



CITY OF NEWARK CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94580-3798 • 510-578-4286 • E-mail: city.clerk@newark.org

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

AGENDA

Thursday, April 9, 2015

- A. ROLL CALL

- B. MINUTES
 - B.1 Approval of Minutes of the regular City Council meeting of Thursday, March 26, 2015. (MOTION)

- C. PRESENTATIONS AND PROCLAMATIONS
 - C.1 Newark Police Department Citizen Appreciation Award for Jennifer Bauer and Gary Stadler.

 - C.2 Proclaiming May 7, 2015, as National Day of Prayer in Newark. (PROCLAMATION)

 - C.3 Proclaiming May 2015 as Older Americans Month in Newark.(PROCLAMATION)

 - C.4 Proclaiming April 18, 2015 as Earth Day in Newark. (PROCLAMATION)

- D. WRITTEN COMMUNICATIONS

- E. PUBLIC HEARINGS
 - E.1 Hearing to consider property owners' objections to the 2015 Weed Abatement Program and instruction to the Superintendent of Streets to abate the public nuisances - from Deputy Fire Marshal Guier/Maintenance Supervisor Carey. (MOTION)

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.2 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** Second reading and adoption of two ordinances approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and 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 City Clerk Harrington. (ORDINANCES-2)
- F.2** Approval of the final map for Tract 8028, a 14-unit residential townhome-style subdivision (Casa Bella Homes, LLC) at 6249 Thornton Avenue, approximately 570 feet west of Newark Boulevard – from Assistant City Engineer Fajeau. (RESOLUTION)

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

- I.1** Appointments to the Community Choice Aggregation Steering Committee – from Mayor Nagy. (RESOLUTION)

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

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

Approval of Audited Demands for the City Council meeting of April 9, 2015. (MOTION)

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.



CITY OF NEWARK CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94500-3798 • 510-578-4266 • E-mail: city.clerk@Newark.org

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

AGENDA

Thursday, April 9, 2015

CITY COUNCIL:

Alan L. Nagy, Mayor
Suey Collazo, Vice Mayor
Luis L. Freitas
Michael K. Hannon
Mike Bucci

CITY STAFF:

John Becker
City Manager
Torrence Grindall
Assistant City Manager
Susie Woodstock
Administrative Services Director
Sandy Abe
Human Resources Director
Peggy A. Claassen
Public Works Director
Jim Leal
Police Chief
David Zehnder
Recreation and Community
Services Director
David J. Benoun
City Attorney
Sheila Harrington
City Clerk

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

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

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

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

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

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



CITY OF NEWARK CITY COUNCIL

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

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

Minutes

Thursday, March 26, 2015

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, March 12, 2015.

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

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.

RESOLUTION NO. 10329-10330
ORDINANCES INTRODUCED (2)

Assistant City Manager Grindall gave a presentation (On file with City Clerk) on the Area 3 and 4 development which would include housing, parks, a school site, open space, and a golf course or other recreational amenity. He noted that some of the land in Area 4 would be permanently preserved as open space. The previous approval was subject to litigation, resulting in the recirculated documents presented tonight.

In response to City Council questions, Assistant City Manager Grindall confirmed that if the golf course was not built, the same acreage would be used for another recreational amenity. The City will receive \$3 million for affordable housing. He discouraged changing the ratio, at this time, of 1.5 acres restored for the impacted wetlands as it was subject to regulatory approval.

Mayor Nagy opened the public hearing at 7:57 p.m.

Tim Steele, Sobrato Organization, stated that the Newark Partners, I.J.C collectively owned property in the area since the mid-1980s. He stated that he read and agreed to the conditions.

Carin High, Citizens Committee to Complete the Refuge, presented a letter (On file with City Clerk). She stated that the preservation of Area 4 was recommend in the 1999 San Francisco Bay Area Wetlands Ecosystem Goals Project, The Tidal Marsh Ecosystem Recovery Plan and is a goal of the Refuge Expansion Boundary. She stated that since the 1980s state and federal agencies have recommended that Area 4 be preserved. She requested that the City Council preserve the land.

Margaret Lewis, Citizens Committee to Complete the Refuge, stated that the area with the proposed recreational amenities has wetlands, is very low lying, and has a high water table. She stated that development was not going to happen in Area 4.

Ricardo Corte stated that he supported the development of Area 3, but that Area 4 should be preserved. He thought that homes in Area 4 would be at risk of liquefaction and flooding. He noted that several regulatory agencies and environmental groups have expressed their disapproval of this project. Mr. Corte presented a petition against the project (On file with City Clerk).

Celmira Bica, stated that she was concerned with the environment and would like Area 4 protected. She stated that the proposed golf course would use tons of water and water rates will increase this year. She hoped that fire and police service will grow with the expected population increases.

Mayor Nagy closed the public hearing at 8:14 p.m.

Assistant City Manager Grindall noted that the resolution certifying the Recirculated Final EIR had minor amendments and requested that the City Council approve that version.

Vice Mayor Collazo moved, Council Member Bucci seconded to adopt: 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. 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.3, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption of the resolutions and ordinance. The motion passed, 5 AYES.

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.**
RESOLUTION NO. 10331
CONTRACT NO. 15007
- 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.**
ORDINANCE NO. 483
- 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.**
RESOLUTION NO. 10332
CONTRACT NO. 07042

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. MOTION APPROVED**

Mayor Nagy stated his support for this letter.

Paul Rea stated that the letter before the City Council was strong. If a project in another part of the state is approved, then there will be trains with 100 cars carrying crude oil through the area. He mentioned recent train accidents that firefighters had to let burn over several days.

Sandy Cashmark stated that she was worried about trains carrying crude oil. She stated that these trains travel over the Feather River, one of the main sources of water, with very old bridges not built for 100 cars traveling over them. The crews on the trains are also being decreased.

Council Member Bucci stated that the railroads are federally regulated so the City could not ban the trains. He stated that the City of Santa Maria is the home of the Phillips 66 refinery rail project that has statewide impact. He wrote a letter against the project and encouraged others to do the same.

Vice Mayor Collazo moved, Council Member Bucci seconded to 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. The motion passed, 5 AYES.

Mayor Nagy stated that he would adjourn the meeting in memory of Ann Joly and Joe Maes. The entire City Council extended their condolences.

Council Member Hannon extended his condolences to the family of San Jose Police Officer Michael Johnson who was killed in the line of duty.

Vice Mayor Collazo encouraged the public to attend Family Day in the Park.

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

K. ORAL COMMUNICATIONS

Gregory Lemos stated that the Alameda County Water District has raised rates over 12 consecutive years. He requested that the individual City Council Members send letters objecting to the proposed new increases. He noted that the opening in the sidewalk that he mentioned at a previous meeting was still in place.

Frankie Addiego stated that his book *Images of America - Newark* will be available for sale in August. There will be a fundraiser at the Newark Pavilion for the Ohlone College Nursing Program on Friday. He referred to the statement by Mr. Lemos and noted that when a resource is scarce, the supplier raises prices.

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 104146 to 104243.

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

M. CLOSED SESSION

N. ADJOURNMENT

At 8:43 p.m. Mayor Nagy adjourned the City Council meeting in memory of Ana Joly and Joe Macs.

C.1 Newark Police Department Citizen Appreciation Award for Jennifer Bauer and Gary Stadler.

Background/Discussion – On February 15, 2015, Jennifer Bauer and Gary Stadler assisted the Newark Police Department in locating and arresting a suspect in a crime that had occurred earlier in the day. The Police Department will honor Ms. Bauer and Mr. Stadler for their assistance to the community.

C.2 Proclaiming May 7, 2015, as National Day of Prayer in Newark. (PROCLAMATION)

Background/Discussion – May 7, 2015, has been designated as National Day of Prayer in Newark. A member of the religious community will be at the meeting to accept the proclamation.

C.3 Proclaiming May 2015 as Older Americans Month in Newark. (PROCLAMATION)

Background/Discussion – May is Older Americans Month. A proclamation has been prepared and members of the Newark Senior Citizen Standing Advisory Committee will accept the proclamation at the City Council meeting.

C.4 Proclaiming April 18, 2015 as Earth Day in Newark.

(PROCLAMATION)

Background/Discussion – In an effort to raise awareness and appreciation for our environment, the League of Volunteers has teamed up with Newark Memorial High School Interact and UNICEF to host an Earth Day Fair. The Earth Day Fair will be held on April 18, 2015, at Swiss Park from 10:00 am to 4:00 pm. A proclamation has been prepared for the event and certificates of appreciation for the students who help organize the event.

E.1 Hearing to consider property owners' objections to the 2015 Weed Abatement Program and instruction to the Superintendent of Streets to abate the public nuisances - from Deputy Fire Marshal Guier/Maintenance Supervisor Carey.
(MOTION)

Background/Discussion - On February 26, 2015, the City Council adopted Resolution No. 10326 initiating the 2015 Weed Abatement Program and setting a public hearing for April 9, 2015. The annual weed abatement program abates weeds on vacant commercial and industrial properties not maintained by the property owners as directed by the Fire Marshal. Property owners may object in person by attending this hearing or by letter. As of April 1, 2015, no written objections have been received. Several owners have notified staff that they will perform the work themselves. If the weeds on these parcels are not abated in a timely manner, the City's contractor will perform the work in May. This will provide these owners ample time to complete the abatement.

The property owners, as listed on the County Assessor's roll, have been given the required notice of the public hearing date. If objections are received prior to or during the public hearing, the Council should consider the objections; and then, by motion, allow or overrule the objections. The Council may then instruct the Superintendent of Streets to abate the public nuisance on the parcels remaining in the program.

Attachment - None

Action - It is recommended that the City Council, by motion, act upon any objections by property owners to the 2015 Weed Abatement Program, and instruct the Superintendent of Streets to abate the public nuisances.

F.1 Second reading and adoption of two ordinances approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and 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 City Clerk Harrington. (ORDINANCES-2)

Background/Discussion -- On March 26, 2015, the City Council introduced two ordinances approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and 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.

Attachment

Action - It is recommended that the City Council adopt ordinances approving: 1) The Newark Areas 3 and 4 Specific Plan Project Development Agreement and; 2) 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.

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(F) 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 [redacted], [redacted] 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[redacted], 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."

F. 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.

D. 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.

11. 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 be located adjacent to the acreage offered for donation as a school site in Section 3.03(c). 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 be 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, whichever 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, whichever 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 its 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 an 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.

- (e) 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.
- (c) 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

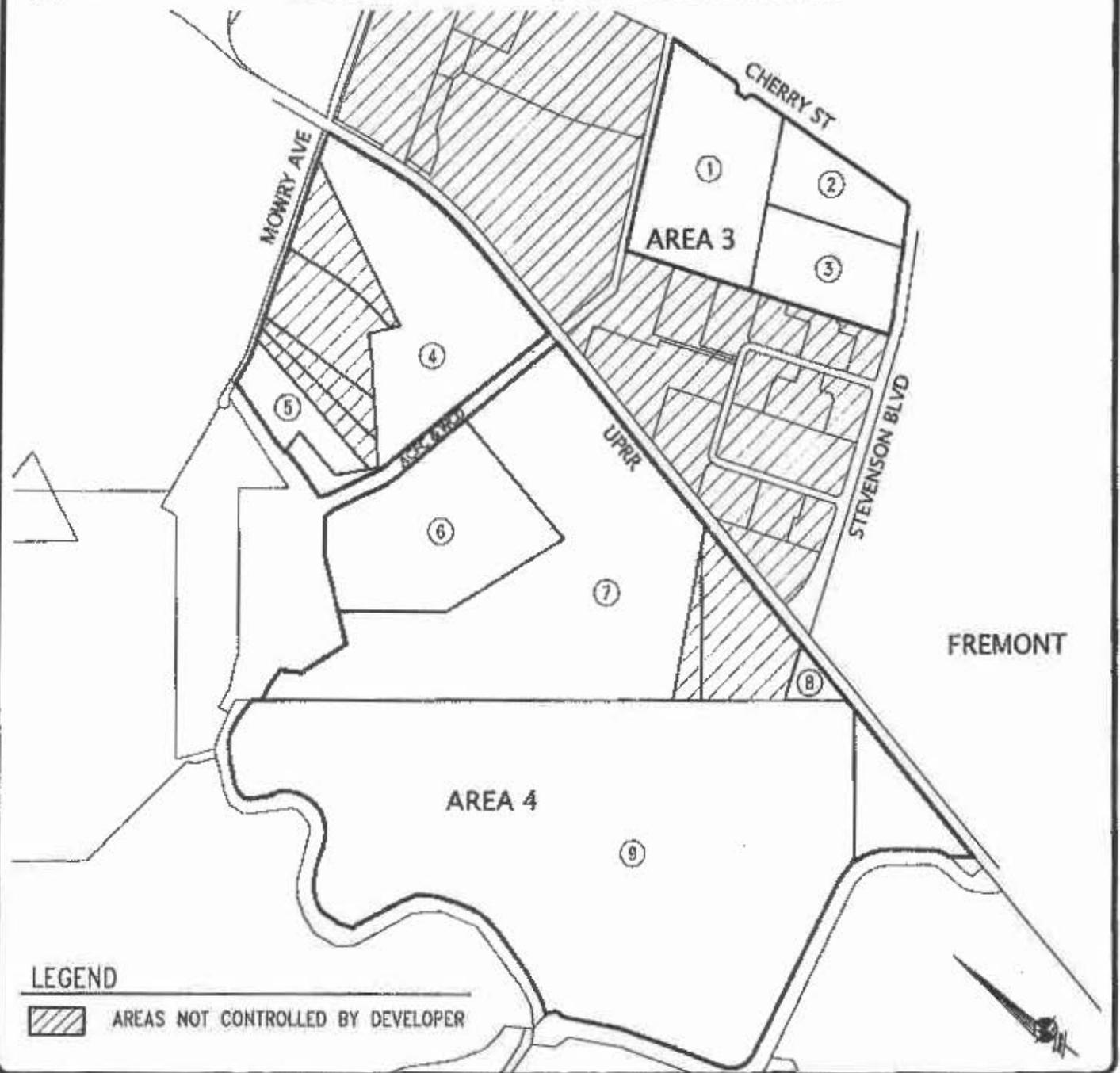


EXHIBIT "A"

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 or 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 O-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 to 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 O-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.

**F.2 Approval of the final map for Tract 8028, a 14-unit residential townhome-style subdivision (Casa Bella Homes, LLC) at 6249 Thornton Avenue, approximately 570 feet west of Newark Boulevard – from Assistant City Engineer Fajeau.
(RESOLUTION)**

Background/Discussion – In 2012, the City Council approved a 14-unit residential townhome-style subdivision at 6249 Thornton Avenue. Casa Bella Homes, LLC has submitted the required fees, documents, and bonds for approval of the final map for Tract 8028. Off-site improvements include placement of two new driveways on Thornton Avenue, utility connections, and frontage landscaping. Recording of the final map and issuance of any subsequent permits for construction activity will be at the discretion of the City Engineer.

Attachment

Action – It is recommended that the City Council, by resolution approve the final map for Tract 8028.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING THE FINAL MAP FOR TRACT 8028

WHEREAS, on July 26, 2012, with Resolution No. 10008, the City Council of the City of Newark approved Vesting Tentative Map 8028 for a 14-unit residential townhome-style subdivision at 6249 Thornton Avenue, approximately 570 feet west of Newark Boulevard;

NOW THEREFORE, BE IT RESOLVED BY THE City Council of the City of Newark that the City Council does hereby approve the final map and improvement plans for Tract 8028, City of Newark, County of Alameda, State of California, and that the Mayor is authorized and hereby directed to execute an agreement between the City of Newark and Casa Bella Homes, LLC, for the improvements of said tract; and

BE IT FURTHER RESOLVED that the City Council does hereby accept all parcels of land offered for public use in conformity with the terms of offer of dedication as shown on the final map for Tract 8028; and

BE IT FURTHER RESOLVED that the City Council does hereby approve the Performance Bond in the amount of \$348,000 and the Materials Bond in the amount of \$174,000 posted by the developer to secure the installation of public improvements in accordance with the plans and specifications and the Subdivision Improvement Agreement; and

BE IT FURTHER RESOLVED that the recording of the final map and final approval for the start of construction activity for Tract 8028, including issuance of all related construction permits, shall be at the discretion of the City Engineer.

TRACT 8028

CONSISTING OF TWO (2) SHEETS
FOR CONVEYANCE PURPOSES

BEING A PORTION OF BLOCK "J", AS SAID BLOCK IS SHOWN ON THE
MAP OF NEWARK, WASHINGTON TOWNSHIP, ALAMEDA COUNTY,
CALIF., FILED FEBRUARY 8, 1912, IN BOOK 18 OF MAPS, PAGE 11,
ALAMEDA COUNTY RECORDS.

CITY OF NEWARK, ALAMEDA COUNTY, CALIFORNIA

SCALE 1"=50'

DATE: 2016

W E C

FALCO ALTO, CA

DATE OF SERVICE

THE BOARD, MEMBERS OF THE THORNTON AVENUE PARKING
LINE, AS SHOWN ON "A" OF RECORD MAPS, HAS BEEN FILED IN THE
OFFICE OF THE RECORDER OF ALAMEDA COUNTY, STATE OF
CALIFORNIA, IN BOOK 18 OF MAPS, PAGE 11, AS SAID AS
THE DATE OF RECORDING THEREON.

LEGEND

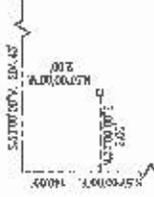
- () DENOTES RECORD DATA
- PUBLIC SERVICE CONNECTION
- EGRESS AND ACCESS EASEMENT
- EASEMENT
- PRIVATE UTILITY EASEMENT
- RESTRICTIVE EASEMENT LINE
- PROPERTY LINE
- CENTER LINE OF STREET
- TRAIL OR EASEMENT LINE
- PARKING LOT
- 3' W/4" FROM THE SETBACK LINE

NOTES

1. ALL UTILITIES AND EGRESS EASEMENTS ARE IN FEET AND DECIMALS THEREOF.
2. THE DISTRICT'S BOUNDARIES SHOWN ON THE SOUTH SIDE OF THE
MAP, ALIGNED WITH THE CENTER LINE OF THE STREET, ARE
AS SHOWN ON THE RECORD MAPS.

REFERENCES

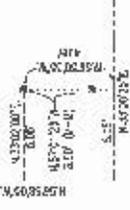
- (1) 16-11
- (2) 16-11
- (3) 16-11



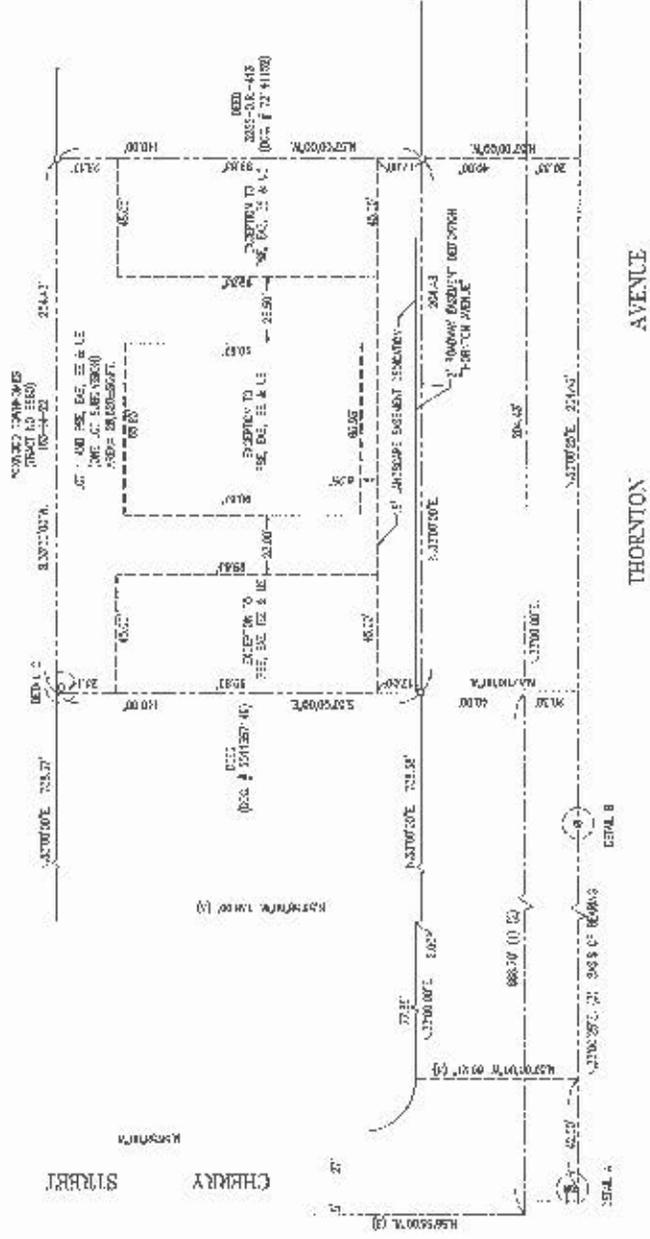
DETAIL 2
1/8" = 10'



DETAIL 4
1/8" = 10'



DETAIL 3
1/8" = 10'



**CITY OF NEWARK
SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

This Subdivision Improvement Agreement (hereinafter "Agreement") is made and entered into by and between the CITY OF NEWARK, a municipal corporation (hereinafter "City"), and CASA BELLA HOMES, LLC, A California limited liability company (hereinafter "Developer"). City and Developer may be collectively referred to herein as the "parties."

RECITALS

- A. In accordance with the Subdivision Map Act (California Government Code Sections 66410, *et seq.*), and the Subdivision Ordinance (Newark Municipal Code, Title 16, Chapters 16.04, 16.08, 16.12, 16.16, 16.20, and 16.32), and the Street Ordinance (Newark Municipal Code, Title 12, Chapters 12.04 and 12.08), the Developer has submitted to the City a Final Map (hereinafter "Final Map") for the Project known as Tract 8028 at 6249 Thornton Avenue, Newark (hereinafter "Project").
- B. The Project is geographically located within the boundaries of the Tentative Tract Map known as "Tentative Map 8028". The Tentative Map is on file with the City Engineer, and is incorporated herein by reference.
- C. The City's approval of the Tentative Map was subject to specified conditions of approval (hereinafter "Conditions"). The Conditions are on file with the City Engineer, and are incorporated herein by reference.
- D. Improvement Plans and Specifications have been prepared on behalf of the Developer, and approved by the City Engineer, which describe the improvements which are required to be constructed by the Developer. The term "Plans and Specifications" shall include the improvement plans titled "Tract 8028 Improvement Plans," approved by the City Engineer. The Plans and Specifications are on file with the City Engineer, and are incorporated herein by reference.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. **SCOPE OF WORK.** The Developer shall perform, or cause to be performed, the Work described in the Plans and Specifications and the Conditions (hereinafter "Work"), to the satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at the Developer's sole cost and expense. No change shall be

**CITY OF NEWARK – SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

made to the Scope of Work unless authorized in writing by the City Engineer.

2. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Developer shall, at the Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the Work. The Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
3. **DEVELOPER'S AUTHORIZED REPRESENTATIVE.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent (hereinafter "Authorized Representative") on site with authority to act on behalf of the Developer. The Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. The Developer shall, at all times, keep the City Engineer informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work.
4. **IMPROVEMENT SECURITY.** The Developer shall furnish faithful performance and labor and material security concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any Work. The Developer shall furnish warranty security prior to the City's acceptance of the Work. The form of the security shall be as authorized by the Subdivision Map Act (including Government Code Sections 66499, *et seq.*) and the Newark Municipal Code, and as set forth below:
 - 4(a). **Faithful Performance.** Security in the amount of \$348,000 to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete) pursuant to Government Code Sections 66499.1, 66499.4, and 66499.9.
 - 4(b). **Labor and Material.** Security in the amount of \$174,000 to secure payment by the Developer to laborers and materialmen pursuant to Government Code Sections 66499.2, 66499.3, and 66499.4.
 - 4(c). **Warranty.** Security in the amount of \$35,000 to secure faithful performance of this Agreement (from the date on which the City accepts the Work as complete until one year thereafter) pursuant to Government Code Sections 66499.1, 66499.4, and 66499.9.
6. **BUSINESS LICENSE.** The Developer shall apply for and pay the business license fees, in accordance with Newark Municipal Code Title 5, Chapter 5.04.
6. **INSURANCE.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer (including its agents,

**CITY OF NEWARK – SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

representatives, contractors, subcontractors, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which Developer shall comply; however, the minimum insurance levels shall not relieve Developer of any other performance responsibilities under this Agreement (including the indemnity requirements), and Developer may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any services, the Developer shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Developer shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

6(a). Minimum Insurance Levels. Developer shall maintain insurance at the following minimum levels:

6(a)(1). Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

6(a)(2). Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

6(a)(3). Workers' Compensation coverage as required by the State of California.

6(b). Minimum Limits of Insurance. 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.

6(c). Endorsements. The insurance policies shall be endorsed as follows:

6(c)(1). For the commercial general liability insurance, the City (including its elected officials, employees, volunteers, and agents) shall be named as additional insured, and the policy shall be endorsed with a form at least as broad as ISO form CG 20 10 11 85.

**CITY OF NEWARK – SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

- 6(c)(2).** Developer's insurance is primary to any other insurance available to the City with respect to any claim arising out of this Agreement. Any insurance maintained by the City shall be excess of the Developer's insurance and shall not contribute with it.
- 6(c)(3).** Developer's insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the City. During the term of this Agreement, Consultant will not materially alter any of the policies or reduce any of the levels of coverage afforded by its insurance policies.
- 6(c)(4).** Maintenance of proper insurance coverage in conformity with this Section 6 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.
- 6(d). Qualifications of Insurers.** All insurance companies providing coverage to Developer 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, and shall have an A.M Best's rating of not less than "A:VII."
- 7. REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Developer shall immediately notify the City Engineer's office by telephone at 510-578-4290, and Developer shall promptly submit to the City Engineer and the Risk Manager, a written report (in a form acceptable to the City) with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property), (b) name and address of witnesses, and (c) name and address of any potential insurance companies.
- 8. INDEMNIFICATION.** To the fullest extent permitted by law, Developer shall indemnify, hold harmless, and defend the City (including its elected officials, officers, volunteers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from performance, or failure to perform, under this Agreement (with the exception of the sole negligence or willful misconduct of the City).
- 9. TIME OF PERFORMANCE.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The Developer shall submit all requests for extensions of time

**CITY OF NEWARK – SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

9(a). Commencement of Work. No later than fifteen (15) days prior to the commencement of Work, the Developer shall provide written notice to the City Engineer of the date on which the Developer shall commence Work. The Developer shall not commence Work until after the notice required by this section is properly provided, and the Developer shall not commence Work prior to the date specified in the written notice.

9(b). Schedule of Work. Concurrently with the written notice of commencement of Work, the Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect the Developer's prosecution of the Work.

9(c). Completion of Work. The Developer shall complete all Work by no later than three hundred sixty-five (365) days after the City's execution of this Agreement, unless otherwise agreed to in writing by the City Engineer.

10. INSPECTION BY THE CITY. In order to permit the City to inspect the Work, the Developer shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

11. DEFAULT. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

11(a). The Developer shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:

11(a)(1). The Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

11(a)(2). The Developer abandons the Project site.

**CITY OF NEWARK – SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

11(a)(3). The Developer fails to perform one or more requirements of this Agreement.

11(a)(4). The Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

11(a)(5). The Developer violates any legal requirement related to the Work.

11(b). In the event that the Developer fails to cure the default, the City may, in the discretion of the City Engineer, take any or all of the following actions:

11(b)(1). Cure the default and charge the Developer for the costs therefor, including administrative costs and interest in an amount equal to seven percent (7 %) per annum from the date of default.

11(b)(2). Demand the Developer to complete performance of the Work.

11(b)(3). Demand the Developer's surety (if any) to complete performance of the Work.

12. ACCEPTANCE OF WORK. Prior to acceptance of the Work by the City Engineer, the Developer shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Developer's obligation to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Engineer has accepted the Work as complete.

13. WARRANTY PERIOD. The Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one year after acceptance of the Work by the City. In the event that (during the one year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of the Developer under this Agreement, the Developer shall be in default.

14. RELATIONSHIP BETWEEN THE PARTIES. Developer is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, contractors, or subcontractors, including any negligent acts or omissions. Developer is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.

**CITY OF NEWARK – SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

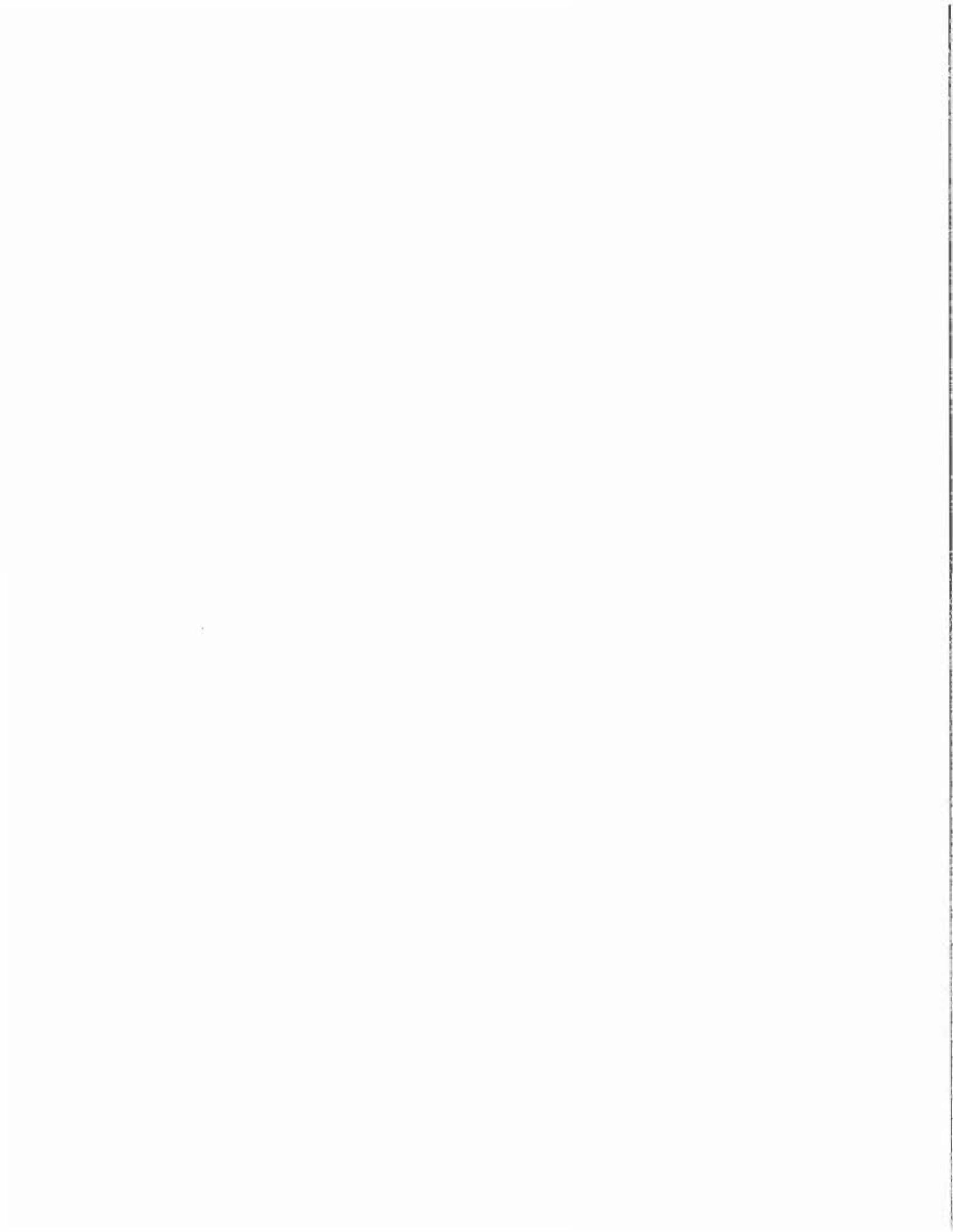
- 15. CONFLICTS OF INTEREST PROHIBITED.** Developer (including its employees, agents, contractors, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Developer maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Developer's conflicting interest may be terminated by the City.
- 16. NONDISCRIMINATION.** Developer 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. Developer 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, or sex.
- 17. NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

City's Authorized Representative Developer's Authorized Representative

Attn: City Engineer
37101 Newark Boulevard
Newark, CA 94560

Casa Bella Homes, LLC
Attn: Humair Raza
16371 Shady View Lane
Los Gatos, CA 95032

- 18. HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- 19. 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.



**CITY OF NEWARK -- SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

- 20. 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.
- 21. 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.
- 22. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 23. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 24. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 25. CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.
- 26. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Work 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.

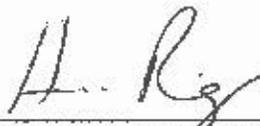
**CITY OF NEWARK – SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 8028**

27. 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 Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and Developer do hereby agree to the full performance of the terms set forth herein.

CASA BELLA HOMES, LLC
a California limited liability company

CITY OF NEWARK,
a municipal corporation

By: 
Humair Raza, Managing Member
3/25/15

By: _____
Alan L. Nagy, Mayor

PLEASE SEE ATTACHED
CALIFORNIA NOTARY FORM

ATTEST:

Sheila Harrington, City Clerk

APPROVED AS TO FORM:

David J. Benoun, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of SANTA CLARA)

On March 25, 2015 before me, Michelle Antonowicz, Notary Public,
Date Here-Insert Name and Title of the Officer

personally appeared Humair Raza
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Michelle Antonowicz
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: TRACT 8028 Document Date: 3-25-15
Number of Pages: 9 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Humair Raza
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: Managing Member
Signer Is Representing: _____

~~Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____~~

1.1 Appointments to the Community Choice Aggregation Steering Committee – from Mayor Nagy. (RESOLUTION)

Background/Discussion – The Alameda County Board of Supervisors has directed the Community Development Agency to determine if a Community Choice Aggregation (CCA) program is feasible for Alameda County. A CCA program would allow for competition in electricity generation services and accelerate investments in clean energy resources and local energy projects. A CCA Steering Committee is being formed that will advise the Board on key aspects of the program’s development and to provide a forum for stakeholders and the public to express their views.

The first tasks of the Committee will be to finalize the scope of the CCA technical study, which will be required to size the CCA program and determine its overall feasibility; and help refine the goals and objective of the CCA program going forward for guidance to the JPA and CCA agency that would be formed to carry the program forward once it is established.

The CCA Steering Committee will consist of appointees from the Alameda County Supervisorial Districts, representatives from each of the County’s 14 cities that choose to participate, and “at large” representatives. The Committee will be subject to the Brown Act and will meet on a monthly or bi-monthly basis. The first meeting is expected to occur in mid-May.

Mayor Nagy will appoint a representative and an alternate to represent the City of Newark on the Steering Committee.

Attachment

Action - It is recommended that the City Council, by resolution, confirm the appointments of a representative and an alternate to the Community Choice Aggregation Steering Committee.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPOINTING _____ AS THE
REPRESENTATIVE AND _____ AS THE
ALTERNATE TO THE COMMUNITY CHOICE
AGGREGATION STEERING COMMITTEE

WHEREAS, the Alameda County Board of Supervisors is forming a Community Choice Aggregation Steering Committee; and

WHEREAS, a Community Choice Aggregation Program would allow for competition in electricity generation services and accelerate investments in clean energy resources and local energy projects; and

WHEREAS, Mayor Nagy has appointed _____ to serve as the Representative and _____ to serve as the Alternate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby confirms the Mayor's appointments to the Community Choice Aggregation Steering Committee and authorizes the Mayor to sign a letter confirming the City wishes to participate in Community Choice Aggregation Steering Committee.



City of Newark

MEMO

DATE: March 26, 2015
TO: City Council
FROM: Sheila Harrington, City Clerk *S.H.*
SUBJECT: Approval of Audited Demands for the City Council Meeting of April 9, 2015.

REGISTER OF AUDITED DEMANDS

Bank of America General Checking Account

<u>Check Date</u>		<u>Check Numbers</u>	
March 20, 2015	Pages 1-2	104244 to 104317	Inclusive
March 27, 2015	Pages 1	104318 to 104366	Inclusive



City of Newark

RECEIVED
MAR 26 2015
CITY CLERK

MEMO

DATE: March 26, 2015
TO: Sheila Harrington, City Clerk
FROM: Susie Woodstock, Administrative Services Director *SW*
SUBJECT: Approval of Audited Demands for the City Council Meeting of April 9, 2015.

The attached list of Audited Demands is accurate and there are sufficient funds for payment.

1

Final Disbursement List. Check Date 03/20/15, Due Date 03/30/15, Discount Date 03/30/15. Computer Checks.

Bank 1001 BANK OF AMERICA

Check#	Vendor Number	Payee	Check Date	Check Amount	Description
104244	10223	LEXISNEXIS RISK DATA MANAGEMENT INC	03/20/15	429.00	BACKGROUND CHECKS
104245	322	ADAMSON POLICE PRODUCTS PROFESSIONAL POL	03/20/15	425.10	MISCELLANEOUS PURCHASES
104246	344	ALAMEDA COUNTY WATER DISTRICT	03/20/15	25,497.52	FY14-15 WATER CHARGES
104247	5821	ALL CITY MANAGEMENT SERVICES, INC	03/20/15	3,124.17	CROSSING GUARD SVCS
104248	411	AIG BENEFIT SOLUTIONS	03/20/15	450.08	LIFE INSURANCE PREMIUM ANNUAL PURCHASE O
104249	349	AT&T	03/20/15	556.74	ANNUAL TELECOM FY2014-15
104250	4534	BAY AREA BARRICADE SERVICE INC	03/20/15	152.40	FY14-15 STEEL POSTS
104251	381	BAY AREA NEWS GROUP EAST BAY	03/20/15	1,245.56	PH NOTICES
104252	3046	BEEHIVE GLASS CO INC	03/20/15	704.12	FY14-15 GLASS REPAIRS
104253	23	FRANK BONETTI PLUMBING INC	03/20/15	650.00	FY 14-15 PLUMBING REPAIRS
104254	2970	MICHAEL BONXIE COMPUTER CONSULTING GROUP	03/20/15	375.00	BLDG PERMIT MAINTENANCE AND SUPPORT
104255	10301	MARIEA G BRONITSKY	03/20/15	455.50	PAYROLL WITHHOLDING
104256	724	DEBORAH CABNESS	03/20/15	743.00	CAPE CONFERENCE ADVANCE 3/30-4/3/15
104257	9150	CAL-WEST LIGHTING & SIGNAL MAINTENANCE I	03/20/15	5,550.70	FY14-15 TRAFFIC SIGNAL AND STREET LIGHT
104258	4388	CAPTURE TECHNOLOGIES INC ATTN: ACCOUNTS R	03/20/15	2,951.99	SECURITY SYSTEM MAINTENANCE
104259	10261	CARBONIC SERVICE	03/20/15	252.51	POOL CHEMICALS
104260	458	CHEVRON AND TEXACO BUSINESS CARD SERVICE	03/20/15	763.03	FY14-15 FUEL
104261	10970	COCA COLA REFRESHMENTS UNION CITY SALES	03/20/15	240.64	CAPE PURCHASES
104262	180	CPGA CALIFORNIA PEACE OFFICERS' ASSOCIAT	03/20/15	252.00	PATROL POST TRAINING
104263	242	CROP PRODUCTION SERVICES	03/20/15	2,320.74	BROAD LEAF SPRAY AND FERTILIZER
104264	10649	COLOR VIBE	03/20/15	5,000.00	PERFORMANCE BOND RTN
104265	10793	RITA MALENGAN	03/20/15	172.50	RENTAL DEPOSIT RTN
104266	10793	SEILU YOGI	03/20/15	100.00	BCAY DEPOSIT RTN
104267	10794	DUKE DE LON	03/20/15	315.00	VIDEO SERVICES
104268	7183	DEMARAY'S GYMNASTICS ACADEMY	03/20/15	141.05	RECREATION CONTRACT
104269	3728	DEPARTMENT OF JUSTICE ACCOUNTING OFFICE	03/20/15	268.00	FINGERPRINTING FEE ANNUAL PURCHASE ORDER
104270	3969	DEPARTMENT OF MOTOR VEHICLES MAIL SUPPOR	03/20/15	614.39	BOOKS & BULLETINS
104271	10725	STEVEN LOSIER	03/20/15	2,202.43	EX COMPUTER LOAN PROGRAM
104272	310	EQUIPAX INFORMATION SVCS LLC	03/20/15	50.42	CREDIT CHECK FEE ANNUAL PURCHASE ORDER
104273	10478	EUGENE'S HOME APPLIANCE SERVICE	03/20/15	101.86	FY14-15 APPLIANCE REPAIRS
104274	4731	EWING IRRIGATION PRODUCTS INC	03/20/15	85.89	IRRIGATION SUPPLIES
104275	10642	FASIGNAL COMPANY	03/20/15	34.77	STREETS PARTS
104276	11224	FREMONT RECYCLING & TRANSFER STATION	03/20/15	10,533.46	GARBAGE SERVICES CY2015
104277	313	FREMONT URGENT CARE CENTER	03/20/15	50.00	PRE-EMPLOYMENT AND DOT PHYSICAL SERVICES
104278	10655	GRANITEROCK	03/20/15	753.00	GRANITE PATCH
104279	65	JERRY HAAG URBAN PLANNER	03/20/15	1,875.00	CONTRACT DO
104280	11219	APRIL HARRIS	03/20/15	123.00	RECREATION CONTRACT
104281	167	HARRIS COMPUTER SYSTEMS	03/20/15	5,853.54	ANNUAL FINANCE SYSTEM TECHNICAL SOFTWARE
104282	4845	HINDERLITZER DELAMAS & ASSOCIATES	03/20/15	10,194.05	SALES TAX CONSULTING/AUDIT SERVICES
104283	10663	HOSE & FITTING ETC	03/20/15	297.52	FY14-15 HYDRAULIC HOSES, PARTS, REPAIR
104284	11133	I PIZZA	03/20/15	357.75	CAPE PIZZAS
104285	10192	JOHN DEBRE LANDSCAPES, INC/LSCO	03/20/15	3,528.94	FY14-15 IRRIGATION SUPPLIES
104286	5009	JTZ INTEGRATED RESOURCES ATTN: CLAIMS AC	03/20/15	10,553.29	WORKER'S COMPENSATION REIMBURSEMENT TRCS
104287	293	LANSURGE LIFE SERVICES INC	03/20/15	97.99	INTERPRETATION SVCS
104288	711	LEXISNEXIS	03/20/15	160.00	LEGAL ONLINE RESOURCE
104289	4690	LIFE ELDERCARE INC	03/20/15	7,000.00	MEALS ON WHEELS
104290	11271	MASAKO'S MUSIC STUDIO MASAKO YAMANOTO	03/20/15	439.20	RECREATION CONTRACT
104291	7114	METRO MOBILE COMMUNICATIONS	03/20/15	124.26	TRAFFIC SUPPLIES
104292	10365	NEW IMAGE LANDSCAPE	03/20/15	11,954.00	PROJECT 10070 LANDSCAPE MAINT PROJECT
104293	349	PACIFIC GAS & ELECTRIC	03/20/15	51.78	FY14-15 STREET/TRAFFIC LIGHT ENERGY
104294	11014	PACIFIC PLUMBING & SEWER SERVICE	03/20/15	580.00	FY14-15 PLUMBING REPAIRS/SEWER SERVICE

Final Disbursement List. Check Date 03/20/15, Due Date 03/30/15, Discount Date 03/30/15. Computer Checks.
Bank 1001 BANK OF AMERICA

NCCR Check#	Vendor Number	Payee	Check Date	Check Amount	Description
104295	5948	R M PALMER COMPANY	03/20/15	861.70	CASHY FOR FAMILY DAY AT THE PARK
104296	2460	PERS LONG-TERM CARE PROGRAM	03/20/15	67.54	PAYROLL PREMIUM
104297	329	PROEXIX GROUP INFORMATION SYSTEMS	03/20/15	100.00	PARKING CITATION PROGRAM
104298	10683	FITNEY BOWES GLOBAL FINANCIAL SVCS	03/20/15	1,723.10	MAIL MACHINE LEASE/SUPPLIES
104299	7815	PRECISION CONCRETE CUTTING INC	03/20/15	540.00	SIDEWALK CONCRETE CUTTING
104300	9811	REDIFLEX TRAFFIC SYSTEMS	03/20/15	23,456.00	REDLIGHT CAMERA MONITORING
104301	11074	ROTAY & TUCKER LLP	03/20/15	3,354.00	LITIGATION AND CONSULTING
104302	13822	DINAH SWAN	03/20/15	541.50	RECREATION CONTRACT
104303	377	SIMON & COMPANY INC	03/20/15	1,817.15	LEGISLATIVE SERVICES
104304	40	SCRAPLES ADVANTAGE DEPT LA	03/20/15	965.16	OFFICE SUPPLIES
104305	2778	STATE OF CALIFORNIA FRANCHISE TAX BOARD	03/20/15	150.00	PAYROLL WITHHOLDING
104306	2778	STATE OF CALIFORNIA FRANCHISE TAX BOARD	03/20/15	135.00	PAYROLL WITHHOLDING
104307	10583	SWIMOUTLET.COM SPIRALEDGE, INC.	03/20/15	128.64	RETAIL ITEMS
104308	679	TARGET SPECIALTY PRODUCTS	03/20/15	26.13	FY14-15 PESTICIDES
104309	1763	TEMPERATURE TECHNOLOGY INC	03/20/15	4,339.43	HVAC REPAIRS AT SILLIMAN
104310	3448	UNIVERSAL SPECIALTIES INC	03/20/15	19.15	FY14-15 BULBING SUPPLIES
104311	853	VALLEY OIL COMPANY DEPT# 55101	03/20/15	10,632.11	FUEL DELIVERY
104312	5623	VERIZON WIRELESS	03/20/15	762.51	CELLULAR SERVICE & EQUIPMENT FY2014-15
104313	339	WASHINGTON HOSPITAL GENERAL ACCOUNTING	03/20/15	275.00	LAB TESTS
104314	5732	WATERPROOFING ASSOCIATES	03/20/15	1,022.00	ROOF REPAIRS
104315	5050	WEST COAST ARBORISTS INC	03/20/15	400.00	STREET/PARK TREE PRUNING
104316	9714	WESTERN PACIFIC SIGNAL LLC	03/20/15	359.20	PROJECT #975 PFD MODULES
104317	767	ZEP MANUFACTURING COMPANY	03/20/15	348.56	SUPPLIES FOR EQUIP. SHOP
Total				181,387.04	

Final Disbursement List. Check Date 03/27/15, Due Date 04/06/15, Discount Date 04/06/15. Computer Checks.
 Bank 1001 BANK OF AMERICA

Check#	Vendor Number	Payee	Check Date	Check Amount	Description
104310	149	ARAG PLAN CORPORATION	03/27/15	\$,931.25	DEDUCTIBLE COSTS
104319	267	ADIRONDACK DIRECT	03/27/15	282.31	CB REPLACEMENT R/W CHAIR
104320	1396	ALAMEDA COUNTY FIRE DEPARTMENT ACTN: ACC	03/27/15	705,351.58	FIRE SERVICES CONTRACT
104321	297	ALAMEDA COUNTY SHERIFF'S OFFICE GREGORY	03/27/15	589.56	LATENT PRINTS
104322	287	TREASURER OF ALAMEDA COUNTY GREGORY J AM	03/27/15	788.75	CRIME LAB FEES
104323	344	ALAMEDA COUNTY WATER DISTRICT	03/27/15	3,763.46	PROJECT1063, 2014 STREET OVERLAY
104324	284	TREASURER OF ALAMEDA COUNTY INFORMATION	03/27/15	3,598.35	ANS ACCESS FEES
104325	5821	ALL CITY MANAGEMENT SERVICES, INC	03/27/15	3,471.30	CROSSING GUARD SVCS
104326	348	AT&T	03/27/15	111.36	ANNUAL TELECOM FY2014-15
104327	1085	AT&T	03/27/15	38.55	LONG DISTANCE FY2014-15
104328	22	BOETHING TREELAND FARMS INC	03/27/15	260.62	ARBOR DAY TREE
104329	9880	BUREAU VERITAS NORTH AMERICA INC FILE 59	03/27/15	30,683.60	BLDG PLAN CHECK FEES FOR pc#356-14
104330	8150	CAL-WEST LIGHTING & SIGNAL MAINTENANCE I	03/27/15	2,246.62	FY14-15 TRAFFIC SIGNAL AND STREET LIGHT
104331	6304	CLASSIC GRAPHICS T & J LEWIS INC	03/27/15	5,000.00	REPAIRS TO 1903, VEHICLE DAMAGED BY TREE
104332	10650	CNIVAC PRECISION, INC.	03/27/15	709.25	BUSINESS LICENSE OVERPAYMENT
104333	10650	NANCY CONKLIN	03/27/15	137.97	UIT REFUND
104334	10793	HIROKO OLSON	03/27/15	15.00	TRIP WITHDRAWAL
104335	10793	PATRICIA KNIGHT	03/27/15	94.00	SR TRIP WITHDRAWAL
104336	10793	BLAIN YONG	03/27/15	300.00	RENTAL DEPOSIT RTN
104337	10642	EASTMAN COMPANY	03/27/15	299.25	COMPACT DRILL
104338	1120	FORENSIC ANALYTICAL SCIENCES, INC	03/27/15	478.00	LAB TESTS
104339	234	FREMONT ALARM C/O JOE TRIMBLE	03/27/15	255.00	FY14-15 ALARM MONITORING AND REPAIR
104340	60	FREMONT FORD/AGTBOODY OF FREMONT AITY: P	03/27/15	28.31	FY14-15 FORD PARTS & SERVICES
104341	8762	G&R TECHNOLOGIES INC	03/27/15	213.05	CARTRIDGE AND PAPER FOR PLOTTER
104342	10707	GYM DOCTORS	03/27/15	150.00	FITNESS EQUIPMENT MTC
104343	1457	HOME DEPOT CREDIT SERVICES DEPT 32-25409	03/27/15	443.17	MISC SUPPLIES
104344	10192	JOHN DEERE LANDSCAPES, INC/LESKO	03/27/15	671.62	FY14-15 IRRIGATION SUPPLIES
104345	7189	LINCOLN EQUIPMENT INC	03/27/15	6,890.23	POOL LIFT
104346	11205	MARINA ESPEDA TRI COUNTY BLDG MAINT	03/27/15	3,264.69	FY14-15 JANITORIAL SERVICES
104347	5046	MOTOROLA SOLUTIONS, INC	03/27/15	453.81	TRAFFIC SUPPLIES
104348	349	PACIFIC GAS & ELECTRIC	03/27/15	1,957.78	FY14-15 STREET/TRAFFIC LIGHT ENERGY
104349	10729	PETTY CASH CUSTODIAN-RECREATION CHERYL G	03/27/15	580.15	PETTY CASH REPLENISHMENT
104350	10666	PRUDENTIAL OVERALL SUPPLY	03/27/15	1,385.87	FY14-15 MATS/TOWELS/UNIFORMS
104351	11234	RAY MORGAN COMPANY	03/27/15	2,914.61	OFFICE RENTAL AGREEMENT R350#10263
104352	220	SONITROL	03/27/15	1,041.00	FY14-15 MONITORING
104353	11231	SURE FIRE PROTECTION CO, INC	03/27/15	3,465.00	ANNUAL FIRE SPRINKLER TEST AND INSPECTIO
104354	679	TARGET SPECIALTY PRODUCTS	03/27/15	881.35	FY14-15 PESTICIDES
104355	11252	AMY TEO	03/27/15	101.00	RECREATION CONTRACT
104356	133	TJRF & INDUSTRIAL EQUIPMENT CO	03/27/15	233.70	FY14-15 MOWER & AMC PARTS AND REPAIR
104357	7517	U S FOODS INC SAN FRANCISCO	03/27/15	511.93	CAFE PURCHASES
104358	363	UNITED STATES POSTMASTER	03/27/15	2,500.00	POSTAGE FOR CITY NEWSLETTER
104359	10968	UTILITY TELEPHONE	03/27/15	17,005.38	ANNUAL TELECOM FY2014-15
104360	10998	GARY M SRELDON VBS SERVICES	03/27/15	250.00	BLOOD WITHDRAWAL SVC
104361	5823	VERIZON WIRELESS	03/27/15	254.67	PD CELLULAR SVC
104362	11160	VIEWU	03/27/15	207.13	TECHNOLOGY MAINT
104363	339	WASHINGTON HOSPITAL GENERAL ACCOUNTING	03/27/15	200.00	LAB TESTS
104364	5050	WEST COAST ARBORISTS INC	03/27/15	6,770.00	STREET/PARK TREES PRUNING
104365	340	WITMER-TYSON IMPORTS	03/27/15	1,187.00	E9 TRAINING/SUPPLIES
104366	3245	ZUMAR INDUSTRIES INC	03/27/15	243.48	FY14-15 STEEL POSTS
Total				821,111.19	