



CITY OF NEWARK CITY COUNCIL

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

City Administration Building
5:30 p.m.
City Council Chambers

Agenda

Thursday, October 8, 2015

Special Meeting Notice

A. ROLL CALL

B. Study Session to discuss a new Civic Center including a library, police facility, and city hall.

The City of Newark is currently studying the needs and opportunities for the replacement of the Civic Center. The feasibility of several options and strategies are being evaluated. The space and program needs for the library and civic functions and the potential locations for the Civic Center will be discussed.

C. ORAL COMMUNICATIONS

D. 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 94560-3796 • 510-578-4266 • E-mail: city.clerk@newark.org

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

AGENDA

Thursday, October 8, 2015

- A. ROLL CALL
- B. MINUTES
 - B.1 Approval of Minutes of the regular City Council meeting of Thursday, September 24, 2015. (MOTION)
- C. PRESENTATIONS AND PROCLAMATIONS
 - C.1 Presentation from the Newark Unified School District in honor of the City's 60th Anniversary. (PRESENTATION)
 - C.2 Proclaiming October 21, 2015 as Unity Day. (PROCLAMATION)
 - C.3 Proclaiming October as National Domestic Violence Awareness Month. (PROCLAMATION)
 - C.4 Presentation of City of Newark map hand drawn by Kyrie Sismaet. (PRESENTATION)
- D. WRITTEN COMMUNICATIONS
- E. PUBLIC HEARINGS
- F. CITY MANAGER REPORTS - NONCONSENT
 - F.1 Authorization for acceptance of transfer of title for the Alameda County Fire Department Fire Truck 28 to the City of Newark, salvage of the 1996

Pierce Arrow Quint and amend the 2014-2016 Biennial Budget – from Administrative Services Director Woodstock. (RESOLUTION)

F.2 Authorization for the Mayor to sign an Agreement Implementing Conditions of Approval with Newark Enterprise Joint Venture, LLC to address the implementation of a private park condition of Vesting Tentative Map 8098 in the Dumbarton Transit Oriented Development Project– from Assistant City Manager Grindall (RESOLUTION)

G. CITY ATTORNEY REPORTS

G.1 Claim of Aasif Shabbir – from City Clerk Harrington. (MOTION)

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

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

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

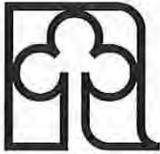
Approval of Audited Demands for the City Council meeting of October 8, 2015. (MOTION)

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.

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

AGENDA

Thursday, October 8, 2015

CITY COUNCIL:

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

CITY STAFF:

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

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

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

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

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

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

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



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, September 24, 2015

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:32 p.m. Present were Council Members Hannon, Bucci, and Vice Mayor Collazo.

Council Member Freitas was noted absent.

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, September 10, 2015. **MOTION APPROVED**

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

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employee.

Mayor Nagy introduced recently promoted Police Sergeant Sean Eriksen.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

F. CITY MANAGER REPORTS

Council Member Bucci requested that item F.3 be removed from the Consent Calendar for separate consideration.

Vice Mayor Collazo moved, Council Member Hannon seconded, to approve Consent Calendar Items F.1 through F.2, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption of the resolutions. The motion passed, 4 AYES, 1 ABSENT.

CONSENT

- F.1 Approval of Tentative Parcel Map 10391 for a proposed four-parcel division of land on the west side of unimproved Hickory Street near the western terminus of Enterprise Drive. RESOLUTION NO. 10418**
- F.2 Authorize staff to execute agreements relating to the implementation of the Local Prepaid Mobile Telephony Services Collection Act. RESOLUTION NO. 10419
RESOLUTION NO. 10420
CONTRACT NO. 15040**

NONCONSENT

- F.3 Amendment of Purchasing Rules and Regulations. RESOLUTION NO. 10421**

In response to Council Member Bucci's questions, Assistant City Engineer Fajeau stated that the City follows the California Public Contract Code when reviewing bids for public contracts. The contracts are awarded to the lowest responsible bidder.

Council Member Bucci moved, Council Member Hannon seconded, to adopt the Purchasing Rules and Regulations pursuant to Ordinance No. 142. The motion passed, 4 AYES, 1 ABSENT.

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

The entire City Council thanked Laurie Gebhard for her work on the City float for the Newark Days parade.

Vice Mayor Collazo stated that the section of Cedar Boulevard by the new homes being built looks beautiful.

In response to Council Member Hannon, City Manager Becker stated that he has not received any complaints regarding Newark Days this year.

Council Member Bucci recognized the local fire fighters who helped with the Valley Fire.

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

K. ORAL COMMUNICATIONS

Wynn Grcich stated that the City of Menlo Park recently adopted an ordinance banning the use of Round Up. She stated that the product should be banned in California. She shared her concerns with additives in water.

Michael Rosemund requested that the City address the sanitary issues associated with the homeless at the railroad tracks near Baine Avenue. He requested an update on the maintenance of the roadway at Birch Street.

Assistant City Engineer Fajeau stated that the Birch Street slurry seal will be completed by the end of October.

Angela Akridge discussed the benefits of skate parks and offered to give the City Council tours of similar parks in the cities of Fremont and Union City.

L. APPROPRIATIONS

Approval of Audited Demands for the City Council meeting of September 24, 2015. MOTION APPROVED

City Clerk Harrington read the Register of Audited Demands: Check numbers 105738 to 105845.

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

M. CLOSED SESSION

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

At 8:02 p.m. the City Council recessed to the closed session.

At 8:10 p.m. the City Council convened in closed session.

At 9:36 p.m. the City Council reconvened in open session with all Council Members present. Council Member Freitas was noted absent.

N. ADJOURNMENT

At 9:36 p.m. Mayor Nagy adjourned the City Council meeting.

C.1 Presentation from the Newark Unified School District in honor of the City's 60th Anniversary. (PRESENTATION)

Background/Discussion – Newark Unified School District Board Member Francisco Preciado will present a proclamation to the City in honor of the City's 60th Anniversary.

C.2 Proclaiming October 21, 2015 as Unity Day.

(PROCLAMATION)

Background/Discussion – October 21, 2015 is Unity Day, a day that promotes bullying awareness and prevention. A proclamation has been prepared and members of the Silliman Activity and Family Aquatic Center will accept it at the City Council meeting.

C.3 Proclaiming October as National Domestic Violence Awareness Month.
(PROCLAMATION)

Background/Discussion – October is National Domestic Violence Awareness Month. A proclamation has been prepared and members of Shelter Against Violent Environments (SAVE) will accept it at the City Council meeting.

C.4 Presentation of City of Newark map hand drawn by Kyrie Sismaet.

(PRESENTATION)

Background/Discussion – Newark resident, Kyrie Sismaet, has created a map of the City of Newark. Every park, street, and building is hand-drawn. Local sights such as neighborhood hangouts and local businesses are highlighted. Mr. Sismaet is attending college out of state; Mayor Nagy will present the art work to the City on behalf of Mr. Sismaet.

F.1 Authorization for acceptance of transfer of title for the Alameda County Fire Department Fire Truck 28 to the City of Newark, salvage of the 1996 Pierce Arrow Quint and amend the 2014-2016 Biennial Budget – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – In 2013, the Alameda County Fire Department (ACFD) submitted an application for Assistance to Firefighters Grant (AFG) for replacement of the City’s 1996 Pierce Arrow Quint. The City was not eligible to apply for the grant directly since fire services are provided by a contract with ACFD. The grant was awarded on June 27, 2014. The grant requires that the 1996 Pierce Arrow Quint be removed from firefighting service in any capacity. It was agreed that the City would salvage the 1996 Quint and reimburse ACFD for the 10 percent match upon transfer of the title of the new truck.

The new fire truck has been delivered and the ACFD Board of Directors approved the title transfer on September 15, 2015.

The final cost of the new fire truck was \$1,030,000. The Federal share was \$927,000 and the match is \$102,965.50. The cost to equip the new fire truck was \$33,563.65. The final cost to the City to accept the new fire truck is \$136,529.15.

Action - It is recommended that the City Council authorize staff to accept the title of the Alameda County Fire Department Fire Truck 28, salvage the 1996 Pierce Arrow Quint and amend the 2014-2016 Biennial Budget for Fiscal Year 2015-2016.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING STAFF TO ACCEPT THE TITLE OF THE ALAMEDA COUNTY FIRE DEPARTMENT FIRE TRUCK 28, SALVAGE THE 1996 PIERCE ARROW QUINT AND AMEND THE 2014-2016 BIENNIAL BUDGET FOR FISCAL YEAR 2015-2016.

WHEREAS, the United States Department of Homeland Security, Federal Emergency Management Agency, Assistance to Firefighter Grants offers grants to fire departments throughout the United States for replacement of equipment; and

WHEREAS, the City of Newark was not eligible for said grant due to fire services being provided by a contract with Alameda County Fire Department (ACFD); and

WHEREAS, ACFD applied for and received a grant to replace the City's 1996 Pierce Arrow Quint; and

WHEREAS, the grant requires a ten percent (10%) match and the salvage of the 1996 Pierce Arrow Quint; and

WHEREAS, the new fire truck has been delivered and is in service; and

WHEREAS, on September 15, 2015, the ACFD Board of Directors approved the transfer of title of the Alameda County Fire Department Fire Truck 28 to the City of Newark; and

WHEREAS, upon transfer of the title the City shall reimburse ACFD for the ten percent (10%) match for the grant and the costs to equip the new truck in the amount of \$136,529.15.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newark, California, as follows:

SECTION 1. The above recitals are true and correct and are adopted as the findings of the City Council.

SECTION 2. Authorizes staff to accept the title transfer of Alameda County Fire Department Fire Truck 28.

SECTION 3. Directs staff to salvage the 1996 Pierce Arrow Quint in accordance with the grant requirements.

SECTION 4. Amends the 2014-2016 Biennial Budget for Fiscal Year 2015-2016 as follows:

From: 010-0000-2991	\$136,529.15
To: 010-1041-7052	\$136,529.15

F.2 Authorization for the Mayor to sign an Agreement Implementing Conditions of Approval with Newark Enterprise Joint Venture, LLC to address the implementation of a private park condition of Vesting Tentative Map 8098 in the Dumbarton Transit Oriented Development Project– from Assistant City Manager Grindall (RESOLUTION)

Background/Discussion – A phase of the Dumbarton Transit Oriented Development Project was approved May 14, 2015 by the City Council. This phase is a 217 Unit residential development on what is commonly referred to as the Jones/Hamilton Property located on the south side of Enterprise Drive and east of Willow Street. The approval included numerous conditions, including condition “uuuu” of City Council Resolution No. 10342 which addressed acquisition of the Gallade Chemical property; clean up of contaminants; and construction of a park.

The condition provided numerous steps and conditions for the park development and included provision for the construction of a privately owned and maintained park, if certain issues or conditions arose that made ownership of the former Gallade Chemical property by the City problematic. The park would be open to the general public but owned, constructed and maintained by a private entity. The conditions of approval require the developer to provide the City with certain legal assurances and indemnifications from the current and former owners of the proposed park site if a public park was constructed and dedicated to the City. However, it now appears that assignment of these indemnifications and legal assurances on terms acceptable to the City may not be feasible due to factors beyond the control of the developer. Given this situation, the developer is requesting that the option for a private park be implemented so as to allow the project to proceed. The attached Agreement to Implement Conditions of Approval would allow the private park option to be implemented and includes provisions to provide financial guarantees and assurances that the private park is completed in a timely manner.

Since such an outcome, where a private park is implemented, is envisioned in the conditions, this agreement is in accord with the conditions of approval for this project. Other provisions are maintained, including the requirement that the Gallade Property is acquired and cleared and that the Regional Water Quality Control Board confirm that park use is appropriate on the site prior to its opening.

Condition “uuuu” addressed phasing the residential development with the completion of the first 121 units allowed if the Gallade property was acquired and the buildings demolished, and the completion of the remaining 96 units to be allowed when the park was constructed. The Agreement Implementing Conditions of Approval would allow the construction of the entire 217 unit project but would implement the park condition by requiring the developer to provide significant financial assurances and deposits, on terms deemed acceptable to City, to assure adequate funding for the construction and maintenance of a privately owned park site. The park would be constructed in accordance with the approved plans envisioned in the existing Conditions of Approval.

This agreement will implement condition “uuuu” by guiding the funding, construction, and maintenance of the park as a privately owned site, which could include additional advantages for the City, such as (1) reduced potential liability for the City, and (2) the costs of park maintenance would be borne by the new homeowners in the surrounding residential development.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the Mayor to sign an Agreement Implementing Conditions of Approval with Newark Enterprise Joint Venture, LLC to address the implementation of a private park in the Dumbarton Transit Oriented Development Project area.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT IMPLEMENTING CONDITIONS OF APPROVAL WITH NEWARK ENTERPRISE JOINT VENTURE, LLC TO ADDRESS THE IMPLEMENTATION OF A PRIVATE PARK CONDITION OF VESTING TENTATIVE MAP 8098 IN THE DUMBARTON ORIENTED TRANSIT DEVELOPMENT PROJECT

WHEREAS, the City of Newark by Resolution No. 10,342 approved Vesting Tentative Map 8098 on May 14, 2015; and

WHEREAS, the conditions of approval for Vesting Tentative Tract map included condition “uuuu” that required the construction of a public park with an option for a privately owned park to be open for public use; and

WHEREAS, circumstances have occurred that make the implementation of a public park infeasible; and

WHEREAS, the condition “uuuu” allows for the substitution of a private park to meet the condition; and

WHEREAS, The Agreement Implementing Conditions of Approval guides the implementation of the private park option as contemplated by the Conditions of Approval; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newark to authorize the Mayor to sign an Agreement Implementing Conditions of Approval to address the implementation of a condition of Vesting Tentative Map 8098;

AGREEMENT IMPLEMENTING CONDITIONS OF APPROVAL

THIS AGREEMENT RE CONDITIONS OF APPROVAL ("Agreement") is made as of _____, 2015, by and between the City of Newark, a California municipal corporation ("City"), and Newark Enterprise Joint Venture, LLC, a California limited liability company ("Developer").

RECITALS

This Agreement is made and entered into on the basis of the following facts and understandings of the parties hereto:

A. On April 23, 2015, by Resolution No. 10,342 (the "Resolution"), the City of Newark City Council approved Developer's application for approvals of development and subdivision for a residential development project (the "Project"), including approvals for development of 217 dwelling units to be located within the municipal boundaries of City, on lands identified as Tract 8110 (the "Property"). The various approvals and conditions of approval reflected in that Resolution are referred to in this Agreement collectively as "the City Approvals."

B. The City's Approvals require, among other things, that Developer acquire certain adjacent property (the "Gallade Property" or "Park Site") and construct thereon a public park. The requirements for such actions are set forth in "Conditions ffff, gggg, and uuuu" of the Resolution.

C. The City and Developer now seek to further define and clarify their mutual understandings as to how the City Approvals pertaining to development and ongoing operation and maintenance of the Park may be implemented.. This Agreement is in furtherance of those conditions of approval and is intended to supplement and clarify the City Approvals.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Developer's Basic Obligation to Provide a Privately-Owned Park for Public Use. Consistent with the terms stated in the City Approvals and this Agreement, Developer, at its cost, will acquire and clear the Gallade Property, such that the prior industrial use of the Gallade Property is permanently ceased, the existing building on the site are demolished and all industrial structures, facilities and equipment are removed. The Developer will make the Gallade Property ready and available for such environmental testing as is provided by Condition uuuu, and will take such actions at Developer's cost as may be reasonably necessary and appropriate to improve the Gallade Property with a public park, i.e., privately owned land to be improved as a park with park equipment and facilities, and to be open to the public. The Park Property is to be constructed by the Developer as provided in the City Approvals, and to be improved in accordance with the Conceptual Plan attached as "Exhibit A" to the

Resolution (the "Park"). The Park will be privately-owned and privately-maintained, but will be open for public access and use, under conditions and hours of operation similar to those applicable to City-owned parks.

2. Timing – Submission of Plans and Construction of Park Improvements.

a. As provided by “Condition ffff” of the Resolution, the Developer shall submit a Park Master Plan, and the Landscape Documentation Package, consistent with the previously-approved Conceptual Plan, for approval by the City Engineer, prior to seeking City Council approval for the final subdivision map for Tract 8110. The City will review and respond to the Park Master Plan within 90 days of submittal.

b. Except as otherwise provided in this Agreement, Developer shall promptly commence the work of improvements, construction, landscaping and equipping of the Park as described in Condition ffff, and in accordance with the City-approved Park Master Plan, within 90 days after the San Francisco Regional Water Quality Control Board (“RWQCB”) issues its “Park Use Confirmation” (as that term is defined in Section 3(a) below), unless the City agrees otherwise in a writing signed by the City Manager, and Developer shall thereafter diligently prosecute the work of improvement of the Park Site and facilities as provided by the City-approved plans. The work shall be subject to the City’s inspection and approval.

c. This Agreement modifies and amends the provisions in Condition uuuu as to the time for the completion of the Park Improvements by the Developer, and the parties agree that Condition uuuu will be implemented by this Agreement such that (except as otherwise provided in this Agreement, e.g., Section 4) the Park Improvements shall be completed and deemed satisfactory by the City before the Developer will be deemed eligible to apply for a certificate of occupancy for the 217th dwelling unit within the Project (rather than for the 121st dwelling unit as stated in Condition uuuu). This Agreement also modifies the provisions in Condition uuuu providing for Developer to offer dedication of the Park Property and improvements to the City prior to issuance of the certificate of occupancy for the 121st residential unit, as such dedication is no longer provided for or required by this Agreement, as further detailed in Sections 4, 5, and 6 below.

d. Except as provided in the preceding sub-section (c) or elsewhere in this Agreement, all other provisions of the City Approvals requiring the Developer to take certain actions on or before issuance of certificates of occupancy for the 121st dwelling unit shall remain in full force and effect, and shall remain tied to the 121st unit.

3. Clearance from Environmental Regulatory Agencies for Park Use of Site (“Park Use Confirmation”).

a. The Developer shall take all such actions as necessary (at no cost to the City) to obtain and provide to the City written confirmation from the RWQCB confirming the RWQCB’s determination that the Park Property is acceptable for park uses. Confirmation of the RWQCB’s determination (the “Park Use Confirmation”) shall be established by the RWQCB’s issuance of a “No Further Action” letter, “Closure Letter” or other equivalent document confirming that all site assessment and remediation involving prior operations on

the Park Property has been completed such that no further additional environmental assessment, monitoring, mitigation, treatment, removal work, remediation and/or cleanup work or similar work or corrective action is necessary for soils at the Park Property "site" (as defined by the RWQCB) for use of the Park Property as a public park. Ongoing groundwater remediation and monitoring shall be deemed permissible, and a deed restriction prohibiting residential use, but allowing all uses generally associated with a public park, and containing other standard RWQCB requirements consistent with a No Further Action Letter, Closure Letter, or equivalent document, of soils for non-residential (park usage), shall also be permissible. Developer shall use reasonable diligence and efforts to obtain and provide such Park Use Confirmation to the City, and as a condition precedent to the Developer being deemed eligible to apply for the issuance of the certificate of occupancy for the 121st dwelling unit in the Project, and in any event the Developer shall provide such Park Use Confirmation to the City, in the required form, no later than December 31, 2018, or such other time as the parties may agree in writing.

b. In the event that the Developer is not able to provide such written Park Use Confirmation to the City within the time allowed under Section 3(a) above, then the Parties shall proceed as provided in Section 4, below.

4. Environmental/Escrow.

a. Upon completion of the soil remediation phase of the environmental cleanup work on the Park Site, or as otherwise provided in this Agreement, the Developer shall provide the City with the Park Use Confirmation prior to City's issuance of the certificate of occupancy for the 121st unit within the Project, or within the time provided by Section 3(a), above, whichever first occurs.

b. If the Park Use Confirmation is not provided to the City within the time described in subdivision 3(a) above, the Developer shall deposit into escrow \$3 million (the Escrow Deposit) for release/disbursement as described below, as a condition precedent to the Developer being deemed eligible to request issuance of the certificate of occupancy for the 121st dwelling unit. The Escrow Deposit shall be established with a mutually agreed escrow holder, separate from any other escrow or account related to Developer's acquisition of the Park Property. On or before the time for Developer making the Escrow Deposit, the parties shall cooperate in good faith to prepare and approve escrow instructions regarding the conditions for the Escrow Deposit, retention, disbursement and release of the funds in the escrow consistent with the terms in this Section 4 of this Agreement. Following such Escrow Deposit, and provided that Developer has otherwise fulfilled any non-park related requirements for obtaining certificates of occupancy for units 121 through 217, the City shall issue those additional certificates of occupancy as requested in due course by Developer.

c. If Developer (1) is able to secure the Park Use Confirmation after issuance of the occupancy permit for the 121st unit and prior to seeking an occupancy certificate for the 217th unit within the Project; and (2) provides adequate financial assurances or security acceptable to the City Engineer for 100% of the estimated Park construction costs (in the City's sole discretion), then upon Developer's request the then-remaining balance of the Escrow Deposit shall immediately be released to Developer and Developer will cause

construction and improvement of the Park as provided by the City Approvals and this Agreement. If Developer fails to provide the financial assurances deemed acceptable to the City Engineer, the Escrow Deposit shall remain in escrow and be subject to the terms and conditions of the following subdivision (d).

d. If Developer is unable to secure and provide the Park Use Confirmation to the City following the issuance of the occupancy certificate for the 121st unit within the Project, or fails to provide adequate financial assurances and security acceptable to the City Engineer as provided in subdivision (c) above, then in addition to Developer making the Escrow Deposit the following will occur and options will become available to the City as detailed below, and provided that Developer complies with the requirements below and fulfills any non-Park-related requirements for obtaining certificates of occupancy for dwelling units 122-217, the City shall issue those certificates of occupancy as requested in due course by Developer:

(i) Developer shall continue to use best efforts during the period described in subsection (ii) below to secure the Park Use Confirmation, and will provide to the City Manager a written report (within 3 months of the issuance of the certificate for the 121st unit, and annually thereafter) regarding the Developer's efforts to resolve the situation. If Developer secures the Park Use Confirmation prior to the City's exercise of the elections provided for in subsection (iii-vi), below, the entire then-remaining balance of the Escrow Deposit shall immediately be released to Developer, and Developer will cause construction and improvement of the Park as provided for in the City Approvals and this Agreement, and any financial assurances and/or security provided to the City under Section 4(c), above, shall be released upon completion of the Park improvements.

(ii) The holder of the Escrow Deposit ("Escrow Holder") will release to City \$300,000 annually (non-refundable) until the earlier to occur of (i) Developer having secured the Park Use Confirmation or (ii) \$1.5 million has been disbursed from escrow (i.e., 5 annual payments of \$300,000 each). The first release shall occur upon the date that is the earlier of either (1) the date that is the first anniversary of the date of issuance of the certificate of occupancy for the 121st unit; or (2) June 1, 2021. Subsequent releases to the City of \$300,000 each shall occur annually, on the date that is the anniversary of the first release.

(iii) If Developer has not secured the Park Use Confirmation by the fifth annual release, when \$1.5 million has been disbursed from escrow (which date is presently anticipated to occur approximately 8 years following start of construction of the Project), then the remaining \$1.5 million will be disbursed to either a Home Owners' Association, or other private entity as provided in third paragraph of Condition uuuu ("HOA"), to be created by Developer as described in Section 5 below, or to the City itself, at the City's election, for the purposes specified in subdivision (iv) or (v), below (based on the City's election as between those subdivisions), and any financial assurances and/or security provided to the City under Section 4(c), above, shall be released.

(iv) If City elects to release the balance of the escrow deposit funds to the HOA, the funds will be released on a restricted basis conditioned upon the HOA constructing

the Park according to the City-approved plans, if and when the Park Use Confirmation has been obtained by either the HOA or the City. In that event, the Developer will be relieved of any further obligation to fund, construct, equip, or improve the Park or to obtain Park Use Confirmation and the Developer's right to reimbursement of "Reimbursable Park-Related Costs" shall be limited to (1) only such Reimbursable Park-Related Costs (defined in Condition uuuu) as Developer may have actually and reasonably incurred prior to the City's election to distribute the balance of the Escrow Deposit, and (2) the \$1.5 million released to the HOA.

(v) If City elects to direct the Escrow Deposit be disbursed to the City itself, such funds may be used at the City's sole discretion and for any public purposes as the City may in its sole discretion determine, and the HOA shall have no obligation to fund, construct, equip, or improve the Park (but may have obligations to maintain the Park, as provided in Section 5, below). In that event, the Developer will be relieved of any further obligation to fund, construct, equip, or improve the Park or to obtain Park Use Confirmation. Also, in the event that the Park Use Confirmation is not provided to the City within the time periods provided in this subparagraph 4(d) and the City elects to release the balance of the escrow deposit to itself, thereby relieving the Developer of further obligation to construct the Park, then the Developer's right to reimbursement of "Reimbursable Park-Related Costs" shall be limited to (1) only such Reimbursable Park-Related Costs (defined in Condition uuuu) as Developer may have actually and reasonably incurred prior to the City's election to receive the balance of the Escrow Deposit, and (2) the \$1.5 million released to the City separate and apart from any of the \$300,000 annual payments.

(vi) City's Election to Terminate Developer's Park Improvement Obligations. In the event that Developer is unable to secure and provide the Park Use Confirmation to the City by the time the Escrow Holder has released the second of the five (5) annual releases (of \$300,000 each) as provided by subdivision (d)(ii) above, then the City may, in its sole discretion, elect to direct the Escrow Holder to immediately release the then-remaining balance of the \$3 million Escrow Deposit to the City itself which the City may use for any public purpose in the City's unfettered discretion. In the event the City, in its sole discretion, determines to exercise the option and election provided by this subdivision (vi) and obtains the full remaining balance of the Escrow Deposit, then (1) the Developer and the HOA shall be relieved of any further obligations to seek the Park Use Confirmation or to fund, construct, equip, improve, or maintain the Park, and (2) the Developer shall be entitled to reimbursement of its "Reimbursable Park-Related Costs" as Developer may have actually and reasonably incurred prior to the City's election under this sub-section.

5. Park Ownership and Maintenance.

a. With this Agreement, the Parties hereto understand and agree that the Conditions of approval in the Resolution are being modified so that under no circumstances will the City be accepting any dedication of the Park Property, or obtaining any ownership interest in, the Park Property, nor will the City otherwise be obtaining any legal rights or control over the uses and/or operations to be conducted on the Park Property, other than as provided in the City Approvals and this Agreement, and/or as provided to the City by law as a part of its regulatory, police power, and land use authority as a municipal corporation.

b. The Developer shall be responsible, and shall continue to be responsible, for all approved Park improvements, and shall continue to be responsible for the Park and the Park improvements under the City Approvals, until such time as the Developer may transfer the ownership and responsibilities for maintenance and operation of the Park and its improvements to a successor as provided in subsection (c), below.

c. Subject to the City's right of prior approval (which shall not be unreasonably withheld), the Developer may transfer the Park Property to the Project's Home Owners Association ("HOA"), which is to be formed and established by the Developer at no cost or liability to the City. If the Developer elects to do so, the Developer shall take such actions as reasonably necessary to prepare documentation for the establishment of a HOA providing that the HOA shall be responsible in perpetuity for providing adequate control, public access, maintenance, and repairs as to the Park. The HOA documents shall provide that the City will have the right (but not the duty) to enforce the HOA's obligations to provide suitable maintenance and public access to the Park, consistent with similar, City-owned parks. The Developer shall be responsible for obtaining all necessary regulatory and legal approval for these provisions, including (without limitation) approval(s) from the State Bureau of Real Estate and/or other agencies responsible for oversight of HOA regulations. The HOA documentation, including State or other regulatory approval, shall be provided to the City for its review and approval prior to the Developer obtaining building permits for the first dwelling unit in the Project; provided, however, the City shall not condition its approval on the documentation containing provisions contrary to or inconsistent with provisions required by any state agency(ies). At or before the same time, the Developer shall provide to the City for review and approval of the City's public works department the HOA's budget for these maintenance and operational responsibilities as approved or accepted by the Bureau of Real Estate.

d. The Park Property shall at all times be operated and maintained in accordance with the standard of care and maintenance consistent with other public parks in the City.

6. Satisfaction of Condition uuuu: The Developer's full and timely compliance with the terms and conditions of Condition uuuu, as implemented and modified by this Agreement, to the City's satisfaction shall be deemed to satisfy Condition uuuu, and there will be no requirement or other provision for dedication of the Park Site to the City, for the Enforcement Release(s), for the Gallade Assignment, or for the Gallade Indemnity. City shall provide reimbursement of Developer's "Reimbursable Park-Related Costs" as provided for in Condition uuuu, except in the event that the conditions described in Section 4(d) of this Agreement occur and the Developer is relieved of its Park responsibilities, in which case the Developer's reimbursement shall be as specified in the applicable provision(s) in Section 4(d).

7. Default by Developer: In the event of a default of any term or provision of this Agreement by Developer or its successor in interest to the Park Property, the City shall provide the defaulting party with a thirty (30) day Notice of Default and an opportunity to cure the default. Where the default has not been cured within thirty (30) days, the City may pursue all rights remedies available to it under the law, including, but not limited to, claims

for breach of contract, nuisance, state common laws, violations of the City's Municipal Code and/or violations of or other claims under State or federal law.

8. Default in the Event of Bankruptcy by Developer or Successor:

In the event that the Developer or any of its successors under this Agreement commence an action for bankruptcy or insolvency of any type, or an action for declaration of bankruptcy or insolvency is filed against the Developer or its successor, the Developer or its successor shall give timely written notice of such action to the City. Upon City's receipt of notice of any bankruptcy or insolvency proceedings involving the Developer or its successor in interest under this Agreement, such notice of bankruptcy may be deemed a default under the City's Conditions and this Agreement. The City may, in that event, and to the extent permitted by bankruptcy and bankruptcy-related law, immediately request and direct the Escrow Holder to release and disburse any or all of the Escrow Deposit to the City unconditionally, for the City's use for any public purpose in the City's discretion, and the City may, in the City's sole discretion, apply to the Bankruptcy Court or other court having jurisdiction over the Developer's interest in the Park Property for an order allowing the City or its nominee to take possession or control of the Park Property.

9. Other Provisions.

a. Except as specifically provided otherwise in this Agreement, all other terms and conditions of the City Approvals and the Resolution, including (without limitation) the existing provisions regarding Park Impact Fees, Fiscal Impact Fees, and Incurable Conditions, shall remain in full force and effect. Except as expressly modified by this Agreement, in the event of any conflict between the terms of the Resolution and the terms of this Agreement, the terms of the Resolution shall prevail.

b. The Conditions of Approval, including (without limitation) Conditions qqqq and rrrr requiring defense and indemnification of the City by Developer and reimbursement of the City's legal and consultant fees related to the consideration and approval of the Project fully extend to the preparation, review, and approval of this Agreement and to the review of and responses to the Initial and Second Phase I Report for the Park Site Property as provided by the Resolution.

c. Developer's rights and obligations hereunder shall be assignable to (i) any affiliate of Developer; or (ii) any person or entity that acquires the Project or any affiliate of such person or entity, subject to the City's written consent (which consent shall not be unreasonably withheld), and provided that any such transferee or acquiring party shall also expressly accept in writing (acceptable to the City) all obligations and financial responsibilities included in this Agreement.

d. This Agreement shall be construed in accordance with the laws of the State of California in effect as of the date of execution of this Agreement. This Agreement shall be interpreted according to its fair meaning and as if it has been prepared by both parties, without any construction, presumption, or preference favoring either contracting party.

e. This Agreement may be executed in counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding whether both parties are signatories to the original or the same document or counterpart.

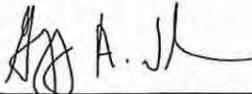
[signatures on following page]

IN WITNESS HEREOF, Developer and City have each executed this Agreement on the dates set forth below:

CITY

DEVELOPER

Name:
Title: Mayor
Date:



Name: Gregg A. Nelson
Title: Member
Date: October 1, 2015

Approved as to Form by Developer's Attorney:

Name:
Title:
Date:

Attested by the City Clerk: _____ Date: _____

Approved as to Form by the City Attorney: _____
Date: _____

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G.1 Claim of Aasif Shabbir – from City Clerk Harrington.

(MOTION)

Background/Discussion – On August 27, 2015, the City received a claim from Aasif Shabbir in the amount of \$150.00 alleging damage to his water meter from City tree roots.

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

Attachment – None

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



City of Newark

MEMO

DATE: September 24, 2015
TO: City Council
FROM: Sheila Harrington, City Clerk *S.H.*
SUBJECT: Approval of Audited Demands for the City Council Meeting of October 8, 2015.

REGISTER OF AUDITED DEMANDS

Bank of America General Checking Account

Check Date

Check Numbers

September 18, 2015 Pages 1-2 105846 to 105906 Inclusive



City of Newark

MEMO

DATE: September 24, 2015

TO: Sheila Harrington, City Clerk

FROM: Susie Woodstock, Administrative Services Director *SW*

SUBJECT: Approval of Audited Demands for the City Council Meeting of October 8, 2015.

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

Final Disbursement List. Check Date 09/18/15, Due Date 10/05/15, Discount Date 10/05/15. Computer Checks.
 Bank 1001 BANK OF AMERICA

MICR Check#	Vendor Number	Payee	Check Date	Check Amount	Description
105846	10658	4LEAF INC	09/18/15	3,546.00	FY15-16 CONTRACT BLDG INSP. SERVICES
105847	149	ABAG PLAN CORPORATION	09/18/15	11,621.94	DEDUCTIBLE COSTS (PROPERTY/LIABILITY) FO
105848	10223	LEXISNEXIS RISK DATA MANAGEMENT INC	09/18/15	447.50	BACKGROUND CHECKS
105849	3853	COUNTY OF ALAMEDA INTERNAL AUDIT UNIT RI	09/18/15	971.50	CITATION PROCESSING FEES
105850	287	ALAMEDA COUNTY SHERIFF'S OFFICE GREGORY	09/18/15	3,441.25	CRIME LAB FEES
105851	344	ALAMEDA COUNTY WATER DISTRICT	09/18/15	85,554.77	FY15-16 WATER USAGE
105852	5821	ALL CITY MANAGEMENT SERVICES, INC	09/18/15	644.67	CROSSING GUARD SVCS
105853	348	AT&T	09/18/15	658.45	ANNUAL TELECOM FY2015-16
105854	23	FRANK BONETTI PLUMBING INC	09/18/15	9,699.52	FY15-16 PLUMBING REPAIRS
105855	2970	MICHAEL BONNIE COMPUTER CONSULTING GROUP	09/18/15	375.00	BUILDING PERMIT SOFTWARE MAINT.
105856	3665	BRUCE'S TIRE	09/18/15	19.40	TIRE PART
105857	9888	BUREAU VERITAS NORTH AMERICA INC FILE 59	09/18/15	17,396.79	FY15-16 CONTRACT BLDG INSP. SERVICES
105858	7898	CALIFORNIA DIESEL & POWER	09/18/15	1,819.58	GENERATOR SERVICE
105859	5337	CDW GOVERNMENT INC	09/18/15	213.00	TECH MAINT
105860	214	CENTRAL VETERINARY HOSPITAL	09/18/15	294.35	VET SVCS
105861	458	CHEVRON AND TEXACO BUSINESS CARD SERVICE	09/18/15	846.82	FY15-16 FUEL CHARGES
105862	6304	CLASSIC GRAPHICS T & J LEWIS INC	09/18/15	1,040.25	ROOF SCREEN FOR SWEEPER
105863	10970	COCA COLA REFRESHMENTS UNION CITY SALES	09/18/15	270.67	CAFE PURCHASES
105864	10649	EZ PLUMBING	09/18/15	1,000.00	PERFORMANCE BOND RTN
105865	10649	FOXWOOD	09/18/15	1,000.00	PERFORMANCE BOND RTN
105866	10793	RAMINDER BOLA	09/18/15	209.00	CANCELLED CLASS-REC Reinstated from clai
105867	10793	CLAUDIA ANDRADE AVENDANO	09/18/15	300.00	RENTAL DEPOSIT RTN
105868	10793	CHARDAE TERRY	09/18/15	100.00	BDAY DEPOSIT RTN
105869	10793	TRISTAN PRESTOZA	09/18/15	300.00	RENTAL DEPOSIT RTN
105870	10793	PRANUTHI GRIDDALUR	09/18/15	118.00	BDAY DEPOSIT RTN
105871	10793	PRADEEPAN KANNAWADI	09/18/15	133.00	BDAY DEPOSIT RTN
105872	10793	CATHIE BROWN	09/18/15	300.00	RENTAL DEPOSIT RTN
105873	10904	EAST BAY REFRIGERATION	09/18/15	317.08	REFRIGERATOR MAINT
105874	10725	MICHAEL ALLUM	09/18/15	1,552.50	EE COMPUTER LOAN PROGRAM
105875	10725	JAMES LEAL	09/18/15	1,500.00	EE COMPUTER LOAN PROGRAM
105876	1660	FREMONT FENCE INC	09/18/15	1,500.00	FY15-16 CITYWIDE FENCE REPAIR
105877	11224	FREMONT RECYCLING & TRANSFER STATION	09/18/15	12,195.70	GARBAGE SERVICES
105878	550	FREMONT RUBBER STAMP CO INC	09/18/15	134.72	STAMPERS
105879	167	HARRIS COMPUTER SYSTEMS	09/18/15	2,931.77	SELECT FINANCE SYSTEM MAINTENANCE FY2015
105880	3284	ANTHONY HECKMAN	09/18/15	119.21	STREET CRIMES TRNG EXPENSES
105881	187	INDUSTRIAL SAFETY SUPPLY	09/18/15	422.52	FY15-16 SAFETY GEAR
105882	263	INTELLI-TECH INTELLIGENT TECHNOLOGIES AN	09/18/15	294.00	FY15-16 HALON ROOM SERVICE
105883	3644	LEXISNEXIS	09/18/15	160.00	ONLINE LEGAL RESEARCH SUBSCRIPTION
105884	7189	LINCOLN EQUIPMENT INC	09/18/15	866.93	POOL CHEMICALS AND EQUIPMENT
105885	80	LYNN PEAVEY COMPANY	09/18/15	55.85	EVIDENCE SUPPLIES
105886	11237	MAJESTIC PAINTERS	09/18/15	4,370.00	PD LOCKER ROOM PAINTING
105887	11309	MANUEL FERNANDEZ CONSTRUCTION	09/18/15	1,374.32	REPAIRS TO BENCHES AT CIVIC PARK
105888	9029	MEYERS NAVE RIBACK SILVER & WILSON	09/18/15	628.75	LEGAL CONSULTING
105889	10686	MIRACLE METHOD OF CONTRA COSTA/ALAMEDA I	09/18/15	1,020.00	GEL COAT REPAIR
105890	10920	MOUNTAIN MIKE'S PIZZA	09/18/15	112.35	SPECIAL EVENT FOOD
105891	10865	NEW IMAGE LANDSCAPE	09/18/15	195.00	LANDSCAPE MAINTENANCE
105892	349	PACIFIC GAS & ELECTRIC	09/18/15	64,908.36	FY15-16 STREET/TRAFFIC LIGHT ENERGY COST
105893	2460	PERS LONG-TERM CARE PROGRAM	09/18/15	67.54	PAYROLL PREMIUMS
105894	10683	PITNEY BOWES GLOBAL FINANCIAL SRVCS	09/18/15	1,741.05	POSTAGE SUPPLIES
105895	4346	QUALITY SIGN & BANNER	09/18/15	149.43	BANNER ADVERTISING PRESCHOOL
105896	9811	REDFLEX TRAFFIC SYSTEMS	09/18/15	18,800.00	REDLIGHT CAMERA MONITORING

Final Disbursement List. Check Date 09/18/15, Due Date 10/05/15, Discount Date 10/05/15. Computer Checks.
 Bank 1001 BANK OF AMERICA

MICR Check#	Vendor Number	Payee	Check Date	Check Amount	Description
105897	9547	ROSAS BROTHERS CONSTRUCTION	09/18/15	34,785.07	RETENTION PAYMENTS FOR PRJ 1065
105898	11074	RUTAN & TUCKER LLP	09/18/15	9,854.51	LITIGATION SERVICES
105899	377	SIMON & COMPANY INC	09/18/15	1,834.49	LEGISLATIVE SERVICES
105900	40	STAPLES ADVANTAGE DEPT LA	09/18/15	1,706.70	OFFICE SUPPLIES
105901	2778	STATE OF CALIFORNIA FRANCHISE TAX BOARD	09/18/15	150.00	PAYROLL WITHHOLDING
105902	2778	STATE OF CALIFORNIA FRANCHISE TAX BOARD	09/18/15	135.00	PAYROLL WITHHOLDINGS
105903	11324	TRIDENT PROFESSIONALS	09/18/15	3,000.00	TEAM BUILDING, AUGUST 20, 2015
105904	5623	VERIZON WIRELESS	09/18/15	437.57	FY15-16 SERVICE FOR IPADS
105905	8714	WESTERN PACIFIC SIGNAL LLC	09/18/15	10,353.23	TRAFFIC SIGNAL PARTS
105906	340	WITMER-TYSON IMPORTS	09/18/15	500.00	K9 TRAINING/SUPPLIES
Total				320,495.11	