects the Project, by application of any City Law otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites:

(a) Change any land use designation or permitted use of the Project Site;

(b) Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc. or, for further example, the enactment of a City-wide Utility Users Tax shall not be deemed a limitation or control of public utilities, service, or facilities) for the Project;

(c) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more

restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued);

(d) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner;

(e) Result in Developer having to substantially delay construction of the Project or require the issuance of additional permits or approvals by the City other than those required by Applicable Law;

(f) Substantially increase the cost of constructing or developing the Project or any portion thereof;

(g) Establish, enact, increase, or impose against the Project or Project Site any fees, taxes (including without limitation general, special and excise taxes with the express exception of a City-wide Utility Users Tax), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities;

(h) Impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Law; or

(i) Limit the processing or procuring of applications and approvals of Subsequent Approvals.

Section 6.05. Initiatives and Referenda.

(a) If any City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement, such Law shall not apply to the Project.

(b) Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project.

(c) To the maximum extent permitted by law, City shall prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect.

(d) City shall not support, adopt or enact any City Law, or take any other action which would violate the provisions of this Agreement, the Project Approvals or the Subsequent Approvals.

(e) Developer reserves the right to challenge in court any City Law that would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement.

Section 6.06. Environmental Mitigation. The parties understand that the EIR was intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIR, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the maximum extent allowed by law and not to impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program or specifically required by Applicable law. In addition, to the extent consistent with CEQA's policies and requirements applicable to either Master EIRs or tiered EIRs, the City agrees to use the EIR in connection with the processing of approvals related to future expansion to the maximum extent allowed by law.

Section 6.07. Life of Subdivision Maps, Development Approvals, and Permits. The term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for 25 years, the longer of the duration of this Agreement (including any extensions) or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a development moratorium (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project or a lawsuit involving any such development approvals or permits is pending.

Section 6.08. State and Federal Law. As provided in California Government Code § 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation,

Article 9 (Cooperation-Implementation) and Section 10.05 (Excusable Delays; Extension of Time of Performance). Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically mandated and required by state or federal laws and regulations.

Section 6.09. Timing of Project Construction and Completion.

(a) Timing of Development. Developer shall diligently pursue the development of Area 3 and Area 4. Notwithstanding the foregoing, or any other provision of this Agreement, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, financial markets, competition, and other similar factors.

(b) In light of the foregoing and except as set forth in subsection (c) below, the parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

(c) Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement for public improvements or similar agreements in accordance with the terms thereof.

Section 6.10. Exempting Fees Imposed by Outside Agencies. The City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or the Project Site after the Effective Date through the Term of this Agreement. This section shall not prohibit the City from imposing on Developer any fee or obligation that is imposed by a regional agency in accordance with state or

federal obligations and implemented by the City in cooperation with such regional agency.

Section 6.11. Fee Reductions or Credits. The parties intend that the fees described in Article 3 will be in lieu of any exactions, taxes or assessments generally intended to address similar uses or purposes, and that Developer shall not be required to pay two times for any such exaction, fee or assessment. Accordingly, the fees described in Article 3 shall be subject to reductions/credits in an amount equal to Developer's actual cost of complying with any such lawfully imposed exaction, tax, or assessment generally intended to address similar uses or purposes, whether imposed on the Project, the Project Site, the Project Approvals or the Subsequent Approvals. Notwithstanding the foregoing, no such reduction/credit shall be provided as a result of any assessment that arises from an assessment district requested by Developer under Section 3.05.

Section 6.12. Written Verification of Sufficient Water Supply. Any and all tentative subdivision maps approved for the Project shall comply with Government Code 66473.7, if, and to the extent, required by Government Code 66473.7.

Section 6.13. Design. Within the limitations and parameters of the design guidelines and product types described in the Newark Specific Plan, Developer shall have the discretion to select the product mix and final locations of the 1,260 units allowed under this Agreement.

ARTICLE 7. AMENDMENT

Section 7.01. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the Community Development Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Community Development Director or his/her designee finds that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "Administrative Project Amendment" and the Community Development Director or his designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments,

reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.

(b) Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

ARTICLE 8. ASSIGNMENT, TRANSFER AND NOTICE

Section 8.01. Assignment of Interests, Rights and Obligations. Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.

Section 8.02. Transfer Agreements.

(a) In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, a "Mortgagee" or a "Non-Assuming Transferee" (as defined in Section 8.03)), Developer and the Transferee shall enter into a written agreement (a "Transfer Agreement") regarding the respective interests, rights and obligations of Developer and the Transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred, as described in the Transfer Agreement, provided that the Transferee expressly assumes such obligations, (ii) transfer to the Transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.

(b) Developer shall seek City's prior written consent to any Transfer Agreement, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within thirty (30) days to any request made by

Developer for such consent shall be deemed to be City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed Transferee's reputation and financial resources, such Transferee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such Transferee. Such determination shall be made by the Community Development Director, and is appealable by Developer to the City Council.

(c) Any Transfer Agreement shall be binding on Developer, City and the Transferee. Upon recordation of any Transfer Agreement in the Official Records of the City of Newark, Developer shall automatically be released from those obligations assumed by the Transferee therein.

(d) Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a Transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.

Section 8.03. Nonassuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to Non-Assuming Transferees, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than 10 lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, industrial, open space, park, school or other nonresidential uses. For the purposes of this Section, a "single retail builder" shall mean a retail builder that is not an Affiliate of any other retail builder to which property is transferred under this Agreement. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees per this Agreement and assessments or compliance with applicable conditions of approval.

Section 8.04. Notice of Compliance Generally. Within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies:

(a) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;

(b) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default;

(c) Any other information reasonably requested by Developer. The failure to deliver such a statement within such time shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.

ARTICLE 9. COOPERATION IN THE EVENT OF LEGAL CHALLENGE

Section 9.01. Cooperation.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of the Agreement or any Project Approval or Subsequent Approval, the parties shall cooperate in defending such action or proceeding. The parties shall use best efforts to select mutually agreeable legal counsel to defend such action, and Developer shall pay compensation for such legal counsel; provided, however, that such compensation shall include only compensation paid to counsel not otherwise employed as City staff and shall exclude, without limitation, City Attorney time and overhead costs and other City staff overhead costs and normal day-to-day business expenses incurred by City. Developer's obligation to pay for legal counsel shall not extend to fees incurred on appeal unless otherwise authorized by Developer. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel at its own expense.

(b) The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this section, which shall survive such invalidation, nullification or setting aside.

Section 9.02. Cure; Reapproval.

(a) If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "Judgment") in such action

or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies related to, as follows, unless the Parties mutually agree in writing to act otherwise:

(i) If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement, Project Approval, or Subsequent Approval, then the Parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement. City shall then readopt or reenact this Agreement, Project Approval, Subsequent Approval, or any portion thereof, for which the Deficiencies have now been cured.

(ii) Acting in a manner consistent with the intent of this Agreement includes, but is not limited to, recognizing that the Parties intend that Developer may develop the project consistent with the Project Approvals, and adopting such ordinances, resolutions, and other enactments, as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.

(b) The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this section, which shall survive such invalidation, nullification or setting aside.

ARTICLE 10. DEFAULT; REMEDIES; TERMINATION

Section 10.01. Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence ("Default Notice") shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of a default under this Agreement, the non-defaulting

party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing party shall take no further action.

Section 10.02. Termination.

(a) If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a public hearing duly noticed in the manner set forth in Government Code section 65867. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City's termination of this Agreement within such sixty-day period, then this Agreement shall remain in full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

(b) At any time prior to the issuance of the first Subsequent Approval the Developer may, upon provision of written notice to the City by certified mail, elect to terminate the Agreement. No obligations of the Developer or City under this Agreement shall survive such a termination.

(c) If, prior to the City's issuance of the first Subsequent Approval, the Developer donates any Developer-owned lands in Area 4 to any entity other than the City, or the City's designee, this Agreement shall terminate unless the City elects, within thirty (30) days of receiving written notice from the Developer of the donation, to continue to honor the terms of the Agreement.

Section 10.03. Periodic Review.

(a) Conducting the Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the Community Development Director or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1.

(b) Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article 10 of this Agreement, City shall deposit in the

mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the Community Development Director.

(c) Good Faith Compliance. During the Periodic Review, the Community Development Director shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the Community Development Director shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the Community Development Director shall be appealable to the City Council. If the Community Development Director finds and determines that Developer has not complied with such terms and conditions, the Community Development Director may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code Sections 65867 and 65868, after providing an opportunity to cure pursuant to Section 10.01 of this Agreement.

(d) Failure to Properly Conduct Periodic Review. If City fails, during any calendar year, to either (i) conduct the Periodic Review or (ii) notify Developer in writing of City's determination, pursuant to a Periodic Review, as to Developer's compliance with the terms of this Agreement and such failure remains uncured as of December 31 of any year during the term of this Agreement, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.

(e) Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.

Section 10.04. Default by City or Developer. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein or under law.

Section 10.05. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances,

walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting state or federal laws or regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement or any of the Project Approvals or Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project pursuant to this Agreement, or Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project, shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be memorialized in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing by Developer and the Community Development Director.

Section 10.06. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

Section 10.07. California Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California and venue with regard to any legal proceedings arising out of this Agreement shall be in Alameda County.

Section 10.08. Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, either party may elect to submit the dispute to final and binding arbitration in Alameda County, California before a JAMS arbitrator or other mutually agreeable retired judge.

Section 10.09. Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any other reasonable litigation costs incurred in that proceeding in addition to any other relief to which it is entitled.

Section 10.10. Hold Harmless. Developer shall hold City and its elected and appointed officers, agents, employees, and representatives harmless from claims, costs, and liabilities for any personal injury, death, or property damage which is a result of the construction of the Project, or of operations performed under this Agreement by Developer or by Developer's

contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, agents or employees. Nothing in this section shall be construed to mean that Developer shall hold City harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from, any act, failure to act, on the part of City, its elected and appointed representatives, offices, agents and employees.

ARTICLE 11. NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

ARTICLE 12. MISCELLANEOUS

Section 12.01. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 12.02. Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code Section 65866.

Section 12.03. Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.

Section 12.04. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 12.05. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 12.06. Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 12.07. Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 12.08. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

Section 12.09. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either

personally, by telefacsimile (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

Terrence Grindall
Community Development Director
City of Newark
City Administration Building
37101 Newark Blvd.
Newark, CA 94560

With Copies to:

City Clerk
City of Newark
City Administration Building
37101 Newark Blvd.
Newark, CA 94560

If to Developer, to:

Tim Steele
Newark Partners, LLC
10600 North De Anza Blvd.
Suite 200
Cupertino, CA 95014

With Copies to:

Anne E. Mudge
Cox, Castle & Nicholson, LLP
555 California Street
10th Floor

San Francisco, CA 94104

Section 12.10. Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of [___] pages and [___] exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Section 12.11. Recordation Of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the City of Newark.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY OF NEWARK,
a municipal corporation

By _____
Mayor
City of Newark
Date _____

Attest:

By: _____
City Clerk
Date _____

Approved as to form:
City Attorney

By_____
David Benoun
Date _____

Manager
Newark Partners

By_____
Tim Steele
Date _____

EXHIBIT A

Project Site Diagram and Parcel Numbers

#	ACREAGE	APN	OWNER
1	40.891 ±AC	901-0185-018/019/020	SI XVIII, LLC
2	15.641 ±AC	901-0185-021/022/023	SI XVIII, LLC
3	21.019 ±AC	901-0185-024	SI XVIII, LLC
4	56.018 ±AC	537-0850-003/004/005/006	NEWARK PARTNERS, LLC
5	10.000 ±AC	537-0850-001-02	NEWARK PARTNERS, LLC
6	45.137 ±AC	537-0850-011-01	NEWARK PARTNERS, LLC
7	115.136 ±AC	537-0850-011-04/007-02	NEWARK PARTNERS, LLC
8	2.880 ±AC	537-0850-009	ARQUES INVESTMENT COMPANY, LLC
9	266.978 ±AC	537-0801-002-06	ARQUES INVESTMENT COMPANY, LLC

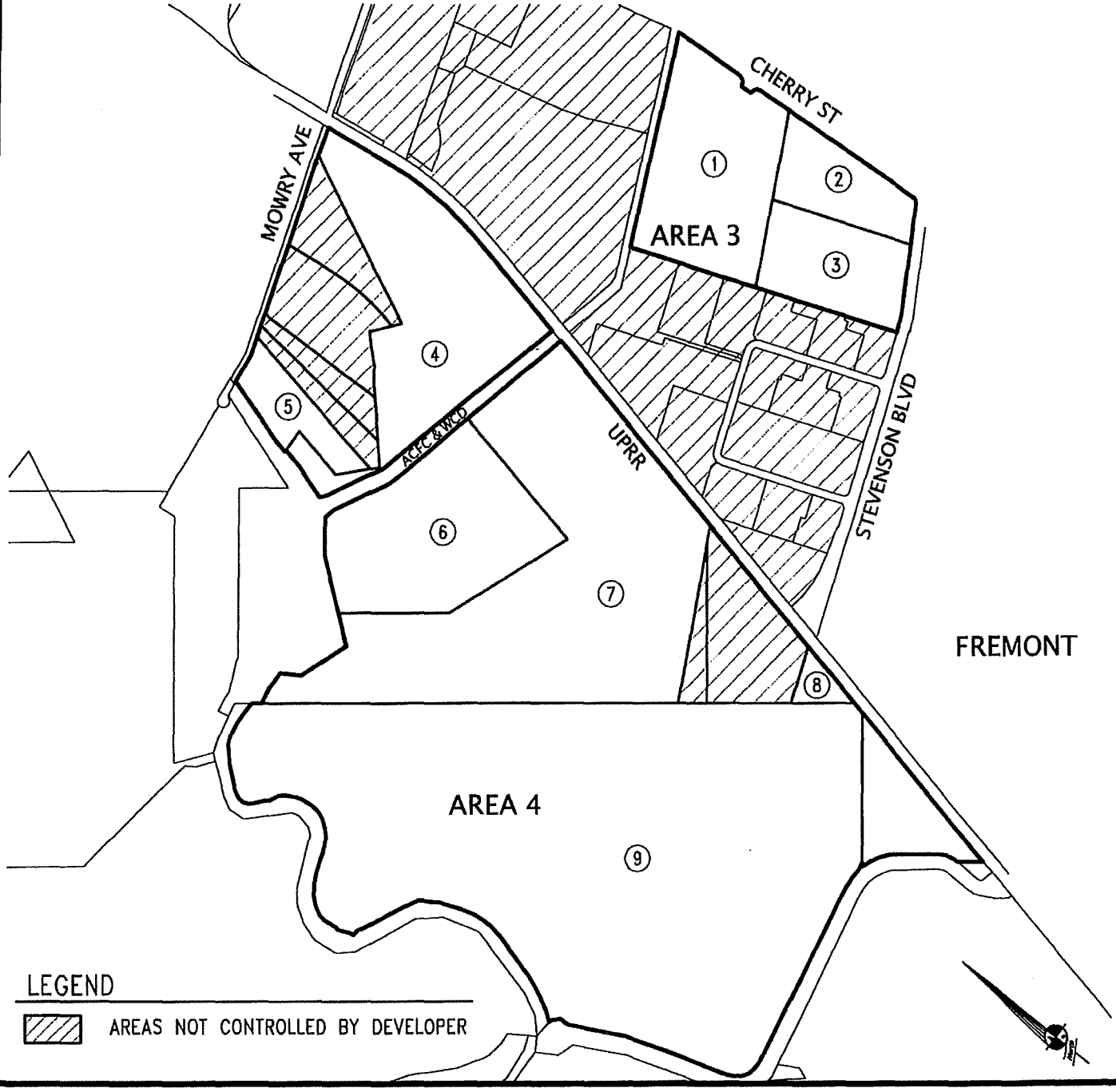


EXHIBIT "A"	NEWARK AREA 3 & 4 SPECIFIC PLAN

EXHIBIT B

Existing Project Impact Fees

	Per Unit Fee
Art in Public Places	$270
Community Facilities	$1,942
Community Development Maintenance Fee	0.5% of construction value
Public Safety	$1,989
Transportation	$801

EXHIBIT C

Diagram of Recreational Parcel

#	ACREAGE	APN	OWNER
4	56.018 ±AC	537-0850-003/004/005/006	NEWARK PARTNERS, LLC
5	10.000 ±AC	537-0850-001-02	NEWARK PARTNERS, LLC

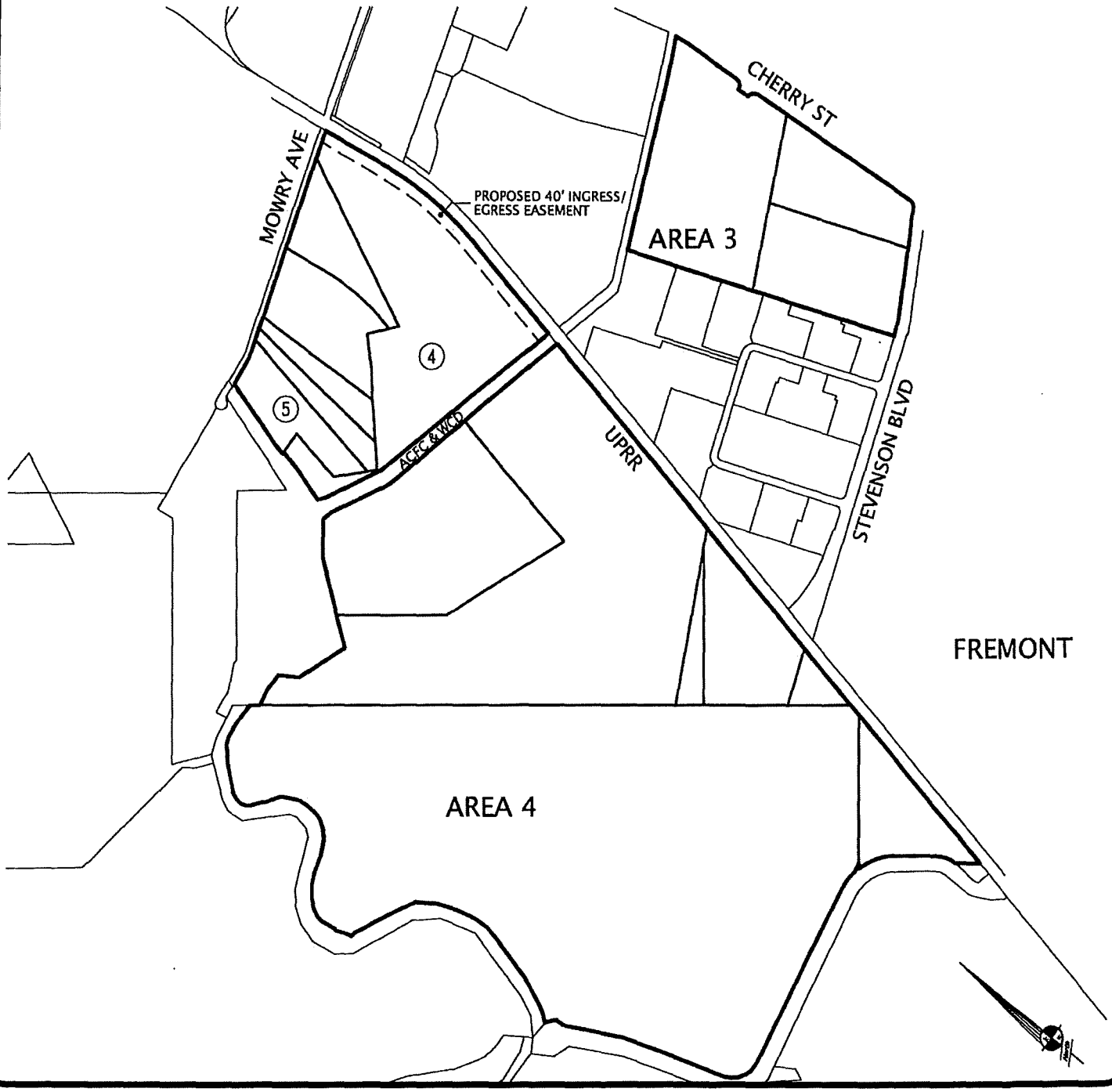


EXHIBIT "C"	NEWARK AREA 3 & 4 SPECIFIC PLAN

EXHIBIT D

Donation Agreement Form

AGREEMENT OF DONATION
(NEWARK PROPERTY)

PREAMBLE

THIS AGREEMENT OF DONATION ("Agreement") is entered into as of _____, _____, by and between NEWARK PARTNERS, LLC, a California limited liability company ("Donor") and the CITY OF NEWARK, a _____ ("City").

RECITALS

A. Donor has offered to donate certain unimproved real property located in the City of Newark, County of Alameda, State of California more particularly described on Exhibit A attached hereto (the "Property"), to City, and City desires to accept such donation, on the terms and conditions set forth in this Agreement.

B. The purpose of this Agreement is to set forth the terms and conditions upon which Donor will donate to City, and City will accept the donation of, the Property.

NOW, THEREFORE, the parties agree as follows:

TERMS, CONDITIONS AND COVENANTS

1. Valuation of Property. The value of the donation ("Donation Value") shall be an amount equal to the fair market value of the Property as of the Closing as determined by an appraisal obtained by Donor from an appraiser selected by Donor.

2. Donation of Property. At the Closing, Donor shall be deemed to have donated the Property to City at the Donation Value.

3. Consummation of Donation; Post Closing Deliveries. The consummation of the donation of the Property contemplated by this Agreement shall occur not later than thirty (30) days after this Agreement has been signed by Donor and City (the "Closing Date") through the Escrow described in Section 4 below. In sufficient time for the Escrow to close by the Closing Date, the parties shall deposit the following into Escrow the following:

(a) Donor shall deliver into Escrow: a deed in the form attached hereto as Exhibit B, duly executed by Donor, with signatures notarized ("Grant Deed"); and such other documents reasonably required to consummate the transactions contemplated by this Agreement, including without limitation escrow instructions.

(b) City shall execute and deliver into Escrow: a written acknowledgement of the donation of the Property in the form attached as Exhibit C, or on such other form reasonably requested by Donor, duly executed by City; and such other documents reasonably required to consummate the transactions contemplated by this Agreement, including without limitation escrow instructions. Furthermore, not later than two (2) business days after request by Donor and delivery to City of a completed IRS Form 8283 and/or such other documents which may be

required by any taxing authority to substantiate the donation of the Property hereunder, City shall execute and return such forms and documents to Donor, which obligation shall survive the Closing.

4. Escrow; Closing Costs; Prorations. To consummate the transactions contemplated by this Agreement, City shall open not later than two (2) business days following the execution of this Agreement by both City and Donor (the date of full execution being the "Effective Date") an escrow (the "Escrow") at First American Title Insurance Company located at 1737 North First Street, Suite 500, San Jose, California 95112, with Liz Zankich as the designated escrow officer ("Escrow Holder") or at such other title insurance company and escrow agent designated by Donor. All escrow fees, title premiums, and closing costs to facilitate transfer of title in the name of City, shall be paid by City. The parties agree to execute such other reasonably necessary and ancillary documents, such as escrow instructions, to carry out the provisions of this Agreement. As used in this Agreement "Closing" or "Close of Escrow" shall mean the date that the Grant Deed is recorded in the Official Records.

5. Title Status. All real property taxes and assessments shall be prorated between Donor and City as of the date of Closing. Subject to the foregoing, City shall take title to the Property subject to all matters affecting title as of the Closing Date, and Donor shall have no liability in connection with title. City acknowledges that any title policy to be issued to City in connection with the donation of the Property under this Agreement shall be issued by Escrow Holder.

6. Donations; Tax Considerations; Condition to Closing. City represents and warrants that it is a tax-exempt entity pursuant to the applicable provisions of the Revenue and Taxation Code of the State of California and of the Internal Revenue Code of the United States of America (a "Tax Exempt Entity"), which representation and warranty shall survive the Close of Escrow. Donor's obligation to complete the donation of the Property to City is subject to satisfaction of the following condition precedent, which condition is for Donor's benefit only and may be unilaterally waived by Donor: that City is as of the Effective Date, at all times during the continuance of this Agreement, and as of the Closing, a Tax Exempt Entity. City agrees to promptly execute any certificates or other documents as may be necessary verifying its status as a Tax Exempt Entity, which obligation shall survive the Closing.

7. Possession After Vesting of Title. Upon Close of Escrow and recordation of the Grant Deed, City shall have possession of the Property as fee owner.

8. AS IS Acquisition; Release.

(a) Prior to the Close of Escrow, City shall have completed its due diligence investigations of the Property and its proposed use thereof. City acknowledges that Donor makes no representations or warranties and shall have no liability in connection with such matters. City acknowledges and agrees that the Property is to be conveyed to and accepted by City in an "AS IS" condition with all faults, including without limitation any environmental condition affecting the Property. Donor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property except as expressly provided elsewhere in this Agreement. In particular, but without limitation, Donor makes no

representations or warranties with respect to the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to zoning, subdivision, planning, building, fire, safety, health or environmental matters, location within any natural hazard disclosure zone, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"), except as expressly set forth in this Agreement. City acknowledges that it will acquire the Property based on City's own investigations of the Condition of the Property, including the subsurface conditions, and City assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigations.

(b) City, for itself, its affiliates, successors, assigns and subsequent owners of the Property, hereby waives, releases, remises, acquits and forever discharges Donor and Donor's partners, employees, agents, officers, successors, assigns and affiliates, and any other person acting on behalf of Donor for whom Donor may be held legally responsible, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which City may have in the future on account of or in any way arising out of or in connection with the Condition of the Property, including, without limitation, the known or unknown physical or environmental condition of the Property (including, without limitation, any contamination in, on, under or adjacent to the Property by any solid, hazardous or toxic substance, material or waste), or any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act; with the sole exception that the foregoing release shall not apply to Seller's breach of Seller's express representations and warranties set forth in this Agreement of which Buyer had no actual knowledge (as opposed to imputed, inquiry or constructive knowledge) at the Close of Escrow, which obligations, representations and warranties shall continue following the Closing, subject however, to the express limitations and conditions set forth in this Agreement. City, for itself, its affiliates, successors, assigns and subsequent owners of the Property, fully understands and expressly waives the benefits of Section 1542 of the California Civil Code, with respect to the matters described in this Section 8(b); Section 1542 of the California Civil Code provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

(c) This Section 8 shall survive Close of Escrow.

9. Binding Effect. Subject to Section 10, below, this Agreement is binding upon the heirs, successors and assigns of the parties.

10. No Assignment. City may not assign its rights under this Agreement, except to another Tax Exempt Entity.

11. Modification in Writing. Any modification to this Agreement shall be in writing, duly executed by the parties.

12. Integrated Agreement. This Agreement, together with the exhibits attached hereto, shall be deemed the complete and total agreement of the parties with respect to the subject matter of this Agreement, and supersedes memoranda or correspondence, if any, and any previous drafts or oral understandings, if any, made by the parties with respect to the subject matter of this Agreement. Nothing herein shall preclude the parties from executing such other documents as are necessary to perfect this Agreement.

13. Severability. In the event any provision of this Agreement is void or unenforceable, that portion shall be stricken and the remaining provisions shall remain in full force and effect, except that in no event shall Donor be obligated to donate the Property pursuant to this Agreement to City or its permitted assignee if City of such permitted assignee is not a Tax Exempt Entity.

14. Execution in Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts such that signatures may appear on separate signature pages. Facsimile signatures and copies of signatures shall have the same force and effect as original signatures.

15. Authority. Each of the parties to this Agreement hereby warrants to the other party, respectively, (i) that it has the full power to execute, deliver, and fully perform its obligations under this Agreement, (ii) that this Agreement constitutes its valid and binding obligation, enforceable according to its terms, and (iii) that there is no agreement to which it is a party or which is binding on it which is in conflict with this Agreement. The parties representations and warranties set forth in this Section 15 shall survive the Closing.

16. Time of Essence. Time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

17. Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid; or (iv) delivered by telecopy. Telecopy notices shall be deemed received upon transmission during regular business hours, (i.e., Monday through Friday between 9:00 a.m. and 5:00 p.m., Saturday, Sunday and legally recognized holidays excepted) or otherwise on the next business day, and provided that a copy of such notice is forwarded by United States Mail or reputable overnight courier no later than the first business day following the day that the facsimile transmission occurs. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Donor: Newark Partners, LLC
c/o The Sobrato Organization
Attn: John Michael Sobrato
10600 N. DeAnza Boulevard, Suite 200
Cupertino, CA 95014
Telephone: (408) 446-0700
Facsimile: (408) 446-0583

If to City: City of Newark
_____
_____
Newark, CA _____
Attn: _____
Telephone: (___) _____
Facsimile: (___) _____

18. Attorney's Fees. If legal action is brought by Donor or City to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover all costs and reasonable attorneys' fees incurred in connection therewith.

19. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in California, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, "business day" shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in California .

[SIGNATURES APPEAR ON NEXT PAGE]

EXECUTION

WHEREFORE, the parties hereto by their signatures hereinbelow, execute this Agreement pursuant to the terms and conditions above.

DONOR:

[INSERT NEWARK PARTNERS' SIGNATURE BLOCK]

By: _____
Its: _____

By: _____
Its: _____

CITY:

[INSERT CITY'S SIGNATURE BLOCK]

LIST OF EXHIBITS

EXHIBIT A- LEGAL DESCRIPTION

EXHIBIT B- DEED

EXHIBIT C- WRITTEN ACKNOWLEDGEMENT

EXHIBIT A
LEGAL DESCRIPTION

[To be attached]

EXHIBIT B
DEED

RECORDING REQUESTED BY

First American Title Insurance Company
National Commercial Services

AND WHEN RECORDED MAIL TO:

City of Newark
_____
Newark, CA _____
Attention: _____

Space Above This Line for Recorder's Use Only

A.P.N.: _____

THIS DOCUMENT IS RECORDED FOR THE BENEFIT OF THE CITY OF NEWARK AND IS ENTITLED TO BE RECORDED FREE OF CHARGE IN ACCORDANCE WITH SECTIONS 6103 & 27383 OF THE GOVERNMENT CODE

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX **$Exempt**; CITY TRANSFER TAX **$Exempt**; SURVEY MONUMENT FEE $
[xx] Transfer is a bona fide gift exempt from tax pursuant to California Revenue and Taxation Code Section 11930

_____
Signature of Declarant

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Newark Partners, LLC, a California limited liability company**

hereby GRANTS to **the City of Newark, a** _____

the following described property in the City of Newark, County of Alameda, State of California:

See Exhibit A attached hereto and made a part hereof

The foregoing grant is made subject to non-delinquent real property taxes and assessments and all other matters of record.

Mail Tax Statements To: SAME AS ABOVE

Dated: _____	**Newark Partners, LLC, a California limited liability company** **By:** _____ **Its:** _____ **By:** _____ **Its:** _____

EXHIBIT A
LEGAL DESCRIPTION

[To be Attached]

STATE OF _____)SS

COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

_____

My Commission Expires: _____

This area for official notarial seal

Notary Name: _____

Notary Phone: _____

Notary Registration Number: _____

County of Principal Place of Business: _____

EXHIBIT C
WRITTEN ACKNOWLEDGEMENT

The City of Newark, a _____ ("City"), in accordance with Section 170(f)(8) of the Internal Revenue Code of 1986, as amended, hereby acknowledges the donation by Newark Partners, LLC, a California limited liability company of the amount of _____ Dollars ($_____), being the value of certain real property more particularly described on Exhibit A attached hereto. City further acknowledges that it has not provided to the Donor any goods or services in consideration, in whole or in part, for the aforesaid contribution.

Very truly yours,

[Insert City signature block]

[Legal description to be attached as Exhibit A]

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING Z-10-17, A MAP AMENDMENT TO TITLE 17 (ZONING) OF THE NEWARK MUNICIPAL CODE REZONING PARCELS TO BE CONSISTENT WITH THE PROPOSED NEWARK AREAS 3 AND 4 SPECIFIC PLAN

WHEREAS, the existing City of Newark zoning designation for the 78-acre property in Area 3 is *High Technology Park (MT-1)*; and

WHEREAS, the Newark Areas 3 and 4 Specific Plan Project proposes to allow development of single-family residential, multi-family residential, and an elementary school within the 78-acre Area 3; and

WHEREAS, the Specific Plan for Sub-Area A (Assessor's Parcel Numbers 901-0185-019, 901-0185-020, 901-0185-021, 901-0185-022, 901-0185-023, and 901-0185-024) anticipates rezoning of the Sub-Area to R-6000 (Low Density Residential) District; and

WHEREAS, the *Residential District R-6000* (Low Density Residential) will allow for the development of single-family residential, multi-family residential, and an elementary school in Area 3; and

WHEREAS, the existing zoning designations for Area 4 of the Newark Areas 3 and 4 Specific Plan are predominantly Agricultural (A), with a small area of General Industrial (MG) adjacent to the termination of Stevenson Boulevard; and

WHEREAS, the Newark Areas 3 and 4 Specific Plan for Sub-Areas B, C, and E (Assessor's Parcel Numbers 537-0801-002-06, 537-0850-009, 537-0850-011-01, 537-0850-011-04, and 537-0850-007-002) anticipates rezoning of the Sub-Areas to R-6000 (Low Density Residential) District; and

WHEREAS, the Newark Areas 3 and 4 Specific Plan for Sub-Area D (Assessor's Parcel Numbers 537-0801-001-02, 537-0801-003, 537-0801-004, 537-0801-005, and 537-0801-006) anticipates rezoning the Sub-Area to 0-P (Open Space-Parks) District; and

WHEREAS, residents and other community members have had opportunities to provide comments and suggestions throughout the development of the Newark Areas 3 and 4 Specific Plan Project; and

WHEREAS, public comments have been used to shape and revise the land use plan for the Newark Areas 3 and 4 Specific Plan Project and related approvals; and

WHEREAS, a Recirculated Environmental Impact Report (the "REIR") was prepared for this Newark Areas 3 and 4 Specific Plan Project, including the related rezoning of Areas 3 and 4, and was recommended for certification by the Planning Commission on February 10, 2015; and

WHEREAS, the REIR fully discloses all possible environmental impacts of the Newark Areas 3 and 4 Specific Plan Project and related approvals, including the related rezoning to develop Areas 3 and 4 in accordance with the Newark Areas 3 and 4 Specific Plan; and

WHEREAS, in accordance with the REIR and Statement of Overriding Considerations adopted by the Newark City Council on March 26, 2015, the City Council found that the benefits to the community associated with this Specific Plan, including the related rezoning of Areas 3 and 4, in terms of housing availability and choice, provision of public school facilities, and creation of a mix of housing options, including high quality residential uses such as executive housing types and below market rate housing options, outweigh the unavoidable impacts; and

WHEREAS, the City Council has read, reviewed, and considered the REIR, Specific Plan, and the related rezoning of Areas 3 and 4; has conducted a public hearing on the proposed Newark Areas 3 and 4 Specific Plan and the related rezoning of Areas 3 and 4; has discussed, evaluated, analyzed, reviewed and considered the information presented in said hearing, as well as the REIR, Specific Plan, the related rezoning of Areas 3 and 4, and staff report; and

WHEREAS, pursuant to California Government Code section 65090, 65091 and 65353, a public notice was published in *The Argus* on March 13, 2015.

NOW, THEREFORE, BE IT RESOLVED that the City Council ordains:

a. That Assessor's Parcel Numbers 901-0185-019, 901-0185-020, 901-0185-021, 901-0185-022, 901-0185-023, and 901-0185-024) are to be rezoned to R-6000 (Low Density Residential) District.

b. That Assessor's Parcel Numbers 537-0801-002-06, 537-0850-009, 537-0850-011-01, 537-0850-011-04, and 537-0850-007-002) are be rezoned to R-6000 (Low Density Residential) District.

c. That Assessor's Parcel Numbers 537-0801-001-02, 537-0801-003, 537-0801-004, 537-0801-005, and 537-0801-006) are to be rezoned to 0-P (Open Space-Parks) District.

d. That a Map amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan is necessary to achieve the purposes of the Municipal Code.

Planning Commission Actions

RESOLUTION NO. 1901

RESOLUTION RECOMMENDING APPROVAL AND CERTIFICATION OF A RECIRCULATED ENVIRONMENTAL IMPACT REPORT FOR THE NEWARK AREAS 3 AND 4 SPECIFIC PLAN PROJECT, INCLUDING A STATEMENT OF OVERRIDING CONSIDERATIONS AND THE APPROVAL OF A MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, the City of Newark has caused a Recirculated Environmental Impact Report (State Clearinghouse Number 20007052065) to be prepared to reassess the potential environmental impacts of the proposed Newark Areas 3 and 4 Specific Plan Project and related General Plan amendment, zone change, Specific Plan, Planned Unit Development, Conditional Use Permit, and Development Agreement (the "Project"); and

WHEREAS, the Recirculated Environmental Impact Report consists of the Recirculated Draft Environmental Impact Report (Draft REIR) and the Recirculated Final Environmental Impact Report document (Final REIR), which in turn consists of all comments received by the City of Newark regarding the Draft REIR during the mandatory public review period, and responses to those comments; and

WHEREAS, the City distributed copies of the Recirculated Environmental Impact Report to public agencies which have jurisdiction by law with respect to the Project and other interested persons and agencies, and sought the comments of such persons and agencies; and

WHEREAS, notice inviting comments on the Draft REIR was given in compliance with CEQA Guidelines Section 15058; and

WHEREAS, written and oral comments to the Draft REIR have been received, and responses to those comments were prepared in the form of the Final REIR; and

WHEREAS, pursuant to Public Resources Code Section 21092.5, the City provided copies of the Final REIR to commenting agencies and individuals; and

WHEREAS, the members of the Planning Commission have read, reviewed, and considered the information contained in the Recirculated Environmental Impact Report and staff report, and have conducted a public hearing on the subject of the Recirculated Environmental Impact Report, and have discussed, evaluated, analyzed, reviewed and considered the information presented at said hearing, as well as all of the printed matter in the Recirculated Environmental Impact Report; and

WHEREAS, Findings have been prepared for the Project, including the related General Plan amendment, zone change, Specific Plan, Planned Unit Develop, Conditional Use Permit, and Development Agreement, consistent with the requirements of Public Resources Code, Section 21000 *et seq.*, which provide the written analysis and conclusions of this City Council

regarding the Project's environmental impacts, mitigation measures, and alternatives to the Project; and

WHEREAS, the Planning Commission, having reviewed and considered the information contained in the Recirculated Environmental Impact Report for the Newark Areas 3 & 4 Specific Plan Project, set forth in the Newark Areas 3 & 4 Specific Plan Project Findings as required by the California Environmental Quality Act; and

WHEREAS, Mitigation Monitoring and Reporting Program has been prepared for the Newark Areas 3 & 4 Specific Plan Project, consistent with the requirements of Public Resources Code 21081.6, which lists all of the mitigation measures contained in the Recirculated Environmental Impact Report, specified the appropriate agency or organization responsible for implementing each mitigation measure and approximate time frames for implementation of each mitigation measure; and

WHEREAS, the Planning Commission held a duly noticed public hearing on February 10, 2015, and finds that Recirculated Environmental Impact Report (State Clearinghouse Number 20007052065) is complete and adequate pursuant to the California Environmental Quality Act, and that the Commission has considered and reviewed all information considered in it; and

WHEREAS, the Planning Commission finds that the Recirculated Environmental Impact Report reflects the independent judgment of the City of Newark.

NOW, THEREFORE, the Planning Commission resolves as follows:

a. To recommend that the City Council certify the Recirculated Environmental Impact Report (State Clearinghouse Number 20007052065), prepared pursuant to the California Environmental Quality Act; and

b. That the Project will have a less than significant impact on land use, public services, and water supply and utilities and service systems; and

c. That the Project, with the exception of impacts on air quality, cultural resources, aesthetic and visual resources, and cumulative impacts on noise, air quality, and visual resources, will have a less than significant impact on the environment once the proposed mitigation measures have been applied; and

d. To recommend that the City Council adopt the Findings, which provide the written analysis and conclusions regarding the Project's environmental impacts, mitigation measures, and alternatives to the Project; and

e. To recommend that the City Council adopt a Statement of Overriding Considerations documenting the unavoidable significant impacts that will result from the Project, and the benefits that will occur as a result of the project and that outweigh the impacts; and

f. To recommend that the City Council adopt the Mitigation Monitoring and Reporting Program; and

g. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.

This Resolution was introduced at the Planning Commission's February 10, 2015 meeting by Commissioner Bridges, seconded by Vice-Chairperson Aguilar, and passed as follows:

AYES: Aguilar, Bridges, Fitts, Nillo and Otterstetter.

NOES: None.

ABSENT: None.

s/Terrence Grindall
TERRENCE GRINDALL, Secretary

s/William Fitts
WILLIAM FITTS, Chairperson

RESOLUTION NO. 1902

RESOLUTION RECOMMENDING APPROVAL AND ADOPTION OF THE NEWARK AREAS 3 AND 4 SPECIFIC PLAN PROJECT AND RELATED GENERAL PLAN AMENDMENT, SPECIFIC PLAN, AND DEVELOPMENT AGREEMENT

WHEREAS, the existing City of Newark General Plan land use diagram designates the proposed Area 3 residential and school area as *Low-Medium Density Residential*; and

WHEREAS, the 1992 City of Newark General Plan land use diagram designated the proposed Area 3 residential and school area as *Special Industrial*; and

WHEREAS, the Newark Areas 3 and 4 Specific Plan proposes to allow development of single-family residential, multi-family residential, and elementary school within the for the 78-acre Area 3; and

WHEREAS, the *Low-Medium Density Residential* General Plan designation will allow for the development of single-family residential, multi-family residential, and elementary school; and

WHEREAS, residents and other community members have had opportunities to provide comments and suggestions throughout the development of the Newark Areas 3 and 4 Specific Plan Project (the "Project"), through a series of public meetings from 2006 through 2010, by commenting on information posted on the City's website and made available at City Hall and the Library, and by commenting on the Recirculated Draft Environmental Impact Report ("Draft REIR") for the Project; and

WHEREAS, public comments have been used to shape and revise the land use plan for the Project; and

WHEREAS, the proposed Low-Medium Density Residential designation is consistent with the other elements of the General Plan; and

WHEREAS, a Recirculated Environmental Impact Report ("REIR") was prepared for this Project, including the General Plan amendment, planned unit development, and development agreement, and recommended for approval by the Planning Commission on February 10, 2015; and

WHEREAS, the REIR fully discloses all possible environmental impacts of the Project, including the Specific Plan, the designation of Area 3 as *Low-Medium Density Residential* in the General Plan, and the Development Agreement; and

WHEREAS, in accordance with the REIR and Statement of Overriding Considerations the Planning Commission recommended for City Council certification and adoption on February10, 2015, the Planning Commission has found that the benefits to the community associated with this Project in terms of housing availability and choice, provision of public

school facilities, and creation of a mix of housing options including high quality residential uses such as executive housing types and below market rate housing options, outweigh the unavoidable impacts; and

WHEREAS, the Planning Commission has read, reviewed, and considered the REIR, Newark Areas 3 and 4 Specific Plan, including the proposal to readopt and affirm the designation of Area 3 as *Low-Medium Density Residential* in the General Plan amendment, and Development Agreement; has conducted a public hearing on the proposed REIR, Newark Areas 3 and 4 Specific Plan, related General Plan affirmation, and Development Agreement; has discussed, evaluated, analyzed, reviewed and considered the information presented in said hearing, as well as the REIR, Newark Areas 3 and 4 Specific Plan, related General Plan affirmation, Development Agreement, and staff report; and

WHEREAS, pursuant to California Government Code section 6061, 65090, 65091 and 65353, a public notice was published in the Tri-City Voice on January 30, 2015, and the Planning Commission held a public hearing on said amendment to the General Plan, Specific Plan, and Development Agreement at 7:30 p.m. on February 10, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, the Planning Commission resolves as follows:

a. To recommend that the City Council adopt the Areas 3 and 4 Specific Plan; and

b. To recommend that the City Council adopt and affirm the designation of Area 3 as *Low-Medium Density Residential* in the General Plan, as supported by the independent analysis in the REIR; and

c. To recommend that the City Council approve the Development Agreement entered into by the City and Newark Partners LLC relating to the development allowed under the Newark Areas 3 and 4 Specific Plan; and

d. To recommend that the City Council find that the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan, any applicable area plan or specific plan, and the regulations prescribed for the zoning district(s) in which the development project is or will be located; and

e. To recommend that the City Council find that the Development Agreement will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the city as a whole; and

f. To recommend that the City Council find that the Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and

g. To recommend that the City Council find that the Development Agreement will facilitate the implementation of any applicable specific plan; and

h. To recommend that the City Council find that the Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65868.5; and

i. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.

This Resolution was introduced at the Planning Commission's February 10, 2015 meeting by Commissioner Bridges, seconded by Vice-Chairperson Aguilar, and passed as follows:

AYES: Aguilar, Bridges, Fitts, Nillo and Otterstetter.

NOES: None.

ABSENT: None.

s/Terrence Grindall
TERRENCE GRINDALL, Secretary

s/William Fitts
WILLIAM FITTS, Chairperson

RESOLUTION NO. 1903

RESOLUTION RECOMMENDING APPROVAL OF REZONING OF AREAS 3 AND 4 FOR THE AREAS 3 AND 4 SPECIFIC PLAN PROJECT

WHEREAS, the existing City of Newark zoning designation for the 78-acre property in Area 3 is *Industrial Technology Park (MT)*; and

WHEREAS, the Newark Areas 3 &4 Specific Plan Project proposes to allow development of single-family residential, multi-family residential, and elementary school within the 78-acre Area 3; and

WHEREAS, the *Residential District R-6000* (Low Density Residential) will allow for the development of single-family residential, multi-family residential, and an elementary school in Area 3; and

WHEREAS, Portions of Specific Plan Sub-Area A in Area 3 (Assessor's Parcel Numbers 901-0185-018, 901-0185-019, 901-0185-020, 901-0185-021, 901-0185-022, 901-0185-023, 901-0185-024) would be rezoned to *Residential District R-6000* (Low Density Residential) District; and

WHEREAS, the existing zoning designations for Area 4 of the Newark Areas 3 and 4 Specific Plan are predominantly Agricultural (A), with a small area of General Industrial (MG) adjacent to the termination of Stevenson Boulevard; and

WHEREAS, the Newark Areas 3 and 4 Specific Plan for Sub-Areas B, C, and E (Assessor's Parcel Numbers 537-0801-002-06, 537-0850-009, 537-0850-011-01, 537-0850-011-04, and 537-0850-007-002) anticipates rezoning of the Sub-Areas to R-6000 (Low Density Residential) District; and

WHEREAS, the Newark Areas 3 and 4 Specific Plan for Sub-Area D (Assessor's Parcel Numbers 537-0801-001-02, 537-0801-003, 537-0801-004, 537-0801-005, and 537-0801-006) anticipates rezoning the Sub-Area to 0-P (Open Space-Parks) District; and

WHEREAS, residents and other community members have had opportunities to provide comments and suggestions throughout the development of the Newark Areas 3 and 4 Specific Plan Project; and

WHEREAS, public comments have been used to shape and revise the land use plan for the Newark Areas 3 & 4 Specific Plan Project; and

WHEREAS, a Recirculated Environmental Impact Report (the "REIR") was prepared for this Newark Areas 3 & 4 Specific Plan Project, including the related rezoning of Areas 3 and 4, and was recommended for certification by the Planning Commission on February 10, 2015; and

WHEREAS, the REIR fully discloses all possible environmental impacts of the Newark Areas 3 & 4 Specific Plan Project, including the related rezoning to develop Areas 3 and 4 in accordance with the Newark Areas 3 & 4 Specific Plan; and

WHEREAS, in accordance with the REIR and Statement of Overriding Considerations recommended for adoption by the Newark City Council by the Planning Commission on February 10, 2015, the Planning Commission has recommended the City Council find that the benefits to the community associated with this Specific Plan, including the related rezoning of Areas 3 and 4, in terms of housing availability and choice, provision of public school facilities, and creation of a mix of housing options, including high quality residential uses such as executive housing types and below market rate housing options, outweigh the unavoidable impacts; and

WHEREAS, the Planning Commission has read, reviewed, and considered the REIR, Specific Plan, and the related rezoning of Areas 3 and 4; has conducted a public hearing on the proposed Newark Areas 3 & 4 Specific Plan and the related rezoning of Areas 3 and 4; has discussed, evaluated, analyzed, reviewed and considered the information presented in said hearing, as well as the REIR, Specific Plan, the related rezoning of Areas 3 and 4, and staff report; and

WHEREAS, pursuant to California Government Code section 6061, 65090, 65091 and 65353, a public notice was published in the Tri-City Voice on January 30, 2015, and the Planning Commission held a public hearing on the recommendation of said rezoning of Areas 3 and 4 at 7:30 p.m. on February 10, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, the Planning Commission resolves as follows:

a. To recommend that the City Council find that Assessor's Parcel Numbers 901-0185-019, 901-0185-020, 901-0185-021, 901-0185-022, 901-0185-023, and 901-0185-024) are to be rezoned to R-6000 (Low Density Residential) District.

b. To recommend that the City Council find that Assessor's Parcel Numbers 537-0801-002-06, 537-0850-009, 537-0850-011-01,537-0850-011-04, and 537-0850-007-002) are be rezoned to R-6000 (Low Density Residential) District.

c. To recommend that the City Council find that Assessor's Parcel Numbers 537-0801-001-02, 537-0801-003, 537-0801-004, 537-0801-005, and 537-0801-006) are to be rezoned to 0-P (Open Space-Parks) District.

d. To recommend that the City Council find that a Map amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan is necessary to achieve the purposes of the Municipal Code.

e. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.

This Resolution was introduced at the Planning Commission's February 10, 2015 meeting by Commissioner Bridges, seconded by Vice-Chairperson Aguilar, and passed as follows:

AYES: Aguilar, Bridges, Fitts, Nillo and Otterstetter.

NOES: None.

ABSENT: None.

s/Terrence Grindall
TERRENCE GRINDALL, Secretary

s/William Fitts
WILLIAM FITTS, Chairperson

E.3 Hearing to consider: 1) Recommending City Council Certification of E-15-4, a Recirculated Final Environmental Impact Report addressing and disclosing the Environmental Impacts of the Newark Areas 3 and 4 Specific Plan Project; 2) Recommendation that the City Council approve GP-10-13, the Newark Specific Plan: Area 3 and 4 of the General Plan, related General Plan amendments, and a map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land; 3) Recommendation that the City Council approve DA-10-14 and adopt the Newark Areas 3 and 4 Specific Plan Project Development Agreement; and 4) Recommendation that the City Council approve Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the Newark Specific Plan: Area 3 and 4 of the General Plan.

Chairperson Fitts opened the Public Hearing.

Mr. John Bradley, 4958 Bosworth Court, Newark, CA 94560, stated he is against this project because he believes it will create isolation for that area's residents; drain City Resources; and create a loss of value to the wetlands.

Mr. Wayne Studer, 6246 Joaquin Murieta Avenue, Newark, CA 94560, stated his concerns of increased traffic on Joaquin Murieta and the decrease in his home's value.

Ms. Jana Sokale, 7788 Hazelnut Drive, Newark, CA 94560, and also representing Citizens Committee to Complete the Refuge, informed the Planning Commission that the US Congress had declared in 1990 that most of Area 4's land was appropriate for inclusion in the National Wildlife Refuge and also stated the US Fish and Wildlife Service had declared these types of wetlands as the most important wetlands to acquire.

Ms. Sokale, stated her belief that this project does not support the health of the Community and the Bay's eco-system and stated the Recirculated FEIR will need further CEQA review.

Answering Mr. Wayne Studer, ACM Grindall stated Sub-Area A is proposed to be developed as residential with a school.

ACM Grindall reminded the Planning Commission that Mr. Hebert's earlier comments apply to this Item.

Chairperson Fitts closed the Public Hearing.

Answering Commissioner Nillo, ACM Grindall stated a Championship Golf Course would command higher green fees and will make the project financially feasible for the Developer.

ACM Grindall stated conceptually the limited fill of Sub-Areas B and C would ultimately enhance the habitat in Sub-Area E.

Answering Vice-Chairperson Aguilar, ACM Grindall explained the difference between a project level and a program level review.

Answering Vice-Chairperson Aguilar, ACM Grindall stated the Developer has 8 years from the start of developing Area 3 to begin development of Area 3, and the City will bear no costs in the development of the infrastructure and all public improvement costs will be funded by the Developer.

Answering Chairperson Fitts, ACM Grindall stated the dedication of the 66 acres to the City will occur prior to the development of Area 3.

Answering Commissioner Bridges, ACM Grindall stated Mitigation measures were identified to address traffic concerns at the intersection of Cherry Street and Mowry Avenue and no significant traffic impacts were identified for Joaquin Murieta.

Motion made by Commissioner Bridges, seconded by Vice-Chairperson Aguilar, to approve: 1) Resolution 1901, recommending that the City Council certify a Recirculated Final Environmental Impact Report (E-15-4) addressing and disclosing the Environmental Impacts of the Newark Areas 3 and 4 Specific Plan Project; and 2) Resolution 1902, recommending approval of the Newark Specific Plan: Area 3 and 4 of the General Plan and related General Plan amendments: A map amendment to the General Plan Diagram to affirm the General Plan land use designations for certain parcels of land (GP-10-13); recommending adoption of the Newark Areas 3 and 4 Specific Plan Project Development Agreement; and 3) Resolution 1903 recommending the City Council approve Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Newark Specific Plan: Area 3 and 4 of the General Plan. Motion passed 5 AYES.

E.4 Hearing to consider recommending that the City Council approve a Resolution clarifying the Council's intent in its Resolution (Council Res. No. 10,146) certifying the General Plan Tune Up Environmental Impact Report (EIR) in December of 2013, as follows: (a) that action was not intended to provide environmental disclosure or CEQA compliance or clearance for the Newark Areas 3 and 4 Specific Plan Project; (b) that the Newark Areas 3 and 4 Specific Plan Project would not rely on the General Plan Update EIR to comply with the California Environmental Quality Act; and (c) that Res. No. 10,146 was not intended to affect or limit the pending judicial review of the Areas 3 and 4 Specific Plan Project (Case No. RG 10530015).

Assistant City Manager Grindall gave the staff report.

Answering Commissioner Nillo, ACM Grindall stated Clarification of Intent is processed by Resolution.

Chairperson Fitts opened the Public Hearing.

Ms. Jana Sokale, 7788 Hazelnut Drive, Newark, CA 94560, stated her belief that adoption of a Resolution is not legally binding and stated her preference for an Amendment to the General Plan with a new EIR.

Chairperson Fitts closed the Public Hearing.

F.1 Approval of Contractual Services Agreement with North American Title Company to provide Preliminary Title Reports for the Central Avenue Overpass, Project 1014 – from Public Works Director Claassen. (RESOLUTION)

Background/Discussion – Alameda County Transportation Commission programmed $2.765 million in Measure B funds for preliminary engineering, environmental studies and final design of the Central Avenue Overpass. Staff is in the process of consultant selection for the design portion of the project that will be awarded by the City Council later this spring. The project will provide four travel lanes, bicycle lanes and sidewalks over the existing railroad tracks (two mainlines and spur tracks) between Sycamore Street and Morton Avenue.

Preliminary Title Reports are required for 16 properties within the scope of the project as part of the preliminary design. The documents will aid in identifying any design constraints and right of way needs for the project construction.

In accordance with the City's Purchasing Ordinance, staff solicited quotations from three title companies for these services. At this time, the City is requesting approval of a Contractual Services Agreement with North American Title Company to provide Preliminary Title Reports for properties within the Central Avenue Overpass project limits. The cost of these services is $11,750.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the City Manager to sign the Contractual Services Agreement with North American Title Company to provide Preliminary Title Reports for the Central Avenue Overpass, Project 1014.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACTUAL SERVICES AGREEMENT WITH NORTH AMERICAN TITLE COMPANY TO PROVIDE PRELIMINARY TITLE REPORTS FOR THE CENTRAL AVENUE OVERPASS, PROJECT 1014

WHEREAS, City staff requested proposals to provide Preliminary Title Reports for the Central Avenue Grade Separation, Project 1014, Alameda County Transportation Commission Project No. 625.1, and

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

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

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the Contractual Services Agreement (on file with the City Clerk) with North American Title Company and does hereby authorize the City Manager of the City of Newark to sign said agreement and enter into any minor non-substantive changes to the Agreement to provide Preliminary Title Reports for the Central Avenue Overpass, Project 1014.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this _____ day of MARCH, 2015 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **NORTH AMERICAN TITLE COMPANY** ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to provide Preliminary Title Reports for the Central Avenue Grade Separation Project 1014, Alameda CTC Project No. 625.1, and

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

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

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

A. "Not to Exceed" Compensation. City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant's rates set

forth in Exhibit "A". The payments specified in Exhibit "A" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Eleven thousand seven hundred fifty and No/100 Dollars ($11,750.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

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

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

Invoices shall be sent to:

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

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

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

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

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services.

Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

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

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

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

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

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

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

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

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

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

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), or Code 8 (hired) and 9 (non-owned) if consultant has no owned autos.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

C. Minimum Limits of Insurance.

Consultant shall maintain limits no less than:

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

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

I. Other Insurance Provisions.

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

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

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

3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. Similarly, no major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement.

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

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

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

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

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

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this

Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

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

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

practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Newark Business License.

16. TERM/TERMINATION.

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

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

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

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

NORTH AMERICAN TITLE COMPANY	**CITY OF NEWARK**
EVELYN BOWENS-CHAMBERS **Branch Manager/Commercial Escrow & Public Services Division**	PEGGY A. CLAASSEN **Public Works Director**
Address: North American Title Company 6612 Owens Drive, Suite 100 Pleasanton, CA 94588	City of Newark 37101 Newark Boulevard Newark, CA 94560

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

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

21. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or

unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

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

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

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

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

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

27. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

28. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City Manager

Date _____

By _____
Consultant

Date 03/05/2015

Evelyn Bowens-Chambers
Asst VP / Manager-Public Services Div

_____
Printed Name

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

North American Title Company - Preliminary Title Reports

Reference	APN Bk	Page	Parcel #	Parcel Address	Estimate
1014-01	92	71	2	6925 Central	$ 650.00
1014-02	92	71	4	6995 Central	$ 650.00
1014-03	92	71	7-1		$ 900.00
1014-04	92	71	8		$ 650.00
1014-05	92	72	3	6821 Central	$ 650.00
1014-06	92	253	1		$ 900.00
1014-07	92	253	2-1		$ 650.00
1014-08	92	253	11	7091 Central	$ 650.00
1014-09	92	253	12	7025 Central	$ 650.00
1014-10	92A	2165	5		$ 900.00
1014-11	92A	2165	6		$ 900.00
1014-12	92A	2165	14		$ 650.00
1014-13	92A	2165	15	6756 Central	$ 650.00
1014-14	92A	2165	16		$ 650.00
1014-15	92A	2165	17		$ 650.00
1014-16	537	751	7-1	7220 Central	$ 1,000.00
TOTAL					**$ 11,750.00**

F.2 Second reading and adoption of an ordinance amending Title 2 (Administration and Personnel), Chapter 2.12 (Planning Commission), Sections 2.12.010 (Created) and 2.12.20 (Qualifications) to reduce the number of Planning Commissioners from seven to five – from City Clerk Harrington. (ORDINANCE)

Background/Discussion – On March 12, 2015, the City Council introduced an ordinance amending the Newark Municipal Code, Title 2 (Administration and Personnel), Chapter 2.12 (Planning Commission), Sections 2.12.010 (Created) and 2.12.20 (Qualifications) to reduce the number of Planning Commissioners from seven to five.

Attachment

Action - It is recommended that the City Council adopt the ordinance amending the Newark Municipal Code, Title 2 (Administration and Personnel), Chapter 2.12 (Planning Commission), Sections 2.12.010 (Created) and 2.12.20 (Qualifications) to reduce the number of Planning Commissioners from seven to five.

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING THE NEWARK MUNICIPAL CODE, TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.12 (PLANNING COMMISSION), SECTIONS 2.12.010 (CREATED) AND 2.12.20 (QUALIFICATIONS) TO REDUCE THE NUMBER OF PLANNING COMMISSIONERS FROM SEVEN TO FIVE

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

Section1: Title 2 (Administration and Personnel) of the Newark Municipal Code is hereby amended as shown in Exhibit A, with ~~strikethrough~~ denoting deletions and <u>underline</u> denoting additions.

<u>Section 2:</u> 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

Sections 2.12.010 (Created) and 2.12.020 (Qualifications), of Title 2 (Administration and Personnel) of the Newark Municipal Code are hereby amended to read as follows (strikethrough denotes deletions, underline denotes additions):

2.12.010 - Created.

There is created a commission to consist of ~~seven~~ <u>five</u> members, which shall be designated as the planning commission of the city.

2.12.020 - Qualifications.

~~Seven~~ Five members of the commission shall be registered voters residing within the city and shall be appointed by the mayor, with the approval of the city council.

F.3 Acceptance of proposal and authorization for City Manager to sign an agreement with Utility Telephone for the extension and enhancement of telecommunications services and associated budget amendment – from Information Systems Manager Towne. (RESOLUTION)

Background/Discussion – The City is currently under contract with Utility Telephone for telecommunications services including voice, data and voice mail, through March 2016. The existing agreement provides for up to four additional one-year extensions beginning April 2016.

Because the City operates an older and increasingly high-maintenance and difficult to integrate private branch exchange (PBX) infrastructure, Utility Telephone has submitted a proposal to migrate to a hosted Voice-over-Internet Protocol (VoIP) solution. The hosted VoIP system proposed will result in reduced cost, improved reliability, and enhanced features and performance. This is accomplished through fuller integration with the City's existing voice mail solution, decreased maintenance and service requirements, upgraded phone set capabilities, and increased data links to both the Internet and Silliman Center.

Under this three year proposal the City's monthly recurring charges for telecommunications services would decrease from approximately $17,300 to $15,200 per month, for an estimated savings of $25,200 per year. There is an initial setup cost for equipment necessary to the VoIP implementation in the amount of $8,500. This amount will be saved within the first 4 months of the extended agreement.

The proposal submitted by Utility Telephone represents an opportunity for the City to enhance telecommunications reliability and performance at a significant overall cost savings. Staff recommends amending the 2014 -2016 Biennial Budget for Fiscal Year 2014 -2015 to authorize payment of the setup cost in the amount of $8,500 from the unallocated General Fund.

Attachment

Action - It is recommended that the City Council, by resolution, accept the proposal of Utility Telephone and authorize the City Manager to sign an agreement with Utility Telephone for the extension and enhancement of telecommunications services, and approve a budget amendment to the 2014-2016 Biennial Budget for Fiscal Year 2014-2015.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACCEPTING THE PROPOSAL AND AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH UTILITY TELEPHONE FOR THE EXTENSION AND ENHANCEMENT OF TELECOMMUNICATIONS SERVICES AND APPROVING A BUDGET AMENDMENT TO THE 2014-2016 BIENNIAL BUDGET FOR FISCAL YEAR 2014-2015

BE IT RESOLVED that the City Council of the City of Newark does hereby accept the proposal of Utility Telephone and does hereby authorize the City Manager to sign an agreement (on file with the City Clerk) with said company for the extension and enhancement of telecommunications services.

BE IT FURTHER RESOLVED that the 2014-2016 Biennial Budget for Fiscal Year 2014 -2015 be amended as follows:

From		
010 – 0000 - 2991	Unallocated (General Fund)	$8,500
To		
010 – 1024 - 5222	Information Systems, Telecommunications	$8,500

Wtr1

SECOND AMENDMENT TO CONTRACTUAL SERVICES AGREEMENT

City and Consultant hereby agree that the Contractual Service Agreement by and between the CITY OF NEWARK and CREATIVE INTERCONNECT COMMUNICATIONS, LLC entered into on September 5, 2007 and as modified by the First, Amendment executed August 28, 2009, (hereinafter collectively referred to as "CSA"), shall be amended as set forth herein:

This Second Amendment (hereinafter "Second Amendment") is made effective as of March 26, 2015 pursuant to Section 25 of the CSA and is made with reference to the following facts:

W I T N E S S E T H:

WHEREAS, the First Amendment to Contractual Services Agreement was made effective as of August 28, 2009 and on March 22, 2012 the City consented to the assignment and transfer of the CSA to Utility Telephone, Inc, a California Corporation.

WHEREAS, during the period from September 2007 to January 2015, Consultant has satisfactorily performed services pursuant to the CSA as more particularly described on EXHIBIT A thereof, in consideration of compensation in the amount of $1,170,000, leaving the sum of $730,000 unexpended from the "not to exceed" compensation and costs limit of Section 3.A of the CSA; and,

WHEREAS, City's PBX systems are nearing end of life and the copper facilities into City Hall are beginning to show their age, and under the CSA Consultant is required to maintain certain services at its expense, Consultant has provided a proposal to replace the aging telephones, to eliminate the PBX systems and to substantially upgrade City Hall to fiber in order to improve performance and maintainability for the remainder of the CSA, without additional monthly charges to City.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. New Location Schedules:

   Effective on the date that each item on a specific Location Schedule is Cutover to its replacement item, that replacement item pricing and services become effective. (See EXHIBIT A). Each replacement item shall be documented on the then current Location Schedule and be attached to and become a part of this CSA, as modified by the Second Amendment.

2. In Section 3.A:

   Delete this sentence:

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Million Nine Hundred Thousand and No/100 Dollars ($1,900,000.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services

or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

And replace it with:

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Hundred Ninety-Nine Thousand and No/100 Dollars ($199,000) per year unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

3. Section 6.6 of CSA EXHIBIT A is deleted in its entirety and replaced with the following:

By default, the Initial Term of each Location Schedule or any service provided without a Location Schedule will be coterminous with the attached Location Schedule for City Hall. The Initial Term of the attached Location Schedule for City Hall will conclude on June 30, 2015.

For the purposes of this section a Location for which Consultant has accepted order(s) without a signed Location Schedule as per Section 1.4 of CSA EXHIBIT A "Written and Verbal Orders" shall be deemed to have a Location Schedule with the terms as defined in Section 1.4 "Written and Verbal Orders".

After the Initial Term, each Location Schedule shall automatically renew for an additional one-year Term, unless written notification is given 60 days in advance of the termination of the Term by either party. If however Consultant wishes to increase any item price on a Location Schedule, other than for regulatory changes as described in EXHIBIT A, Section 6.13 of CSA, its written notification of such increase must be provided 90 days in advance of the termination of then current Term.

Customer hereby exercises three additional one-year Terms ending June 30, 2018 and waives its annual right of Termination for the years ending June 30, 2016 and 2017. Consultant hereby accepts Customer's three year CSA extension and hereby waives its annual of right of Termination for the years ending June 30, 2016, 2017, 2018 and 2019. Consultant will not increase any item price on a Location Schedule, other than for regulatory changes as described in EXHIBIT A, Section 6.13 of CSA for the Terms ending June 30, 2016, 2017, 2018, 2019 and 2020.

Customer may order a service with a term which concludes after the Term of this Second Amendment. In such case, the longer term for that service will apply to that service only.

4. Section 7 of the First Amendment to CSA is deleted in its entirety and replaced with "Intentionally Left Blank".

5. Section 8 of the First Amendment to CSA is deleted in its entirety and replaced with the following:

In the event that Customer decides for budgetary reasons to close or sell the Community Center or Watkins Hall or Old Fire Station #1, Customer may at its option reduce or discontinue any of the services on that Location's individual Location Schedule without being subject to a Termination Charge for such reduction or discontinuance. Customer must provide Consultant no less than 90 days Notice of its intent to reduce or discontinue services including the specific services affected and the effective date. Billing terms for non discontinued service shall continue unaltered.

6. Section 18, NOTICES: remove the Consultant's and the City's name and contact information and replace with the following:

UTILITY TELEPHONE, INC.	**CITY OF NEWARK**
JASON MILLS PRESIDENT & CEO **Consultant**	WILL TOWNE **Administrator**
Address: Utility Telephone, Inc. Attention: Jason Mills 4202 Coronado Ave Stockton CA 95204	City of Newark City Administration Building 37101 Newark Boulevard Newark, CA 94560

7. All references in the CSA to Creative Interconnect Communications, LLC and CIC are replaced with Utility Telephone, Inc. The City's Consent to Assignment to Utility Telephone dated March 22, 2012 is attached and made a part of this Second Amendment.

8. Except as specifically modified in this Second Amendment CSA, the ACSA and all its Exhibits and attachments shall continue in full force and effect in accordance with its terms and conditions.

NOW, THEREFORE, the parties have executed this Second Amendment on the dates set forth below.

CITY OF NEWARK,	UTILTY TELEPHONE, INC.
a municipal corporation	a California Corporation
By _____ City of Newark	By _____ Consultant
Date _____	Date 3-17-2015
	Jason R. Mills, CEO Printed Name

Attest:

_____
City Clerk

Date _____

EXHIBIT A
to Second Amendment to Contractual Services Agreement

Location Schedule

Eleven (11) locations specified as follows, all within the City of Newark, California:

1. 37365 Ash St.
2. 37103 Ash St.
3. 39039 Cherry St.
4. 7700 Thornton Ave.
5. 37440 Filbert St.
6. 7550 Thornton Ave.
7. 7401 Enterprise Dr.
8. 37101 Newark Blvd.
9. 6800 Mowry Ave.
10. 35775 Ruschin Dr.
11. 35501 Cedar Blvd.

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126458	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark -37365 Ash	**Primary Contact Name** Will Towne / **Telephone Number** (510) 578-4283
Service Address 37365 Ash St,	**Primary Contact Email** will.towne@newark.org
City, State, Zip Newark, CA 94560	**Alternate / Technical Contact Name** / **Telephone Number**
Primary Telephone Number	**Billing Contact Name** / **Telephone Number**

☐ Add to Existing Contract Term

Service Description

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		1	$ 21.25	$ 9.04	$ 30.29	$ -
	Alarm		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			4	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 30.29	$ -
					Adjustments	$ -	$ -
					Grand Total	$ 30.29	$ -

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126457	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark-Watkins Hall	
Service Address 37103 Ash St,	
City, State, Zip Newark, CA 94560	
Primary Telephone Number	

Primary Contact Name Will Towne	Telephone Number (510) 578-4283
Primary Contact Email will.towne@newark.org	
Alternate / Technical Contact Name	Telephone Number
Billing Contact Name	Telephone Number

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		1	$ 21.25	$ 9.04	$ 30.29	$ -
	Alarm		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
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			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 30.29	$ -
					Adjustments	$ -	$ -
					Grand Total	$ 30.29	$ -

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126425	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark Fire Station 27	
Service Address 39039 Cherry St.	
City, State, Zip Newark, CA 94560	
Primary Telephone Number	

Primary Contact Name Will Towne	**Telephone Number** (510) 578-4283
Primary Contact Email will.towne@newark.org	
Alternate / Technical Contact Name	**Telephone Number**
Billing Contact Name	**Telephone Number**

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
	Private Network 10 Mbps (T-1)		1	$ 879.00	$ -	$ 879.00	$ -
	24 Port POE Layer 3 Switch		1	$ -	$ 70.00	$ 70.00	$ -
	(Must have SFP cage)		0	$ -	$ -	$ -	$ -
	Data Fax Line		1	$ 16.15	$ 8.92	$ 25.07	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		1	$ 21.25	$ 9.04	$ 30.29	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		8	$ 12.75	$ 9.04	$ 174.32	$ -
	VoIP phones, Fast-E		8	$ -	$ 7.00	$ 56.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		1	$ 12.75	$ 9.04	$ 21.79	$ -
	Main Line & VM		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Cat5E cable, foot each		340	$ -	$ -	$ -	$ 57.80
	24 Port Patch panel		1	$ -	$ -	$ -	$ 74.50
	Misc		1	$ -	$ -	$ -	$ 45.00
	Tax		9%	$ -	$ -	$ -	$ 15.96
	Hours labor		8	$ -	$ -	$ -	$ 960.00
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 1,256.47	$ 1,153.26
					Adjustments	$ -	$ -
					Grand Total	$ 1,256.47	$ 1,153.26

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126455	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark-Old Fire Station 1	**Primary Contact Name** Will Towne **Telephone Number** (510) 578-4283
Service Address 7700 Thornton Ave.	**Primary Contact Email** will.towne@newark.org
City, State, Zip Newark, CA 94560	**Alternate / Technical Contact Name** **Telephone Number**
Primary Telephone Number	**Billing Contact Name** **Telephone Number**

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		1	$ 21.25	$ 9.04	$ 30.29	$ -
	Alarm		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 30.29	$ -
					Adjustments	$ -	$ -
					Grand Total	$ 30.29	$ -

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126430	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark- Service Center/Corp Yard	**Primary Contact Name** Will Towne **Telephone Number** (510) 578-4283
Service Address 37440 Filbert St.	**Primary Contact Email** will.towne@newark.org
City, State, Zip Newark, CA 94560	**Alternate / Technical Contact Name** **Telephone Number**
Primary Telephone Number	**Billing Contact Name** **Telephone Number**

☐ Add to Existing Contract Term

Service Description

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
	Private Ethernet 10 Mbps		1	$ 879.00	$ -	$ 879.00	$ -
	24 Port POE Layer 2 Switch		1	$ -	$ 70.00	$ 70.00	$ -
	8 Port Layer 2 Switch		1	$ -	$ 45.00	$ 45.00	$ -
	Data Fax Line		1	$ 16.15	$ 8.92	$ 25.07	$ -
	Maintenance on exisitng 24 Prt layer 3 switch		1	$ -	$ 45.00	$ 45.00	$ -
	(1335 will be replaced with POE at no charge)		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Basic Business Line		3	$ 11.90	$ 8.92	$ 62.46	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		16	$ 12.72	$ 9.04	$ 348.16	$ -
	VoIP Phones, Fast-E		16	$ -	$ 7.00	$ 112.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		2	$ 21.25	$ 9.04	$ 60.58	$ -
	alarm		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Cat 5E cable foot each		500	$ -	$ -	$ -	$ 85.00
	Misc jacks and patch cables		1	$ -	$ -	$ -	$ 40.00
	Teledex Phone		1	$ -	$ -	$ -	$ 95.00
	Sales Tax		9%	$ -	$ -	$ -	$ 19.80
			0	$ -	$ -	$ -	$ -
	Hours Labor		9	$ -	$ -	$ -	$ 1,080.00
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 1,647.27	$ 1,319.80
					Adjustments	$ -	$ -
					Grand Total	$ 1,647.27	$ 1,319.80

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126455	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark Fire Station 28	
Service Address 7550 Thornton Ave.	
City, State, Zip Newark, CA 94560	
Primary Telephone Number	

Primary Contact Name Will Towne	**Telephone Number** (510) 578-4283
Primary Contact Email will.towne@newark.org	
Alternate / Technical Contact Name	**Telephone Number**
Billing Contact Name	**Telephone Number**

☐ Add to Existing Contract Term

Service Description

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
	EOC Internet		1	$ 299.00	$ -	$ 299.00	$ -
	Private Network 2 Mpbs		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	24 Port POE Layer 3 Switch		1	$ -	$ 70.00	$ 70.00	$ -
	Note; have 1335 which can be traded in		0	$ -	$ -	$ -	$ -
	Premium Business Line		1	$ 21.25	$ 9.04	$ 30.29	$ -
	Station Emergency		0	$ -	$ -	$ -	$ -
	Note; alarm unconfirmed		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		10	$ 12.72	$ 9.04	$ 217.60	$ -
	VoIP Phones, Fast-E		10	$ -	$ 7.00	$ 70.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		1	$ 12.72	$ 9.04	$ 21.76	$ -
	Main Number		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		1	$ 8.50	$ 9.04	$ 17.54	$ -
	Paging adapter		1	$ -	$ 7.00	$ 7.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Valcom VIP-201A		1	$ -	$ -	$ -	$ 450.00
	Cabling cat5, foot each		125	$ -	$ -	$ -	$ 21.25
	Jacks		2	$ -	$ -	$ -	$ 18.00
	sales tax		9%	$ -	$ -	$ -	$ 44.03
	Labor-hours		6	$ -	$ -	$ -	$ 720.00
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 733.19	$ 1,253.28
					Adjustments	$ -	$ -
					Grand Total	$ 733.19	$ 1,253.28

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126428	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark - Senior Center	
Service Address 7401 Enterprise Dr.	
City, State, Zip Newark, CA 94560	
Primary Telephone Number	

Primary Contact Name Will Towne	**Telephone Number** (510) 578-4283
Primary Contact Email will.towne@newark.org	
Alternate / Technical Contact Name	**Telephone Number**
Billing Contact Name	**Telephone Number**

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
	Private Ethernet to CO 2 Mbps		1	$ 299.00	$ -	$ 299.00	$ -
	24 Port POE Layer 3 Switch		1	$ -	$ 70.00	$ 70.00	$ -
	Internet (on same connection)		1	$ 25.00	$ -	$ 25.00	$ -
	Data Fax Line		1	$ 16.15	$ 8.92	$ 25.07	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		2	$ 21.25	$ 9.04	$ 60.58	$ -
	Alarm		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		4	$ 12.72	$ 9.04	$ 87.04	$ -
	VoIP Phones, Fast-E		4	$ -	$ 7.00	$ 28.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 594.69	$ -
					Adjustments	$ -	$ -
					Grand Total	$ 594.69	$ -

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126145	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark City Hall	**Primary Contact Name** Will Towne / **Telephone Number** (510) 578-4283
Service Address 37101 Newark Blvd, 4th Flr.	**Primary Contact Email** will.towne@newark.org
City, State, Zip Newark, CA 94560	**Alternate / Technical Contact Name** / **Telephone Number**
Primary Telephone Number	**Billing Contact Name** / **Telephone Number**

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
	Optical Ethernet		1	$ 1,550.00	$ -	$ 1,550.00	$ -
	100 Mbps Internet/Private		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	1,000 Local, Intralata & LD calling package		25	$ -	$ 20.00	$ 500.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Basic Business Line		25	$ 11.90	$ 9.04	$ 523.50	$ -
			0	$ -	$ -	$ -	$ -
	1.5 Mbps EoC Internet (cust wanted separate)		1	$ 69.00	$ -	$ 69.00	$ -
	1.5 Mbps P2P T1 to Alameda County		1	$ 299.00	$ -	$ 299.00	$ -
	Data Fax Line		1	$ 16.15	$ 8.92	$ 25.07	$ -
			0	$ -	$ -	$ -	$ -
	Additional Listing		1	$ 3.00	$ -	$ 3.00	$ -
	Caption Listing		3	$ 3.00	$ -	$ 9.00	$ -
	Hosted IP PBX		98	$ 12.72	$ 9.04	$ 2,132.48	$ -
	VoIP Phones GIG-E		88	$ -	$ 11.00	$ 968.00	$ -
	VoIP Phones Fast-E		10	$ -	$ 7.00	$ 70.00	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		6	$ 12.72	$ 9.04	$ 130.56	$ -
	Main Number & VM		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Voice Mail		48	$ 4.95	$ -	$ 237.60	$ -
	Teledex Single Line Phone		3	$ -	$ -	$ -	$ 285.00
	Valcom VIP-821 Paging Adapter		1	$ -	$ -	$ -	$ 425.00
	Cat 5E Cable foot each		370	$ -	$ -	$ -	$ 62.90
	Misc Amount		1	$ -	$ -	$ -	$ 30.00
	Sales Tax		9%	$ -	$ -	$ -	$ 72.26
			0	$ -	$ -	$ -	$ -
	Hours Labor		10	$ -	$ -	$ -	$ 1,200.00
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 6,517.21	$ 2,075.16
					Adjustments	$ -	$ -
					Grand Total	$ 6,517.21	$ 2,075.16

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126426	Bill Brownlow	3/17/2015	

Primary Service Information

Legal Name City of Newark Silliman Center	
Service Address 6800 Mowry Av.	
City, State, Zip Newark, CA 94560	
Primary Telephone Number	

Primary Contact Name Will Towne	Telephone Number (510) 578-4283
Primary Contact Email will.towne@newark.org	
Alternate / Technical Contact Name	Telephone Number
Billing Contact Name	Telephone Number

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
	Internet for Teen Ctr. 5 Mbps (from stn 27 int)		1	$ 99.00	$ -	$ 99.00	$ -
	48 Port POE Layer 2 Switch		1	$ -	$ 90.00	$ 90.00	$ -
	Maintenance 48 Port POE Layer 2 Switch		1	$ 55.00	$ -	$ 55.00	$ -
	Premium Business Line		6	$ 21.25	$ 9.04	$ 181.74	$ -
	Aquatics Emergency		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Upgrade existing 48 Prt switch to POE No charge		1	$ -	$ -	$ -	$ -
	Basic Business Line		8	$ 11.90	$ 8.92	$ 166.56	$ -
	4 Sump Pit lines not included		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		19	$ 12.72	$ 9.04	$ 413.44	$ -
	VoIP Phones, Fast-E		19	$ -	$ 7.00	$ 133.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		1	$ 12.72	$ 9.04	$ 21.76	$ -
	Main Number & VM		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Data Fax Line		2	$ 16.15	$ 8.92	$ 50.14	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Teledex Phone		2	$ -	$ -	$ -	$ 180.00
	sales tax		9%	$ -	$ -	$ -	$ 16.20
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 1,210.64	$ 196.20
					Adjustments	$ -	$ -
					Grand Total	$ 1,210.64	$ 196.20

Allow International Calling?
☐ Yes ☑ No

Totals do not include state/federal usages taxes and surcharges

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126432	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark Fire Station 29	
Service Address 35775 Ruschin Dr,	
City, State, Zip Newark, CA 94560	
Primary Telephone Number	

Primary Contact Name Will Towne	**Telephone Number** (510) 578-4283
Primary Contact Email will.towne@newark.org	
Alternate / Technical Contact Name	**Telephone Number**
Billing Contact Name	**Telephone Number**

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
	Private Ethernet to CO 2 Mbps		1	$ 299.00	$ -	$ 299.00	$ -
	8 Port POE Layer 3 Switch		1	$ -	$ 45.00	$ 45.00	$ -
			0	$ -	$ -	$ -	$ -
	Data Fax Line		1	$ 16.15	$ 8.92	$ 25.07	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		1	$ 21.25	$ 9.04	$ 30.29	$ -
	Station Emergency		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		6	$ 12.72	$ 9.04	$ 130.56	$ -
	VoIP Phone, Fast-E		6	$ -	$ 7.00	$ 42.00	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		1	$ 12.72	$ 9.04	$ 21.76	$ -
	Main Number		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Cat 5E Cable, per foot		175	$ -	$ -	$ -	$ 29.75
	Patch Panel, 24 Port		1	$ -	$ -	$ -	$ 74.50
	Cat 5E Jacks		2	$ -	$ -	$ -	$ 18.00
	Cat 5 Patch Cables, Approx. 2-4'		7	$ -	$ -	$ -	$ 28.00
	Sales Tax		9%	$ -	$ -	$ -	$ 13.52
	Hours Labor to Run Cables and Reterm Exist.		7	$ -	$ -	$ -	$ 840.00
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 593.68	$ 1,003.77
					Adjustments	$ -	$ -
					Grand Total	$ 593.68	$ 1,003.77

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

Location Schedule

UtilityTelephone

Order Information

☐ New Account ☐ Renewal ☐ Add to Existing ☑ Change to Existing ☐ Move to New Address

Account Number	Account Executive	Date	Customer Desired Date / Move Date and Time
126431	Bill Brownlow	2/18/2015	

Primary Service Information

Legal Name City of Newark Community Center	**Primary Contact Name** Will Towne **Telephone Number** (510) 578-4283
Service Address 35501 Cedar St.	**Primary Contact Email** will.towne@newark.org
City, State, Zip Newark, CA 94560	**Alternate / Technical Contact Name** **Telephone Number**
Primary Telephone Number	**Billing Contact Name** **Telephone Number**

Service Description

☐ Add to Existing Contract Term

Svc Code	Product	Rate Plan	Qnty	Monthly Charge	Call Pkgs & Surcharges	Total MRC	Non Reoccuring Charges
			0	$ -	$ -	$ -	$ -
	Private Network Ethernet to CO 2 Mbps		1	$ 299.00	$ -	$ 299.00	$ -
	Router Maintenance		1	$ 45.00	$ -	$ 45.00	$ -
	Existing Router is NV 1335		0	$ -	$ -	$ -	$ -
	Basic Business Line		2	$ 11.90	$ 8.92	$ 41.64	$ -
	Child Care 510-578-4438,4439 Hunt		0	$ -	$ -	$ -	$ -
	For use with CPE 2 Line Cordless Phone		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Premium Business Line		2	$ 21.25	$ 9.04	$ 60.58	$ -
	For Alarm		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
	Hosted IP PBX		1	$ 12.75	$ 9.04	$ 21.79	$ -
	VoIP Phone, Fast-E		1	$ -	$ 7.00	$ 7.00	$ -
	Reception 510-578-4437, provide Power Brick n/c		0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
			0	$ -	$ -	$ -	$ -
					Subtotal	$ 475.01	$ -
					Adjustments	$ -	$ -
					Grand Total	$ 475.01	$ -

Allow International Calling?
☐ Yes ☑ No

Date:_____ Initials:_____

Exhibit A

CONSENT TO ASSIGNMENT

The City of Newark ("City") and Creative Interconnect Communications, LLC ("Consultant") are parties to the Contractual Services Agreement between City and Consultant dated September 5, 2007 as amended ("Agreement").

Pursuant to Section 24 of the Agreement, the City hereby consents to the assignment and transfer of the Agreement to Utility Telephone, Inc. ("Utility") as a part of the sale of the assets of Consultant to Utility.

City of Newark:

Signed: _____

Name: WILL TOWNE

Title: I.S. MANAGER

Date: 3-22-2012

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 5 day of September, 2007 by and between the **CITY OF NEWARK**, a municipal corporation ("City" or "Customer"), and CREATIVE INTERCONNECT COMMUNICATIONS, LLC, a CALIFORNIA LIMITED LIABILITY COMPANY ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: **DESIGN, ORDERING, INSTALLATION, MAINTENANCE, TRAINING, AND REPORTING SERVICES RELATED TO THE CITY'S TELECOMMUNICATIONS SYSTEM** (the "Project").

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

WHEREAS, the City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

NOW, THEREFORE, the Parties hereto agree as follows:

1. CONSULTANT'S SERVICES. Consultant shall perform the services described, and in the time, place and manner specified, in Exhibit "A", Exhibit "B", and any attachments thereto which are incorporated herein by reference, in accordance with the terms and conditions of this Agreement, provided, however, that if there is any conflict between Exhibit A and Exhibit B, Exhibit A shall take precedence and supply the controlling term or provision .

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

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

3. **PAYMENT**

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Nine Hundred Fifty Thousand and No/100 Dollars ($950,000.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

B. **Method of Billing.** To request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges therefore (and when billing for labor including an identification of the billing category of the person(s) who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant's billing rates (set forth on Exhibit "A" hereto). The billing details for labor required above are waived where labor is provided based on a written, fixed-price quote mutually agreed to by the City and CIC. Upon receipt of billing, the City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit "A", for services, which are performed in accordance with this Agreement to the reasonable satisfaction of the City.

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

Upon completion of the initial work to be performed at a City site for this Project, City shall sign off and acknowledge that all terms and conditions of such initial work have been satisfactorily met; upon which, unless waived by the City in writing, Consultant shall prepare an itemized invoice, briefly describing by task and/or category the items billed.

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

4. **ADDITIONAL SERVICES.** See Exhibit A.

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

not have the right to control the means by which Consultant accomplished services rendered pursuant to this Agreement.

6. **PERSONNEL.** Consultant understands that, in entering into this Agreement, the City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of the Consultant.

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

7. **FACILITIES AND EQUIPMENT.** Except as otherwise provided in Exhibit A, Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

8. **INFORMATION AND DOCUMENTATION.**

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

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with Federal Communications Commission, California Public Utilities Commission and state law requirements, and in no event for less than four (4) years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City at CIC's principal office within a reasonable time after City's request, during normal business hours.

C. **Ownership of Work Product.** All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("work product"), whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand of the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the City, unless Consultant is required to do so by law or as part of an audit.

9. **CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may

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have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk.

10. **NONDISCRIMINATION.** Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. To the extent required by law, Consultant shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, or age.

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

12. **INSURANCE.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees. Insurance policies for Workers Compensation and Automotive Liability may be held by an Affiliate of Consultant.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. **Minimum Limits of Insurance**

Consultant shall maintain limits no less than:

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

C. Deductibles and Self-Insured Retentions

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

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

E. Verification of Coverage

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

F. Other Insurance Provisions

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

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

2. Primary Insurance. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not be contribute with it.

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

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

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

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein. For the purposes of this Agreement Underlying Service Providers are not subconsultants.

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

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

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

13. **REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall

immediately notify the City Risk Manager's office by telephone at 510-742-4427, and Consultant shall promptly submit to the City's Risk manager and the City's Administrator (see Paragraph 17, herein below) a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

14. **INDEMNIFICATION/SAVE HARMLESS.** Consultant hereby agrees to defend, indemnify, and save harmless City, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, City, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortious act or omission, or willful misconduct of Consultant, its officers, employees or agents in the performance of any services or work pursuant to this Agreement.

The duty of Consultant to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require Consultant to indemnify City, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

Approval of the insurance contracts does not relieve the Consultant or subconsultants from liability under this paragraph, including but not limited to the duty to indemnify City set forth herein. By execution of this Agreement Consultant acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration.

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

16. **TERM/TERMINATION.**

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

B. This Agreement may be terminated as provided for in Exhibit A.

17. **CONTRACT ADMINISTRATION.** This Agreement shall be administered by **WILL TOWNE** of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his or her designee.

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

CREATIVE INTERCONNECT COMMUNICATIONS, LLC	**CITY OF NEWARK**
WILLIAM A. G. WILDE PRESIDENT	WILL TOWNE
Consultant	**Administrator**
Address: Creative Interconnect Communications, LLC 555 Old County Rd. Suite 100 San Carlos, CA 94070	City of Newark City Administration Building 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

24. **ASSIGNABILITY.** Neither Consultant nor City shall assign, sell, mortgage, hypothecate or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring party. City agrees that a change in the form of organization or name of Consultant shall not constitute a transfer or assignment of this Agreement.

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

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

27. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

28. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 8-31-07

CREATIVE INTERCONNECT COMMUNICATIONS, LLC
a California Limited Liability Company

By _____ president
Consultant

Date 9-5-07

Wm. A. G. Wilde
Printed Name

Attest:

_____
City Clerk

Date 9/12/07

Approved as to form:

_____
City Attorney

Date 9/11/07

EXHIBIT "A"

SCOPE OF SERVICES and PAYMENT

Exhibit A to Contractual Services Agreement

1. Service.

1.1. Included Documents: This Exhibit A describes and provides the prices and charges for the Telecommunications Services and Equipment (including maintenance of such Equipment) to be provided by Creative Interconnect Communications, LLC (CIC) to the City of Newark, California (City) or (Customer), pursuant to the Contractual Services Agreement (CSA) between CIC and City dated Sept. 5, 2007. Wherever used in this Exhibit, the term "this Agreement" means and includes the CSA, this Exhibit A and Exhibit B, as well as any Location Schedules attached thereto.

1.2. Location Schedules: This Agreement includes the signed attached Location Schedule(s). The Location(s) covered by this Agreement are listed on the attached Location Schedule(s). Other locations may be added to this Agreement upon request of Customer and acceptance by CIC, as evidenced by an additional signed Location Schedule. Customer may place orders for additional services at a Location, and the charges, terms and conditions shall be as specified for that Location on the Location Schedule and in this Agreement.

1.3. Other Locations: Customer may place orders for additional services at a Location for which there is no Location Schedule. CIC shall not be obligated to provide service at such a Location. However, if CIC elects to provide service at such Location, the charges, terms and conditions shall be as specified in this Agreement. Not all services may be available at all Locations. CIC reserves the right to require Customer to execute a Location Schedule for such service.

1.4. Written and Verbal Orders: CIC may accept verbal orders from Customer, however when CIC anticipates charges may result CIC may require Customer to submit orders in writing, including via email or FAX.

In the event that CIC has Provisioned service(s) to a Location for which there is no Location Schedule and for which there is no order signed by Customer, CIC's records kept in the normal course of business shall constitute sufficient evidence to establish Customer's request and agreement to pay CIC for such service(s) pursuant to this Agreement. (Example: Customer submits a verbal request for services at a Location for which there is no Location Schedule. CIC arranges for such services to meet Customer's request, but does not obtain a written order from Customer for such services.)

CIC's failure to obtain a signed order or Location Schedule from Customer shall not preclude CIC from billing Customer for such service pursuant to the charges, terms and conditions of this Agreement. Charges for a Location without a Location Schedule will be established based on the following precedence: 1) as stated by CIC in a written communication including a fax or an email specific to the Location where there services or equipment are provisioned; 2) as stated in the applicable Location Schedule; 3) as per other Location Schedules for the same service under similar or identical circumstances; 4) as per CIC's then standard practice.

The terms of this Agreement cannot be changed by any terms and conditions of a Customer purchase order or any other Customer document unless it is signed by Customer and an officer of CIC after the effective date of the Agreement.

1.5. Call Management Reporting: A management report showing billable call detail (except for Local Calls and calls for which no charge results) will be furnished by CIC at no additional charge. This report will be in sections by telephone number or groups of telephone numbers (departments) for direct dialed calls as designated by Customer. Special calls such as "700" or operator assisted calls may not be broken down by originating number. Call details will include the date, time, length of call, number dialed, generic name for place called and gross charge. Upon request of Customer, CIC will work with Customer to best organize the groupings of stations to coincide with Customer's organization. Upon request, a report of activity and totals for each department will be sent by email to up to 3 addresses per department on a monthly basis, after Customer's bill is generated. If reports are desired, Customer will supply email address(es) and a General Ledger/Budget code for each department. Any names or labels for services on any management report or invoice are provided for the convenience of Customer and no warranty is made regarding the initial or ongoing accuracy of such names or labels. Upon

request, CIC will supply monthly via email an ASCII file with department, General Ledger/Budget codes (if available), and total dollar amount in the format of one or more records per department.

1.6. Wiring: Charges for Provision and maintenance of wiring will be separately identified from charges for telecommunications services. Non-Recurring Installation of wiring (including cross connects unless otherwise specified in a Location Schedule, or performed as a part of initial work described in the Location Schedules attached to this Agreement at execution) or jacks is additional and will be billed at the time and materials charges then in effect by CIC or a CIC Affiliate. Charges for any wiring, equipment or other materials to extend cabling to any locations for any reason within each site will be billed on a time and materials basis unless such cabling is described on an attached Location Schedule or other arrangements are made in writing in advance.

1.7. Adds, Moves and Changes: Adds, moves and changes for customer premises equipment will be provided at normally billed rates of CIC or its Affiliate. Customer may be billed directly at CIC's option.

1.8. Listings: All listings in this Section 1.8 refer to other than yellow page listings in the telephone book published by the ILEC, or in the event the ILEC ceases to publish a directory, the primary directory in which the ILEC provides listings for its customers. Upon written request, one white page basic listing for each Location for which traditional voice services are provided will be provided at no additional charge. If a Location has no listing no credit will be provided and that no charge listing may not be used for another Location. For all other listings, Customer will be billed the rate for that type of directory listing as per CIC's Tariff. In the event such listing type is not contained within CIC's Tariff, the rate used will be from the tariff of the ILEC, which section regarding listings is incorporated hereby by reference. CIC AND ITS AFFILIATES SHALL UNDER NO CIRCUMSTANCES HAVE ANY LIABILITY WITH RESPECT TO ANY DIRECTORY LISTING OR 911 RELATED LISTING OR SERVICES.

1.9. Equipment: Charges for Provision and maintenance of equipment including customer premises equipment "CPE" will be separately identified from charges for telecommunications services. Some equipment provided may not be in factory sealed cartons but will be delivered from the inventory of CIC or a CIC Affiliate, or in some cases may be refurbished but will be provided with the maintenance services provided under this Agreement as if it were new. City may at its option provide equipment to be used under this Agreement subject to meeting all of the following conditions; 1) such equipment must be new and in factory sealed cartons, 2) it must be purchased from a vendor authorized to sell that product by the respective manufacturer within the geographic area of the City, 3) the factory warranty on such equipment is fully valid for the same time period as if the equipment was ordered by City through CIC, 4) such equipment is exactly the same manufacturer, model and equipped with the same options and software revision as if it had been ordered through CIC, and 5) CIC would be given 7 days prior written notice by the City in order that CIC would have the option of quoting a price that is lower than the other price provided to the City, in which case the City would make the purchase from CIC or its Affiliate. If a bona fide emergency exists and CIC cannot supply an item requested by the City on a timely basis, CIC agrees to waive the preceding subsection 5 requiring 7 days prior written notice for the City to purchase that item at City's expense outside of this Agreement.

1.10. Schedule: Consultant will complete the initial work described in the attached Location Schedules within 180 days of the effective date of this Agreement, unless delays beyond the control of Consultant occur.

2. Description of Services.

2.1. Telecommunications Services provided under this Agreement are separate and distinct from the supply, Provision and maintenance of equipment (including CPE) and wiring provided under this Agreement . Such services and equipment are defined in this Agreement including Exhibit B.

3. Charges. The NRC and MRC apply to each individual item including those on the Location Schedule for each Location.

3.1. Charges: MRC and NRC for each Location will be billed as per the Location Schedule for each designated Location, plus any items added which are not on a Location Schedule as per Section 1.4 "Written and Verbal Orders". The initial Non-Recurring Charges on each Location Schedule are due and payable to CIC upon execution of that schedule. Charges for Analog Lines at Locations for which there is not a written Location Schedule shall be subject to change based on rates/charges in CIC's Tariff. Customer is responsible for Monthly Recurring Charges as of the earlier of the date when telecommunications services are installed or activated at or for the premises designated by Customer. Pricing for additional equipment will be negotiated between Customer and CIC or its Affiliate.

3.2. Intentionally Omitted:

3.3. Telephone Calls: Charges for telephone calls are in addition to any NRC or MRC in this Agreement, unless otherwise specifically provided for in this Agreement. CIC shall provide telecommunications for all of Customer's telephone calls for services provided under this Agreement. Pricing per minute is specified in this Section 3.3 for all DDD calls. Pricing for each Local Call is calculated using the local or zone usage measurement (ZUM) rate as per the CIC's Tariff CPUC 1-T Schedules C and F, which is incorporated by reference herein. Charges for International Calls are found at http://www.creatint.com/tel-edge/international. CIC may adjust the charges for International Calls from time to time due to changes in the prices charged to CIC by Underlying Service Providers. These charges are incorporated by reference and are hereby made a part of this Agreement. Charges for non-direct dialed calls including but not limited to collect calls, operator-assisted calls, requests for busy interrupts, etc. shall be 100% of the gross billed charge to CIC plus a 25% fee. The rounding of domestic DDD calls shall be in 6-second increments, with a 24-second minimum. CIC may at its option bill domestic DDD calls by rounding up to the next full minute. Where CIC rounds billing for domestic DDD calls in such manner, CIC will estimate the difference in charges attributable to such rounding over billing for DDD calls in 6-second increments (with a 24-second minimum) and apply the percentage difference as a discount to the charges for such calls. Local Calls, International Calls, and miscellaneous calls are billed in 60 second increments. Charges for each telephone call are rounded up to the next full cent.

Charges for direct dialed calls classified as In Area Calls, In State Calls, or Out of State Calls shall be $ 0.0399 per minute. Annually, on the anniversary of the effective date of this Agreement, CIC will review the then effective tariff of Pacific Bell Telephone Company dba ATT California or its successor for its Intra State switched access charges (taking into account but not limited to call setup, per minute, tandem and trunking charges). If CIC determines the switched access charges vary by more than $ 0.005 per minute from the previous tariff (the tariff in effect as of the effective date of this Agreement if no adjustment has previously been made, otherwise the current tariff is compared to the tariff in effect as of the last revision), CIC will adjust the price charged to Customer by a similar amount per minute for In Area Calls, In State Calls, and Out of State Calls within 30 days. Customer will be notified of any change in writing.

Customer shall not be charged for calls between Customer Locations which meet all of the following criteria: All points on the call are telephones connected directly to a PBX (where the telephone and the PBX are at the same Customer Location) maintained by CIC under this Agreement, the call was made by dialing the applicable extension number and not "9", and the call was connected within the same PBX or actually carried only by a trunk or trunks which exclusively and directly interconnect PBXs at Customer Locations maintained under this Agreement. All other calls between Customer Locations other than calls which meet all of the preceding criteria in this paragraph shall be billed to Customer per this Agreement without regard for the terminating point of the call being a Customer Location.

3.4. Taxes, Fees, and Miscellaneous Service Charges: For telecommunications services, all taxes, regulatory fees, surcharges and similar fees required by law, governmental order or CIC's Tariff will be billed to Customer. Pay station service charges

will be billed to Customer on an estimated per call basis. For the Provision and maintenance of equipment (including CPE) and wiring, sales tax as well as any other applicable taxes, fees, and surcharges shall be applied.

3.5. Payment Terms: Payment Terms: Payments on invoices are due 30 days after the date on the invoice or the mailing date, whichever is later. Payments received after 30 days will be considered late payments. Customer is permitted three late payments of up to 60 days after the date of the invoice per fiscal year (July 1 through June 30). The fourth and subsequent late payments by customer in a fiscal year shall incur late charges of 1.5% per month applied to outstanding balances past 30 days. CIC reserves the right to (or to direct others to) suspend or disconnect Customer's services in the event of non-payment or incomplete payment to CIC after 60 days from the date on the invoice, but only after written Notice sent 7 calendar days in advance of disconnection. CIC shall bill Customer for all time and materials work within 90 days of the completion of such work, unless City and CIC agree to an extension.

3.6. Customer agrees that for the term of this Agreement, Customer agrees all its telecommunications services and information services which all or in part take the place of telecommunications services will be ordered through CIC. If any such service is not ordered through CIC, Customer agrees to notify CIC and to pay CIC 10% of the gross amount of such service on a monthly basis. This Section 3.6 will not apply to temporary service that is in use for 90 days or less and is in aggregate less than $100 per month, and public safety private line service to the County of Alameda. The facilities which deliver Internet to Customer Locations will be supplied by CIC, however Customer may separately arrange for access to the internet using such facilities, and such charges for access to the internet will not be subject to the charges in this section 3.6. (Example: Customer orders from CIC one or more T-1 lines to a Location as facilities for the delivery of internet access to that Location. Customer arranges with an ISP for internet access to be connected to the T-1 line(s). The charges of the ISP to Customer are not subject to this Section 3.6.)

3.7. As of July 1, 2007 the technician labor rate for time and materials work related to equipment or wiring, which is not provided for elsewhere in this Agreement, is $125 per on site hour, with a 1 hour minimum per technician per day. CIC will limit any increases in the technician labor rate so that the labor rate during the Initial Term shall not exceed $ 132.00 plus the increase in the Consumer Price Index for All Urban Consumers for the San Francisco Bay Area (1982-1984=100).

3.8. The installation, maintenance, and any charges related to the telecommunications services and equipment for the receipt of 911 calls in Customer's Public Safety Answering Point ("PSAP") are expressly excluded from this Agreement and are the exclusive responsibility of Customer.

4. Limitations of Service:

4.1. Service Exclusions: This Agreement does not cover the cost of maintenance and parts required due to accident, fire, theft, negligence, vandalism, use of equipment for something other than its intended purpose, acts of third parties, or force majeure. It does not cover maintenance for malfunction of customer-supplied parts, peripheral devices, or expendable items such as batteries, other than batteries for UPS units provided as a part of this Agreement. Alterations including programming or installation of additional equipment are not normal maintenance procedures and will be billed as per this Agreement or on a time and materials basis at CIC's option. The installation or maintenance of conduit, or cables or wires inside or outside of conduit, inside or outside of any building, for any reason, is not included.

4.2. Limitations of Liability and Indemnification: WITH REGARD TO ALL EQUIPMENT AND SERVICES PROVIDED OR MANAGED UNDER THIS AGREEMENT, CIC OR ANY AFFILIATE OF CIC INCLUDING WITHOUT LIMITATION ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF CIC OR ANY AFFILIATE OF CIC, HEREINAFTER REFERRED TO AS "CIC AND ITS AFFILIATES") SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR ANY LOSS, EXPENSE, CLAIMS, DEMANDS, JUDGEMENTS, PENALTIES, COSTS, INCLUDING ATTORNEYS' FEES AND COSTS, OR DAMAGES, HOWEVER NAMED,

WHETHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, RESULTING FROM OR INCIDENT TO ANY INTERRUPTION OR FAILURE OF SUCH EQUIPMENT OR SERVICES, DUE TO THE NEGLIGENCE OF CIC OR ITS AFFILIATE(S), EXCEPT AS HEREIN SPECIFICALLY PROVIDED: CUSTOMER SHALL BE GIVEN A PRO RATA HOURLY CREDIT OF MONTHLY RECURRING CHARGES FOR ANY INTERRUPTION OF SERVICE LASTING MORE THAN 24 HOURS. CIC AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY FAILURE OF PERFORMANCE DUE TO CAUSES BEYOND THEIR CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF GOD, FIRES, VANDALISM, EARTHQUAKES, FLOODS OR OTHER CATASTROPHES, NATIONAL EMERGENCIES, TERRORIST ACTS, INSURRECTIONS, RIOTS OR WARS, STRIKES, LOCKOUTS, WORK STOPPAGE OR OTHER LABOR DIFFICULTIES, AND ANY ORDER, REGULATION OR OTHER ACTION OF ANY GOVERNING AUTHORITY OR AGENCY THEREOF. IF CIC AND ITS AFFILIATES ARE FOUND LIABLE FOR GROSS NEGLIGENCE RESULTING IN OR INCIDENT TO ANY INTERRUPTION OR FAILURE OF SUCH EQUIPMENT OR SERVICES, THEIR MAXIMUM LIABILITY TO CUSTOMER SHALL NOT IN ANY EVENT EXCEED $5,000. CUSTOMER SHALL INDEMNIFY AND DEFEND CIC AND ITS AFFILIATES FOR ANY LOSS AND ALL DAMAGES, HOWEVER NAMED, ATTRIBUTABLE TO THE NEGLIGENCE OR GROSS NEGLIGENCE OF CUSTOMER. UNDER NO CIRCUMSTANCES SHALL CIC OR ITS AFFILIATES INDEMNIFY CUSTOMER AGAINST LOSS OR LIABILITY ATTRIBUTABLE TO OR CAUSED BY UNDERLYING SERVICE PROVIDERS. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO RELIEVE CIC OF ANY LIABILITY FOR PROPERTY DAMAGE OR PERSONAL INJURY AT A CUSTOMER LOCATION.

4.3. Exclusion of Warranties: CIC AND ITS AFFILIATES MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

4.4. INTENTIONALLY OMMITTED

5. Definitions: Technical terms not defined herein, have the meaning that is commonly accepted in the telecommunications industry.

5.1. "Acceptable Use Policy" – a policy that provides enforceable guidelines as to acceptable and unacceptable use of services and Components. A current copy may be found at http://www.creatint.com/aup.

5.2. "Acceptance" – Acceptance occurs on the earlier of any of the following: when Customer notifies CIC that the service (made up of one or more Components) is accepted by Customer or operating properly, or in the event that CIC notifies Customer in writing (including via email) that service is available and Customer does not respond in writing with any concerns or issues within one week, or when Customer or its users begin to use any portion of such service at that Location for purposes other than testing.

5.3. "Affiliate" - An entity under common control with CIC.

5.4. "Analog Lines" – individual connections to a telecommunications system for the purpose of telephone communication with a Customer-provided and maintained device which has an analog interface compatible with those found on an industry standard single line telephone.

5.5. "Available Bandwidth" – the capacity of a circuit (or the sum of the functioning circuits in a group of circuits used together which utilize the same Point of Demarcation at a Location) after subtracting (i) the capacity required for overhead as a part of any protocol and (ii) any bandwidth used by CIC or another party for testing or administration. The Available Bandwidth between two Locations on a network is the lowest of the Available Bandwidth at any point which connects the two Points of Demarcation on the network. However each portion of the Available Bandwidth at any point may only be used once, i.e., between two Points of Demarcation or between a Point of Demarcation and another point. The Available Bandwidth may vary and is not necessarily constant. Examples:

5.4 a One T-1 used for data: A T-1 nominally has a maximum bandwidth of 1.536 mbps. If 136 kbps of the bandwidth is in use for protocols and by CIC or others for testing or administration, the Available Bandwidth would be 1.4 mbps.

5.4 b Two T-1s operated together between two Locations used for data: Each T-1 nominally has a maximum bandwidth of 1.536 mbps, so two T-1s nominally have a collective maximum bandwidth of 3.072 mbps. If 300 kbps of the bandwidth is in use for protocols and by CIC or others for testing or administration, the Available Bandwidth for the two T-1s together would be 2.772 mbps.

5.4 c Two T-1s operated together between two Locations used for data, with one circuit inoperative: Each T-1 nominally has a maximum bandwidth of 1.536 mbps, but as only one is operative the collective maximum bandwidth is 1.536 mbps. If 150 kbps of the bandwidth is in use for protocols and by CIC or others for testing or administration, the Available Bandwidth for the two T-1s together would be 1.386 mbps.

5.4 d One half of one T-1 used for data: A T-1 nominally has a maximum bandwidth of 1.536 mbps. One half of one T-1 has a nominal bandwidth of 768 kbps. If 80 kbps of the bandwidth is in use for protocols and by CIC or others for testing or administration, the Available Bandwidth would be 688 kbps.

5.4 e One 100 Base T Point of Demarcation: A 100 Base T connection nominally has a maximum bandwidth of 100 mbps. If 20 mbps of the bandwidth is in use for protocols and by CIC or others for testing or administration, the Available Bandwidth would be 80 mbps.

5.4 f Between one 100 Base T Point of Demarcation and a Point of Demarcation served via a single T-1: A 100 Base T connection nominally has a maximum bandwidth of 100 mbps. If 20 mbps of the bandwidth is in use for protocols and by CIC for testing or administration, the Available Bandwidth for the 100 Base T connection would be 80 mbps. A T-1 nominally has a maximum bandwidth of 1.536 mbps. If 136 kbps of the bandwidth was in use for protocols, and by CIC or others for testing or administration, the Available Bandwidth for the Point of Demarcation served by a single T-1 would be 1.4 mbps. The Available Bandwidth between the two Points of Demarcation would be the lower of the Available Bandwidths of the two Points of Demarcation, or 1.4 mbps, less any bandwidth used from Point of Demarcation served by a single T-1 to any other location(s), so long as the 100 Base T Point of Demarcation has less than 78.6 mbps in use to other locations(s).

5.5. "Blocking" – a condition that occurs when an incoming or outgoing call does not complete because an appropriate trunk line is not available.

5.6. "Caller ID" – on a Location Schedule refers to the following, all of which will be available at City Hall and to the extent technically feasible with the existing PBX software at all Locations other than City Hall, the following: inbound Caller ID for Superset telephones, outbound Caller ID for all Superset telephones with one of the following options to be designated by Customer: a) No Caller ID ("Unavailable" or "Blocked)", b) Actual Caller ID of Direct Dial number for that extension, c) Caller ID of Main City Number, or d) An alternate valid City Caller ID. If selection of these options by individual telephone is not feasible for a particular Location, the selection may be made for the Location as a whole. Additionally for City Hall Inbound Caller ID will be available to the Public Safety Answering Point (Dispatch) on 7 digit emergency and business Analog Lines, and Caller ID for calls from the City owned outbound calling unit will be customizable within any applicable technical constraints.

5.7. "CIC's Tariff" – The tariff filed by CIC with and approved by the California Public Utilities Commission (CPUC), or its successor agency. In the event that CIC may no longer file a tariff with the CPUC, "CIC's Tariff" refers to the CIC tariff last on file with the CPUC as modified by CIC with Notice given to Customer.

5.8. "Circuit" - a communication path between two or more points of termination

5.9. "Component" – An individual service provided under this Agreement which may or may not be usable without other Components.

5.10. "Cutover" – the date that the equipment and/or service has as applicable been delivered, setup and become operational per this Agreement.

5.11. "DDD" – Direct Distance Dialed calls, also known as long distance calls, are any direct dialed calls made to points outside the Local Calling Area of the exchange of the number assigned to Customer by CIC at a Customer Location which are not International Calls.

5.12. "Digital Lines" – individual connections to a telecommunications system for the purpose of telephone communication with a CIC-provided and maintained (or approved Customer provided) digital telephone.

5.13. "Existing-maint" on a Location Schedule means that the equipment described on that line is existing equipment which was supplied previous to this Agreement and owned by Customer and for which maintenance services will be provided under this Agreement.

5.14. "Existing-svc" A service which exists and is billed by CIC or an Affiliate of CIC to Customer as of the effective date of this Agreement.

5.15. "ILEC" – The incumbent Local Exchange Carrier for the geographic area which includes the Location.

5.16. "In Area Calls" – calls from a Customer Location to numbers assigned to exchanges within the same LATA as the exchange of the number assigned to Customer by CIC, outside of the Local Calling Area.

5.17. "In State Calls" – calls from a Customer Location to numbers assigned to exchanges within the same state as the exchange of the number assigned to Customer by CIC which are not Local Calls or In Area Calls.

5.18. "International Calls" – calls to numbers assigned to points outside of the 50 states of the United States of America. Calls to Puerto Rico, US Virgin Islands, and other territories and possessions of the United States shall be treated as International Calls. Calls to maritime and satellite phone services shall be treated as International Calls.

5.19. "kbps" – kilobits per second.

5.20. "LATA" – Local Access and Transport Area.

5.21. "Local Calling Area" – the exchanges to which calls are provided at a local or zone usage measurement (ZUM) rate from the exchange assigned by CIC to the service at a Customer Location as per the CIC's Tariff.

5.22. "Local Calls" – calls from Customer Location to numbers assigned to exchanges within the Local Calling Area. Toll Free calls are never considered local calls.

5.23. "Local Exchange Carrier (LEC)" – a provider of telecommunications services that provides local exchange services either pursuant to tariff or contract.

5.24. "Location" – is the physical Customer location specified on the Location Schedule, or any other location where CIC provides Customer's service.

5.25. "mbps" – megabits per second.

5.26. "Monthly Billing Period" shall extend from the 16th day of each month to the 15th day of each succeeding month and will be invoiced on or about the 26th of the preceding month. CIC may change the Monthly Billing Period of Customer and make associated prorated Monthly Recurring Charges, or by providing a prorated credit for same based on the change in billing date. Charges are payable hereunder for the first and last fractional months of any Component.

5.27. "NRC" – means Non-Recurring Charge

5.28. "Non-Recurring Charge" – is a charge under this Agreement which does not recur each month. Non-Recurring Charges are not refundable.

5.29. "MRC" – means Monthly Recurring Charge

5.30. "Monthly Recurring Charge" – means a charge which is billed monthly. Monthly Recurring Charges may not stop less than 30 days after Customer requests a service or Component be terminated and provides a date for such, unless otherwise provided hereunder. Monthly Recurring Charges are not refundable, although Customer may be entitled to a credit or credits for service outages as provided for herein. A Location Schedule may provide a total of Monthly Recurring Charges for the quantity of items listed on that Location Schedule.

5.31. "Notice" – notice shall be provided in accordance with Section 18 of The Contractual Services Agreement between the City and CIC.

5.32. "Out of State Calls" – calls from Customer Location to numbers assigned to exchanges outside the same state as the exchange of the number assigned to Customer by CIC, which are not International Calls.

5.33. "Provision" – The activity of supplying or providing service or equipment.

5.34. "Point of Demarcation" – a handoff from CIC to Customer where CIC's responsibilities under this Agreement begin. Examples: 1) A T-1 between two Locations with Customer-provided routers. The Point of Demarcation is the jack for the T-1 at each Location, subject to provisions for maintenance of inside wiring under this Agreement. 2) A T-1 between two Locations with CIC-provided routers. The Point of Demarcation is the LAN connection on the

router at each Location, subject to provisions for maintenance of inside wiring under this Agreement.

5.35. "Regulated Providers" – telecommunications service providers that are regulated by a State Public Utilities Commission, the Federal Communications Commission, or similar governmental agency.

5.36. "System Check" – work at a Location where the PBX equipment and the CSU/DSU/Router will be inspected, preventative checks made, and cleaned as needed (as determined by the technician who is making the inspection). Labeling and documentation will be updated as needed. Underutilized equipment will be identified and redeployed between Locations as needed. All telephones at the Location will have their labels replaced reflecting the new direct numbers, and all frayed or tired cords will be replaced.

5.37. "Surcharge" – a charge applied to a rate or other charge by an Underlying Service Provider. Surcharges include but are not limited to charges applied by Underlying Service Providers at the direction of the federal and state regulatory authorities or to recover costs that are caused directly, or indirectly, by mandates of such authorities. Surcharges do not include Underlying Service Provider's surcredits.

5.38. "Surcredit – a credit applied to a rate or charge by an Underlying Service Provider.

5.39. "Termination Charge" – a charge paid by Customer to CIC for the full or partial termination of this Agreement.

5.40. "Underlying Service Providers" – are providers (whether or not they are Affiliates of CIC) of telecommunications services or equipment provided or managed under this Agreement. Underlying Service Providers include, but are not limited to Regulated Providers.

6. General.

6.1. Intentionally Omitted

6.2. Good Faith: CIC hereby agrees to furnish equipment and telecommunications services to Customer on a professional, good faith basis, pursuant to the charges, terms and conditions of this Agreement. Customer agrees to pay and reimburse CIC pursuant to the charges, terms and conditions of this Agreement.

6.3. Appointment of CIC as Agent: Customer hereby appoints CIC as its agent for the acquisition of telecommunications services ordered through CIC, and agrees to sign any Letters of Agency or forms for this purpose. Customer further agrees to become a customer of telecommunications services with CIC and to sign any necessary forms for that purpose, and further authorizes CIC to sign any such forms on Customer's behalf as its agent.

6.4. CIC's Obligations: It will be CIC's responsibility to order, install, and maintain telecommunications equipment for the use of Customer. Equipment not at a Customer Location will be for the non-exclusive use of Customer. It will also be CIC's responsibility to provide telecommunications services for the use of Customer. CIC agrees to provide reasonable initial and ongoing training at no additional charge. CIC will provide reasonable training for Customer's IT personnel including an overview of the system and making basic moves of telephones using a punch down tool and will authorize persons so trained by CIC to make such moves. CIC will also supply software and blanks for creating telephone labels and will train Customer's IT personnel on use of same. Customer support for inquiries will be available by telephone or email during normal business hours which are from 8AM to 4:30 PM Monday through Friday, excluding holidays recognized by CIC. CIC agrees to provide support and maintenance for the telecommunications equipment provided and telecommunications services provided under this Agreement during the term of this Agreement. This Agreement covers replacement of all standard parts on an exchange basis. Accessories such as headsets are not included. Routine maintenance service will be provided during normal business hours, and at CIC's option outside of normal working hours for an additional charge in accordance with CIC's then standard practices. If so specified on a Location Schedule service affecting routine maintenance services may be provided outside of normal working hours without additional charge. Emergency maintenance service for major outages will be provided 7 days a week, 24 hours a day. CIC will respond or

begin remote diagnosis within 2 hours from the time of notification on major outages which do not allow for either incoming, outgoing or internal calls, and one business day on minor malfunctions. Customer agrees to follow instructions for requesting emergency maintenance services found on CIC's main number (650) 595-5555 or in written instructions provided by CIC.

6.5. Customer's Obligations: Customer agrees to provide at Customer's sole expense the space, environment including temperature, appropriate electric power, and 24-hour per day access required for the equipment necessary for the Provision of any services provided pursuant to this Agreement, and to provide a clean, well lit and safe environment for any personnel of CIC, its vendors, contractors, or Affiliates. Customer agrees that no equipment used by Customer as a part of this Agreement will become a fixture, and agrees to have any building owner confirm this in writing. Charges of any building owner or manager including but not limited to charges for riser access or use of riser cabling shall be the responsibility of Customer. Customer agrees to arrange for and if required pay for any access to risers, power, telecommunications rooms, etc. required by CIC in its performance of this Agreement. Telecommunications services, installation or re-installation and labor ordered directly by Customer from other than CIC, whether during or after the term of this Agreement, shall be the responsibility of Customer. It is Customer's responsibility to notify any existing vendors and to arrange for cancellation of Customer's existing service(s) and contract(s). Customer's obligations include but are not limited to payment of the charges and performance of the terms and conditions set forth in this Agreement. Customer is responsible for all maintenance and costs associated with any voice mail system used by Customer which was not supplied by CIC or its Affiliates. In order for 911 calls to show the name of the physical location associated with the direct dial number of the calling extension Customer will need to provide location information in writing initially to CIC for this to be effective, and on an ongoing basis to maintain accuracy.

6.6. Term of Agreement: By default, the Initial Term of each Location Schedule or any service provided without a Location Schedule will be coterminous with the attached Location Schedule for City Hall. The Initial Term of the attached Location Schedule for City Hall will conclude 36 months after the earlier date of the completion of work described in the Location Schedule for City Hall plus 60 calendar days, or once all of the work described in all of the other attached Location Schedules for Locations other than City Hall is complete.

Location Schedules may define a different term. In the event of a conflict in the Initial Term, the Initial Term for each service shall be the longer of the Initial Term stated in the Location Schedule, or the term measured from the start of billing of the service to the end of the Initial Term for the City Hall Location Schedule, unless the Location Schedule specifically states that the Initial Term overrides the Agreement, in which case the Location Schedule shall apply.

For the purposes of this section a Location for which CIC has accepted order(s) without a signed Location Schedule as per Section 1.4 "Written and Verbal Orders" shall be deemed to have a Location Schedule with the terms as would be defined in Section 1.4 "Written and Verbal Orders".

After the Initial Term, each Location Schedule shall automatically renew for an additional one-year Term on the anniversary of the Initial Term unless written notification is given 60 days in advance of the termination of the Term by either party.

For the first additional one-year Term, a discount of $265.09 per month shall be applied to the total MRCs from the Initial Term for the City Hall Location Schedule, so long as all Location Schedules that are a part of this Agreement as of the effective date of this Agreement are still in effect for that additional one-year Term.

For the second additional one-year Term, a discount of $349.07 (instead of to the preceding discount of $265.09) per month shall be applied to the total MRCs from the Initial Term for the City Hall Location Schedule, so long as all Location Schedules that are a part of this Agreement as of the effective date of this Agreement are still in effect for that additional one-year Term.

For the third and any subsequent additional one-year Terms, the discount preceding for the second additional one-year Term may be adjusted annually by CIC to reflect inflation and increased costs. If CIC is to adjust this discount it will provide written notification to the City 90 days in advance of the expiration of the previous Term.

This Agreement shall remain in effect as long as services are provided.

6.7. Questions or Claims Regarding Invoices: Customer agrees to notify CIC promptly and in writing if any questions or issues arise regarding any invoice, but in no case later than 90 days from the date of the invoice. CIC will not consider requests for credit dated more than 120 days from the date of the invoice in question, and Customer agrees to diligently review all invoices when received.

6.8. Miscellaneous: The headings of this Agreement are set forth for convenience only, and do not limit the subject matter of any provisions herein.

6.9. Intentionally Omitted:

6.10. Contracting: CIC may subcontract all or part of the services provided under this Agreement while maintaining responsibility.

6.11. Intentionally Omitted:

6.12. Unauthorized Access: Customer acknowledges and accepts full financial responsibility for and agrees to pay CIC for any unauthorized use of any equipment or telecommunications service, whether initiated by a person or a device. CIC DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY THAT ANY EQUIPMENT OR SERVICE EXISTING OR ADDED (WHETHER OR NOT A PART OF THIS AGREEMENT) IS TECHNICALLY IMMUNE FROM OR PREVENTS FRAUDULENT INTRUSIONS INTO AND/OR UNAUTHORIZED USE OF CIC'S SERVICES OR ANY EQUIPMENT INCLUDING EQUIPMENT OWNED BY CUSTOMER. Customer is hereby warned that fraudulent use of equipment and services, including but not limited to DISA (direct inward system access), auto-attendant, voice mail, "Toll Free" (800/888, etc.) and 900 service is possible. Customer acknowledges and accepts full financial responsibility for all usage including calls that are made from, to or through a Location (including Toll Free, Collect, or other reverse billing arrangements), even if the usage or call originates from another location. CIC does not indemnify Customer from usage charges including calls billed by an Underlying Service Provider. Customer agrees to take appropriate steps to protect equipment owned or used by Customer or Customer's users from unauthorized access or use. Upon written request of City, CIC will confer with the City with respect to prevention and detection of fraudulent use of equipment and telecommunications services other than voice mail and all aspects of the Internet. If CIC has knowledge of unauthorized use, CIC will cooperate with and assist the City as appropriate in the investigation and remediation of fraudulent use of telecom equipment and services with the exception of voice mail and all aspects of the Internet.

6.13. Regulatory Changes: In the event a government agency or Underlying Service Provider makes changes which remove the availability of a particular product or service to CIC or its Affiliates or increases the price from the price in effect as of the effective date of either this Agreement, or any applicable Location Schedule, CIC shall be allowed at its option to cease offering a service to Customer without penalty at one or more Locations, or to recover the increased costs by means of a surcharge or price increase.

6.14. Jurisdictional Declaration: Customer is responsible for notifying CIC in writing on a Location Schedule prior to execution or by providing Notice regarding the jurisdictional nature of any circuit provided or managed by CIC for Customer. Customer agrees to indemnify CIC, its Affiliates, or any successor against any additional costs incurred by CIC in the event that CIC or an Underlying Service Provider determines that the jurisdictional nature of any such circuit is different than Customer has notified CIC. In the absence of such notification by Customer, the jurisdictional nature of the circuit will be the same as was stated to the Underlying Service Provider by CIC or its Affiliate.

6.15. Intentionally Omitted

6.16. Termination of Agreement: This Agreement may be terminated for a material breach of its terms by the aggrieved party upon 30 days written Notice and opportunity to cure given to the other party. If CIC terminates this Agreement due to a material breach by Customer, or if Customer terminates this Agreement for any reason during the Initial Term or

Renewal Term of any Location Schedule, CIC will be paid a Termination Charge. Customer and CIC agree that it would be difficult to determine actual damages in the event of a termination and that the Termination Charge is a reasonable approximation thereof. The Termination Charge will be calculated individually for each Location Schedule. For a Location Schedule within its Initial Term the Termination Charge will be 26% (except that if more than 36 months remain on the Initial Term of that Location Schedule, the Termination Charge will be 21%) of the then current Monthly Recurring Charges for each Location Schedule times the number of full and partial months remaining on the Initial Term for that Location Schedule. For a Location Schedule past its Initial Term the Termination Charge will be 15% of the then current Monthly Recurring Charges for each Location Schedule times the number of full and partial months remaining on any Renewal Term for that Location Schedule. Any partial termination of services at a Location shall be treated as a full termination of services at that location except that CIC in its discretion may allow a partial termination provided that a Termination Charge shall be assessed for such partial termination. After payment in full (including payment of any Termination Charges) is received by CIC, CIC will cooperate with Customer and other providers in making any service rearrangements, but CIC shall have no obligation to provide such rearrangements, and the title to any telecommunications equipment provided under this Agreement at a Customer Location (per Location Schedules plus additional equipment paid for by Customer) will be transferred to Customer. Customer shall pay all charges for any rearrangements or billing changes. For the purposes of this section, for any Location for which services are provided and for which there is not a Location Schedule, the Termination Charge shall be calculated as if there was a Location Schedule as per Section 1.4 "Written and Verbal Orders".

6.17. Equipment: At the end of the Initial Term, ownership of and title to all of the equipment specified in the Location Schedules which is provided under this Agreement and is located at Customer's Locations will pass to Customer. Pricing for additional equipment will be negotiated between Customer and CIC. Any additional equipment of any type ordered by Customer and added during the term of the Agreement will be paid for by Customer. CIC will supply the equipment from its or an Affiliate's inventory or purchase the equipment on behalf of Customer and will endeavor to obtain competitive pricing based on making purchases from the manufacturer or other reputable sources as allowed under any agreement CIC or its Affiliates may have with a manufacturer, and Customer will be billed accordingly. CIC will adjust its Monthly Recurring Charges to Customer for a Location when equipment is added to reflect the additional charges for maintenance of any added equipment. When a circuit card is added to a PBX, additional maintenance charges will apply. When telephones are added to an existing circuit card in a PBX, additional maintenance charges for the telephone will not apply. All equipment at Customer Locations which is owned by Customer or for which title will be passed by CIC or an Affiliate of CIC to Customer which is required to operate Customer's telecommunications services as of the date of this Agreement, including but not limited to all telephones and equipment (including cards, sub assemblies, and accessories), shall continue to be made available by Customer for use under this Agreement, for as long as this Agreement is in effect. Any telecommunications equipment removed or made obsolete by the work performed under this Agreement, with the exception of PBX station cards, may at CIC's option, become the property of CIC for recycling, reuse, or other disposition.

EXHIBIT "B"

PROPOSAL

(10)

CREATIVE INTERCONNECT

Communications, LLC

Exhibit B to Contractual Services Agreement
Proposal and Location Schedules
August 9, 2007

Background:

The City of Newark and an affiliate of Creative Interconnect Communications, LLC (CIC), Creative Interconnect Telemanagement (CIT), have been working together on Telecommunications since 1992, and CIT has been the City's Telecommunications Manager since October, 1994.

Since 1994 CIT has provided 24 hour per day, 7 day a week service to insure that Police, Fire, and other important City departments have reliable, cost effective, and user friendly telephone service. Additionally CIT has worked with City staff to insure that the City's current and anticipated Telecommunications needs have been met. One of the accomplishments we are most proud of is the personalized service we have provided to the City, which has been made possible in part through the excellent working relationship between the City and CIT's staff. With CIT, the City never has to call a toll free number, wait on hold, or navigate endless menus to make a request.

In 1994, many telephone sets at City Hall were upgraded to Digital, the Corporation Yard and Civic Terrace were brought into the City Hall system, a Y2K compliant new telephone switch was installed at City Hall, and all of this was accomplished at a significant cost savings.

In 2000 additional improvements were made, including:

- The bandwidth from all remote locations to the City Hall computer network was increased
- The City Hall telephone switch was upgraded with a new CPU, software, and capacity
- Integrated Access Manager unit was installed for integration of Voice and Data of the City's private network
- Virtually all remaining analog telephones at City Hall were upgraded to Digital
- Remote sites had new digital telephone systems installed and analog telephones were upgraded to City standard digital telephones
- Reports on Telephone Usage and Expense provided electronically via EMAIL
- High Speed Digital T1 Connection to the Internet via City Hall to all sites
- Backup Emergency Power for Telephones at all sites

Presently CIT is serving the City of Newark on a month to month basis, per the 2000 contract. Even though CIC is familiar with the City's telecommunications needs, site

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(650) 595-5555 FAX (650) 592-1562

visits were made by CIC personnel to review site specific conditions as needed. The information collected from these site visits, as well as input from CIC personnel and City staff, was invaluable in the creation of this proposal.

CIC now proposes to continue the same high standard of service provided in the past, for an additional 3 years. Presently, CIC proposes to make the following further improvements and enhancements to the City's Voice and Data Telecommunications:

General:

This proposal is for a fully managed service, where CIC provides all of the following:

- 24/7 Service for all hardware, software and services including access to CIC's local inventory of spare parts and field visits from technicians 24 hours per day
- Network documentation, record keeping, and off site backups of programs
- CIC acts as a single point of contact for maintenance and changes. This avoids finger pointing between multiple vendors. As a "General Contractor" CIC manages all of the integrated parts, managing for the desired outcome
- CIC provides all hardware, software and professional services (including user support) to implement this proposal, and does so without any up front charges to the City, and for a cost savings over the present monthly charges
- After the 3 year term of the agreement, all added equipment becomes the property of the City.
- CIC monitors and audits its incoming billings prior to invoicing the City, which reduces or eliminates inaccurate and fraudulent charges
- CIC provides a single monthly invoice and management report to the City, which collates and organizes data from many different sources (including billings) into a single easy to read report which clearly identifies costs and users
- CIC provides timely reports via EMAIL to City departments to allow them to monitor and control expenses
- All of this is accomplished for a fixed fee which varies only under specific circumstances such as cost reductions due to market changes and cost increases that may occur due to State and Federal regulations
- Certain existing equipment which will no longer be needed, will be returned to CIC, which will either re use the equipment or recycle it in an environmentally friendly manner
- All of these functions are performed by CIC without the City having to dedicate the time of City staff, and without City investment in specialized software and training

Key Improvements:

New Telephone Numbers:

The City will have all numbers in all departments be consistent with a single prefix – 510-578. The new numbers are:

- 510-578-4000 for the main number at City Hall and
- 510-578-4001 through 4999 for all other

The existing 3 digit extension numbers will match the new direct dial numbers.

Transition Existing Numbers:

The additional numbers will be available at all sites to relieve a present shortage of numbers. The new and old numbers will operate in parallel for about one year to allow citizens time to adjust, and following that year there will be several months where callers to the old numbers receive a customized recording advising them of the new numbers.

Caller ID:

Inbound Caller ID to will be available to all Superset telephones. Outbound Caller ID will have multiple options by individual phone (or remote location). These include:

- No Caller ID "Unavailable" or "Blocked"
- Actual Caller ID of Direct Dial number for that extension
- Caller ID of Main City Number (510-578-4000)
- An alternate City Caller ID such as a manager's phone showing their administrative assistant's number

All of this is accomplished by department which will allow some departments to utilize these features and others to preserve the status quo for now if desired

Inbound Caller ID will be available to the Public Safety Answering Point (Dispatch) on 7 digit emergency and business lines

Caller ID for calls from the Dialogic unit will read "Newark Emergency" (or other short phrase as designated by City)

Emergency Calls:

911 calls will show the direct dial number of the calling extension and the location such as "City Hall 5th Floor". For example, 911 calls from the Senior Center and Corporation Yard will each show the respective name and address even though those two sites share a PBX. The same will be true of the Silliman Center, Silliman Aquatics Center, and Fire Station 3 which also share a PBX.

(12)

Backup phone lines will be provided to the primary EOC at City Hall similar to the backup EOC at Fire Station 1.

Bandwidth and Data Network:

For access to the Internet from City Hall the router will be replaced and the speed increased to 6 mega bits per second symmetric speed (upload/download). This will increase performance and allow better service to citizens.

For access to the internal City network (including access to the Internet) from the Silliman Complex and Fire Station 3, the router will be replaced and the speed increased to 4.5 mega bits per second symmetric speed (upload/download). This will increase performance and eliminate present and likely future bottlenecks.

For access to the Internet from the Silliman Center the router will be replaced and the speed increased to 1.5 mega bits per second symmetric speed (upload/download). This will increase performance by a factor of 12.

Reliability:

T1 lines will be remotely monitored 24 hours per day to help detect problems before they are service affecting.

In order to maintain reliability and extend service life, the equipment will be internally cleaned and thorough preventative checks made at each site. Labeling and documentation will be updated as needed. Underutilized equipment will be identified and made available for redeployment between sites as needed.

All telephones in the City will have their labels replaced reflecting the new direct numbers, and all frayed or tired cords will be replaced.

All remote locations will have the backup power systems replaced with units which allow hot swaps of batteries, which will first occur in 30 months, in advance of the expiration of the service life of the batteries.

The City Hall telephone system will have its software updated.

Summary of Projected Costs:

Total Proposed Monthly Recurring Charges*	$ 11,204.74
Less Projected Cost Savings	$ (415.42)
Less Current Monthly Recurring Charges	$ (11,824.65)
Projected Net Increase (decrease) in monthly charges due to this proposal**	$ (1,035.32)

Non recurring charges: $ 0.

(10)

* This amount includes an estimate of $500 in Monthly Recurring Charges which will be billed directly to the City by SMRN and will not be a part of the Agreement between CIC and the City.

** This projected amount has not been reduced by the undistributed reserve below.

An undistributed reserve of $400 in Monthly Recurring Charges will be set aside for improvements or changes which are desirable but not included within this proposal. Only the amounts actually used will be billed, and City's representative will approve in advance any additional work which would be paid for out of the undistributed reserve.

Thank you for your consideration of this proposal. We look forward to again being of service to the City of Newark.

Yours truly,

Bill Wilde
President

Creative Interconnect Communications, LLC
The Creative Interconnect Building
555 Old County Road
San Carlos, Calif, 94070
(650) 595-5555 - Fax 650-592-1562
EMAIL: support @ creatint.com

City of Newark
Location Schedule
City Hall / Main
August 9, 2007

1	Mitel 200 ML (Existing-maint)
27	Station Cards (Existing-maint)
1	System Check and Caller ID
10	DID Numbers, Block of 100
1	Transition Existing Numbers
24	Voice Trunks on T1
6	Analog Lines (for EOC)
1	Analog Lines
1	Digital Cross Connect (Exist-maint)
1	Renumbering of Extensions to 4 Digit
12	Analog Lines (for outbound calling unit)
2	Routers with 8 T1 and 2 Ethernet Ports
1	Update PBX Software
2	T1 Line to CIC - Voice (existing-svc)
4	T1 Line to CIC - Data
1	T1 Line - City Hall to ALCO SNLN (existing-svc)
1	Preferred Customer Discount
1	Support and Email Billing

$	150.42	MRC - Equipment
$	3,846.00	MRC - Telecommunications Services
$	2,159.75	MRC - Equipment Maintenance and Support
$	6,156.17	MRC - Sub Total (Monthly Recurring Charges)
$	-	Initial Non Recurring Charges

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City of Newark
Location Schedule
Fire Station #1 / Alternate EOC
August 9, 2007

1	Mitel 200 ML (Existing-maint.)
4	Station Cards (Existing-maint.)
1	Replace UPS
1	System Check and Caller ID
4	Analog Lines (existing-svc)
1	Renumbering of Extensions to 4 Digit
1	Router - 1 T1, 1 DSX, 1 Eth, DHCP
2	CSU/DSU (existing-maint.)
1	T1 Line to City Hall (existing-svc)
1	T1 Line to CIC (existing-svc)
10	Voice Trunks on T1 (exist-svc)

$	84.13	MRC - Equipment
$	650.00	MRC - Telecommunications Services
$	443.50	MRC - Equipment Maintenance and Support
$	1,177.63	MRC - Sub Total (Monthly Recurring Charges)
$	-	Initial Non Recurring Charges

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City of Newark
Location Schedule
Fire Station #2
August 9, 2007

1 Mitel 200 ML (Existing-maint.)
1 Station Cards (Existing-maint.)
1 Replace UPS
1 System Check and Caller ID
1 Analog Line
1 Renumbering Extensions to 4 Digits
1 Router/CSU/DSU (Existing-maint)
1 T1 Line to City Hall (existing-svc)

$	45.24	MRC - Equipment
$	185.00	MRC - Telecommunications Services
$	160.25	MRC - Equipment Maintenance and Support
$	390.49	MRC - Sub Total (Monthly Recurring Charges)
$	-	Initial Non Recurring Charges

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City of Newark
Location Schedule
Fire Station #3 / Silliman Center
August 9, 2007

1	Mitel 200 ML (Existing-maint)
9	Station Cards (Existing-maint)
1	Replace UPS
1	System Check and Caller ID
1	Analog Station Card
2	Analog Lines (existing-svc)
5	Analog Lines
6	Reterminate Emergency Phones to PBX
1	Renumbering Extensions to 4 Digits
1	Router-Silliman Lab, 1 T1, 1 Eth.
1	Router - 8 T1, 2 Eth.
1	T1 Line to City Hall - Data (existing-svc)
1	T1 Line to City Hall - Voice (existing-svc)
3	T1 Line to City Hall - Data
1	Preferred Customer Discount

$	61.52	MRC - Equipment
$	975.00	MRC - Telecommunications Services
$	805.25	MRC - Equipment Maintenance and Support
$	1,841.77	MRC - Sub Total (Monthly Recurring Charges)
$	-	Initial Non Recurring Charges

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City of Newark
Location Schedule
Community Center
August 9, 2007

1 Mitel 200 ML (Existing-maint.)
2 Station Cards (Existing-maint.)
1 Replace UPS
1 System Check and Caller ID
2 Analog Line
1 Renumbering Extensions to 4 Digits
1 Router/CSU/DSU (Existing-maint))
1 T1 Line to City Hall (existing-svc)

$	57.41	MRC - Equipment
$	210.00	MRC - Telecommunications Services
$	242.25	MRC - Equipment Maintenance and Support
$	509.66	MRC - Sub Total (Monthly Recurring Charges)
$	-	Initial Non Recurring Charges

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555 Old County Road
San Carlos, Calif, 94070
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EMAIL: support @ creatint.com

City of Newark
Location Schedule
Corporation Yard and Senior Center
August 9, 2007

1 Mitel 200 ML (Existing-maint.)
4 Station Cards (Existing-maint.)
1 Replace UPS
1 System Check and Caller ID
1 Analog Line
1 Renumbering Extensions to 4 Digits
1 Router/CSU/DSU (Existing-maint)
1 T1 Line to City Hall (existing-svc)

$	61.77	MRC - Equipment
$	185.00	MRC - Telecommunications Services
$	382.25	MRC - Equipment Maintenance and Support
$	629.02	MRC - Sub Total (Monthly Recurring Charges)
$	-	Initial Non Recurring Charges

I.1 Authorization for the Mayor to send a letter to the Office of Management and Budget to encourage support for specific actions to improve rail safety with respect to the transport of crude oil and other hazardous materials by rail – from City Manager Becker. (MOTION)

Background/Discussion – The increase in the transport of crude oil by rail, combined with recent rail accidents involving oil spills and resulting fires, has heightened concerns about rail safety among many cities that are dissected by rail lines. Specifically, two derailments accompanied by fires involving "unit trains" (100 or more tank cars) carrying crude oil in West Virginia and in Ontario, Canada earlier this month have greatly increased public anxiety about what steps the relevant federal regulatory agencies are taking to improve rail safety, and on what timetable.

The League of California Cities has been monitoring the transport of crude oil and other hazardous materials by rail for several months, and has recently adopted as its policy several goals for safety improvements based on input from key state agencies. The League strongly believes that implementation of these rail safety improvements should be expedited at the federal level to improve rail safety as soon as possible.

The Board of Directors of the League of California Cities at its February 20, 2015 meeting adopted ten specific recommendations as official policy on this issue. These recommendations include:

1. Require installation of electronically controlled, pneumatic braking systems on trains carrying crude oil and ethanol by a date certain.
2. Expedite the retrofit of tank cars failing to meet current safety standards and require the phase-out of older DOT-111 tank cars to be completed by a date certain.
3. Require the availability of "real-time" information to first responders the cargo manifest information on trains carrying these substances.
4. Provide federal funding for training and equipment purchases for first responders to improve their ability to respond to hazardous materials accidents.
5. Impose mandatory speed limits on rail cars carrying these materials.
6. Mandate stricter reporting requirements.
7. Identify priority routes for trains and incorporate GPS tracking to automatically stop or slow trains before an accident can occur.
8. Mandate railroad industry compliance with certain requirements that are currently voluntary.
9. Implement a clear methodology for how funding passes through to local agencies involved in first response.
10. Regulate the parking and storage of tank cars to improve safety in populated areas.

While this area of regulation is largely pre-empted by federal law, the League urges the federal agencies with appropriate jurisdiction (primarily the National Transportation Safety Board, the Federal Railroad Administration, and the Pipeline and Hazardous Materials Safety Administration) to take the these actions to improve rail safety with respect to the transport of crude oil and other hazardous materials by rail.

The League is requesting that member cities send a letter of support for the League Boards recommendations to the Office of Management and Budget. Given the amount of freight traffic that crosses through Newark and the potential risk that these "unit trains" present to our community, staff believes that it is in our best interest to support the Leagues efforts in this regard. While staff does not expect that derailments and accidents will cease altogether, it is anticipated that stricter safety standards will reduce their numbers over time.

Attachment

Action - It is recommended that the City Council, by motion, authorize the Mayor to send a letter to the Office of Management and Budget to encourage support for specific actions to improve rail safety with respect to the transport of crude oil and other hazardous materials by rail.

CITY OF NEWARK, CALIFORNIA

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

March 26, 2015

Mr. Chad A. Lallemand
The Office of Management and Budget
725 17th Street, NW
Washington, D. C. 20503

RE: Rulemaking on Rail Safety/Crude Oil Transport

Dear Mr. Lallemand:

Due to a steady flow of concerns about the transport of crude oil by rail voiced by our citizens for several months, the City of Newark has been in contact with the League of California Cities, which has been monitoring transport of crude oil and other hazardous materials by rail, as well as hosting educational forums on the topic. We note that the League has recently adopted as its policy several goals for safety improvements based on input from our key state agencies. The City of Newark agrees with the League's position that implementation of these rail safety improvements should be expedited at the federal level to accomplish improved rail safety as soon as possible.

The continued increase in the transport of crude oil by rail, combined with recent rail accidents involving oil spills and resulting fires, has served to heighten concerns about rail safety among many of our citizens. Specifically, two derailments accompanied by fires involving unit trains (100 or more tank cars) carrying crude oil in West Virginia and in Ontario, Canada last month have greatly increased public anxiety about what steps the relevant federal regulatory agencies are taking to improve rail safety, and on what timetable.

The Board of Directors of the League of California Cities at its February 20, 2015 meeting adopted ten specific recommendations as official policy on this issue. The City of Newark respectfully submits these recommendations to you as priority items for improving rail safety. We have three points to emphasize in submitting these recommendations. First, irrespective of whether these improvements are required of railroads, petrochemical companies, hazardous materials shippers, or the owners or lessees of rail tank cars, we urge that they take the form of mandates, rather than the more traditional recommendations. Second, the mandates should be accompanied by the imposition of a hard deadline for their implementation. Third, we strongly recommend that the Department of Transportation include these recommendations for improved rail safety in the final rule for the Safe Transportation of Crude Oil and Flammable Materials.

<u>League of Cities Policy Recommendations – Oil by Rail</u>

The City of Newark urges the federal agencies with appropriate jurisdiction (primarily the National Transportation Safety Board, the Federal Railroad Administration, and the Pipeline and

Hazardous Materials Safety Administration) to take the following actions to improve rail safety with respect to the transport of Bakken crude oil and other hazardous materials by rail:

1) **Mandate Electronically Controlled Braking Systems:** Require installation of electronically controlled, pneumatic braking systems (ECP) on trains carrying Bakken crude and ethanol by a date certain. This technology allows for faster and more efficient braking to a full stop.

2) **Expedite retrofit or phase-out of tank cars failing to meet current safety standards:** Require phase-out or retrofitting of older, DOT-111 tank cars manufactured prior to October 2011, to be completed by a date certain. The Association of American Railroads adopted higher manufacturing standards requiring greater structural integrity for these tank cars which took effect at that time to facilitate safer transport of flammable liquids, including ethanol and all crude oil.

3) **Mandate Provision of Real-Time Information to first responders in event of accidents:** Require via federal regulations that railroads and producers of petroleum and other hazardous materials shipped by rail make available to first responders, via a secure access portal on their websites, the cargo manifest information, or "consist," on trains containing these substances. This information ideally should also be accessible via mobile applications, allowing rapid access by first responders to cargo manifest information in real time, particularly in accidents where the manifest is not available on the train.

4) **Federal funding for first responders:** Increase federal funding for training and equipment purchases for first responders, to improve their ability to respond to hazardous materials accidents.

5) **Mandatory Speed Limits:** Impose mandatory maximum speed limits in all areas.

6) **Mandate Stricter Reporting Requirements:** Lower the threshold for the number of tank cars that trigger a reporting requirement to the California Energy Commission and the State Emergency Response Commission, from 33 to 20. Currently petroleum producers and railroads only have to submit reports of trains carrying Bakken crude oil if the train includes 33 or more tank cars. Each tank car holds 34, 500 gallons. This will lower the trigger for the reporting requirement from shipments of 1.1 million gallons or more, to shipment of 690,000 gallons or more.

7) **Identity priority routes for positive train control (PTC):** PTC is an advanced technology incorporating GPS tracking to automatically stop or slow trains before an accident can occur. It is specifically designed to prevent train-on-train collisions, derailments due to excessive speed, and unauthorized movement of trains. Require PTC to be employed on all rail lines used for the transport of hazardous materials, with a date certain by which the technology will be online.

8) **Mandate railroad industry compliance with Individual Voluntary Agreement negotiated with the U.S. Department of Transportation by codifying the following actions as requirements:** (Note: The requirements below have been voluntarily agreed to by railroads, but there is currently no legal or regulatory requirement for their compliance. Such requirements should be codified, given their significant impact on rail safety)
    - Reduced speed for crude oil trains with older tank cars going through urban areas
    - Analyses to determine the safest routes for crude oil trains
    - Increased track inspections
    - Enhanced braking systems (electronically controlled pneumatic brakes) ECP
    - Installation of wayside defective bearing detectors along tracks
    - Better emergency response plans
    - Improved emergency response training
    - Working with communities through which oil trains must move to address community concerns

9) **Clear methodology for funding:** Devise a clear methodology on how funds are to be distributed, to ensure that sufficient funds pass through that state and county agencies to the local agencies involved in first response.

10) **Regulate the parking and storage of tank cars:** Mandate improved safety regulations addressing the storage or parking of tank cars in populated areas.

The City of Newark understands that this area of regulation is largely pre-empted by federal law; that is why we are urging specific and timely action by the federal agencies charged with regulatory oversight in this area. We do not expect that derailments and accidents will cease altogether, but we anticipate that stricter safety standards will reduce their numbers over time.

Thank you for your attention to this matter. Please contact me or my City Manager, John Becker at 510-578-4262 with any questions.

Sincerely,

ALAN L. NAGY
Mayor

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Members of the California Congressional delegation
Federal Railroad Administration
National Transportation Safety Board
Tim Cromartie, League of California Cities, tcromartie@cacities.org
Sam Caygill, League of California Cities, scaygill@cacities.org

City of Newark

MEMO

DATE: March 12, 2015

TO: City Council

FROM: Sheila Harrington, City Clerk S. H.

SUBJECT: Approval of Audited Demands for the City Council Meeting of March 26, 2015.

REGISTER OF AUDITED DEMANDS

Bank of America General Checking Account

Check Date		Check Numbers	
March 4, 2015	Pages 1	104146	Inclusive
March 6, 2015	Pages 1-2	104147 to 104197	Inclusive
March 13, 2015	Pages 1	104198 to 104243	Inclusive

City of Newark

MEMO

DATE: March 12, 2015

TO: Sheila Harrington, City Clerk

FROM: Susie Woodstock, Administrative Services Director SRW

SUBJECT: Approval of Audited Demands for the City Council Meeting of March 26, 2015.

The attached list of Audited Demands is accurate and there are sufficient funds for payment.

RECEIVED
MAR 16 2015
CITY CLERK

Final Disbursement List. Check Date 03/04/15, Due Date 03/04/15, Discount Date 03/04/15. Computer Checks.
Bank 1001 BANK OF AMERICA

MICR Check#	Vendor Number	Payee	Check Date	Check Amount	Description
104146	2081	DOUBLETREE HOTEL	03/04/15	3,216.79	EMPLOYEE SERVICE AWARDS LUNCHEON
		Total		3,216.79	

Final Disbursement List. Check Date 03/06/15, Due Date 03/16/15, Discount Date 03/16/15. Computer Checks.
Bank 1001 BANK OF AMERICA

MICR Check#	Vendor Number	Payee	Check Date	Check Amount	Description
104147	9867	3-D GOURMET CATERING	03/06/15	327.00	ARBOR DAY CATERING
104148	10736	ABACUS PRODUCTS INC	03/06/15	1,227.25	CITY LETTERHEAD/ENVELOPES
104149	332	ADAMSON POLICE PRODUCTS PROFESSIONAL POL	03/06/15	2,401.10	MISCELLANEOUS PURCHASES
104150	2036	ALAMEDA COUNTY SHERIFF'S OFFICE REGIONAL	03/06/15	552.00	POST PATROL TRAINING
104151	5821	ALL CITY MANAGEMENT SERVICES, INC	03/06/15	3,124.17	CROSSING GUARD SVCS
104152	348	AT&T	03/06/15	273.63	ANNUAL TELECOM FY2014-15
104153	147	AT&T MOBILITY	03/06/15	1,971.99	CELL SVC FOR MDT'S
104154	8137	BAVCO BACKFLOW APPARATUS & VALVE CO	03/06/15	609.53	FY14-15 BACKFLOW SUPPLIES
104155	9680	BAY CENTRAL PRINTING	03/06/15	213.64	BUSINESS CARD IMPRINTING
104156	10060	COMCAST	03/06/15	92.11	CABLE
104157	3664	CSMFO CALIFORNIA SOCIETY OF MUNICIPAL FI	03/06/15	150.00	FINANCE TRAINING
104158	10649	FERMA CORP OPERATIONS ACCOUNT	03/06/15	1,000.00	PERFORMANCE BOND RTN
104159	10793	DAN BASINSKI	03/06/15	65.00	COURSE CANCELLATION
104160	63	THE GOODYEAR TIRE & RUBBER CO	03/06/15	264.51	FY14-15 TIRES
104161	10881	GLORIA DEL ROSARIO	03/06/15	72.31	CSMFO TRAINING 2/6/15
104162	1352	DRIVERS LICENSE GUIDE COMPANY	03/06/15	68.50	BOOKS & BULLETINS
104163	10725	NICHOLAS CUEVAS	03/06/15	1,394.69	EE COMPUTER LOAN PROGRAM
104164	522	FEDEX	03/06/15	92.88	SHIPPING SERVICES
104165	60	FREMONT FORD/AUTOBODY OF FREMONT ATTN: P	03/06/15	81.86	FY14-15 FORD PARTS & SERVICES
104166	8258	GALL HOUSE PRINTING CONSULTANTS	03/06/15	1,934.75	BUSINESS CARD SHELLS
104167	7783	GOLDEN WEST TRAVEL INC	03/06/15	1,976.00	SR TRIP TRANSPORTATION
104168	275	GOVERNMENT FINANCE OFFICERS ASSOCIATION	03/06/15	150.00	MEMBERSHIP DUES/SUBSCRIPTIONS
104169	11268	HEIDI HORNER	03/06/15	111.19	BASIC DISPATCH ACADEMY EXPENSES
104170	11123	I PIZZA	03/06/15	583.20	CAFE PIZZAS
104171	7189	LINCOLN EQUIPMENT INC	03/06/15	578.32	CHEMICALS
104172	11205	MARINA ZEPEDA TRI COUNTY BLDG MAINT	03/06/15	19,392.80	FY14-15 JANITORIAL SERVICES
104173	7618	METLIFE SBC	03/06/15	1,963.79	PAYROLL PREMIUMS
104174	9029	MEYERS NAVE RIBACK SILVER & WILSON	03/06/15	1,085.00	LITIGATION SERVICES
104175	5046	MOTOROLA SOLUTIONS, INC	03/06/15	44.47	UB MOTORCYCLE ANTENNAS
104176	10865	NEW IMAGE LANDSCAPE	03/06/15	11,954.00	PROJECT 1007C LANDSCAPE MAINT PROJECT
104177	1520	OAKLAND AUDIO-VISUAL SERVICE INC	03/06/15	4,990.00	ORDER NUMBER 0024776
104178	4139	PACIFIC CAR WASH INC	03/06/15	785.00	PATROL VEHICLE CLEANING
104179	3674	PRIORITY 1 PUBLIC SAFETY EQUIPMENT INSTA	03/06/15	564.23	VEHICLE CHANGE OVER
104180	8813	PROFORCE LAW ENFORCEMENT	03/06/15	992.82	2012 JAG GRANT
104181	4346	QUALITY SIGN & BANNER	03/06/15	21.80	FY14-15 SIGNS & BANNERS
104182	4176	MICHAEL QUEBEC	03/06/15	918.00	RECREATION CONTRACT
104183	107	RALEY'S SUPERSTORES IN STORE CHARGE-ACCT	03/06/15	387.35	PROGRAM SUPPLIES
104184	1215	REGISTRAR OF VOTERS ALAMEDA COUNTY	03/06/15	32,695.11	NOVEMBER 4, 2014, GENERAL ELECTION
104185	654	SFPUC-WATER DEPARTMENT CUSTOMER SERVICE	03/06/15	2,878.05	FY14-15 HET HETCHY RENT
104186	112	WILLE ELECTRICAL SUPPLY CO INC	03/06/15	1,733.12	ELECTRICAL SUPPLIES
104187	5164	SAN MATEO REGIONAL NETWORK INC SMRN.COM	03/06/15	170.00	SPAM AND VIRUS FILTER SERVICE
104188	1741	SIRCHIE FINGER PRINT LABORATORIES	03/06/15	398.04	EVIDENCE SUPPLIES
104189	10583	SWIMOUTLET.COM SPIRALEDGE, INC.	03/06/15	160.56	RETAIL ITEMS
104190	1765	TEMPERATURE TECHNOLOGY INC	03/06/15	2,350.70	HVAC REPAIRS AT SILLIMAN
104191	337	TROPHY TOWNE	03/06/15	8.18	EMP OF QTR
104192	7517	U S FOODS INC SAN FRANCISCO	03/06/15	551.14	CAFE PURCHASES
104193	690	UNITED PARCEL SERVICE UPS	03/06/15	18.57	PACKAGE DELIVERY
104194	10968	UTILITY TELEPHONE	03/06/15	16,964.99	ANNUAL TELECOM FY2014-15
104195	5623	VERIZON WIRELESS	03/06/15	23.11	PAGER SVC
104196	5050	WEST COAST ARBORISTS INC	03/06/15	14,705.99	STREET/PARK TREE PRUNING
104197	9102	SUSIE WOODSTOCK	03/06/15	272.93	CSMFO CONFERENCE EXPENSES

Final Disbursement List. Check Date 03/06/15, Due Date 03/16/15, Discount Date 03/16/15. Computer Checks.
Bank 1001 BANK OF AMERICA

MICR Check#	Vendor Number	Payee	Check Date	Check Amount	Description
		Total		135,345.38	

Final Disbursement List. Check Date 03/13/15, Due Date 03/22/15, Discount Date 03/22/15. Computer Checks.
Bank 1001 BANK OF AMERICA

MICR Check#	Vendor Number	Payee	Check Date	Check Amount	Description
104198	9103	SAM ACKERMAN	03/13/15	797.55	CA HOMICIDE INVESTIGATORS CONF
104199	11094	ACME AUTO LEASING, LLC	03/13/15	1,909.44	ARMORED RESCUE VEH LEASE
104200	10559	ALAMEDA COUNTY MEDICAL CENTER ATTN: FINA	03/13/15	662.00	VICTIM MEDICAL EXAMS
104201	284	TREASURER OF ALAMEDA COUNTY INFORMATION	03/13/15	2,838.42	AWS ACCESS FEES
104202	12	ALLIED AUTO STORES INC	03/13/15	1,056.05	MISC AUTO PARTS
104203	11270	ARBORWELL	03/13/15	3,515.00	DECORATIVE LIGHTING
104204	1347	BAY AREA AIR QUALITY MGMT DIST	03/13/15	283.00	PERMIT TO OPERATE FUEL STATIONS
104205	11269	JAMES BOYDD	03/13/15	698.00	PATROL NON-POST TRAINING
104206	3665	BRUCE'S TIRE	03/13/15	565.81	FY14-15 TIRE PURCHASES/REPAIRS
104207	5337	CDW GOVERNMENT INC	03/13/15	363.30	ADOBE ACROBAT 11 LIC PD RECORDS
104208	214	CENTRAL VETERINARY HOSPITAL	03/13/15	375.00	VET SVCS
104209	10060	COMCAST	03/13/15	89.63	CABLE SVCS
104210	1109	CAPITAL ONE COMMERCIAL	03/13/15	826.13	PROGRAM SUPPLIES
104211	242	CROP PRODUCTION SERVICES	03/13/15	1,340.70	FY1415 PESTICIDES
104212	10793	MARIA BORJON	03/13/15	93.00	REC CLASS WITHDRAWAL
104213	10793	ERIN MCCORMICK	03/13/15	339.00	RENTAL DEPOSIT RTN
104214	63	THE GOODYEAR TIRE & RUBBER CO	03/13/15	592.83	FY14-15 TIRE PURCHASES (MARCH-JUNE)
104215	11162	ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE	03/13/15	940.50	UB GIS MAINT
104216	11132	SEAN ERIKSEN	03/13/15	919.39	CA HOMICIDE INVESTIGATOR CONF
104217	7663	FIDELITY SECURITY LIFE INSURANCE/EYEMED	03/13/15	645.69	PAYROLL PREMIUMS
104218	9126	FINIS INCORPORATED	03/13/15	392.04	RETAIL SALES
104219	1120	FORENSIC ANALYTICAL SCIENCES, INC	03/13/15	436.00	LAB TESTS
104220	3284	ANTHONY HECKMAN	03/13/15	111.07	SWAT VEST RACK
104221	10486	SHAKATI KHALSA	03/13/15	346.00	RECREATION CONTRACT
104222	7964	KNORR SYSTEMS INC	03/13/15	3,276.54	CHEMICALS
104223	10943	KRONOS INC	03/13/15	5,092.59	TELESTAFF ACCESS
104224	11173	MIGUEL LLAMAS	03/13/15	370.00	MECHANICAL BULL RENTAL
104225	11246	LOOMIS ARMORED	03/13/15	568.13	ARMORED CAR SERVICE
104226	8218	JOLIE MACIAS	03/13/15	273.58	IACP WOMENS LEADERSHIP INSTITUTE
104227	5046	MOTOROLA SOLUTIONS, INC	03/13/15	1,918.40	PORTABLE RADIO BATTERIES
104228	611	KKR AUTOMOTIVE DBA NAPA AUTO PARTS	03/13/15	118.80	FY14-15 AUTO SUPPLIES
104229	11089	NEWPARK AUTO SERVICE	03/13/15	1,877.56	SMOG CHECK AND VEHICLE REPAIRS
104230	349	PACIFIC GAS & ELECTRIC	03/13/15	38,468.82	FY14-15 GAS/ELECTRIC CHARGES
104231	3674	PRIORITY 1 PUBLIC SAFETY EQUIPMENT INSTA	03/13/15	125.33	VEHICLE CHANGE OVER
104232	11234	RAY MORGAN COMPANY	03/13/15	2,814.61	COPIER RENTAL AGREEMENT RESO#10263
104233	10945	REVOLUTION DANCEWEAR, LLC	03/13/15	3,135.60	COSTUMES FOR ANNUAL DANCE RECITAL
104234	112	WILLE ELECTRICAL SUPPLY CO INC	03/13/15	370.36	ELECTRICAL SUPPLIES
104235	11098	SILVER & WRIGHT LLP	03/13/15	4,484.40	CONSULTING AND LITIGATION SERVICES
104236	40	STAPLES ADVANTAGE DEPT LA	03/13/15	2,361.68	OFFICE SUPPLIES
104237	10804	STEVENS CREEK CJD	03/13/15	118.25	VEHICLE REPAIRS
104238	5246	TURF STAR INC	03/13/15	1,351.82	FY14-15 MOWER & AMT PARTS
104239	363	UNITED STATES POSTMASTER	03/13/15	2,942.97	SUMMER 2015 ACTIVITIES GUIDE POSTAGE
104240	5623	VERIZON WIRELESS	03/13/15	3,234.38	CELL SVC FOR IPHONES
104241	3239	WASTE MANAGEMENT ATTN: SUSIE SCHOEN	03/13/15	870.23	GARBAGE TAX LIENS
104242	143	WILCO SUPPLY P O BOX 3047	03/13/15	242.06	FY14-15 LOCKS & SUPPLIES
104243	11206	Y.A.A., INC	03/13/15	139.20	RECREATION CONTRACT
		Total		94,290.86	