

AGENDA
NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY
REGULAR MEETING MAY 12, 2009
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. Call To Order.
2. Pledge Of Allegiance.
3. Invocation.
4. Roll Call.
5. Declaration Of Conflicts Of Interest.
6. Ceremonial Matters.
 - a. Proclamation - Asthma Awareness Month.
 - b. Proclamation - Older Americans Month.
 - c. Proclamation - National Police Week.
7. Items from the Public - Non-Agenda Items.
8. Consent Calendar
 - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
 - b. Approval Of Warrants.
 - c. Approval Of Minutes Of The April 28, 2009 Regular Meeting.
 - d. Approve L. J. Newman Memorial Building Air Conditioning Unit Purchase.
9. Public Hearings
 - a. Adopt Resolution No. 2009- , A Resolution Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4.
10. Regular Business
 - a. Adopt Resolution No. 2009- , A Resolution Approving A HOME Regulatory Agreement With 751 Driskell Ave., L.P. (Corporation for Better Housing) For The Development Of The Newman Family Apartments Project And Authorizing The City Manager To Execute Said Contract.

- b. Approval Of Addendum To RDA Participation Agreement With 751 Driskell Ave., L.P. (Corporation for Better Housing) For The Development Of The Newman Family Apartments Project.
 - c. Award Bid For Waste Water Treatment Plant Storage Basin Construction Management To Eco:Logic.

- 11. Items From District Five Stanislaus County Supervisor

- 12. Items From The City Manager And Staff.

- 13. Items From City Council Members.

- 14. Adjourn To Closed Session
 - a. Conference With Labor Negotiator – All Bargaining Groups – G.C. 54957.6.
 - b. Public Employee Personnel Evaluation – City Manager – G.C. 54957.
 - c. Return To Open Session.

- 15. Adjournment.

Calendar of Events

- May 11 – Baseball Board Meeting – 6:00 P.M.
- May 11 – NCLUSD Board Meeting - 7:15 P.M.
- May 12 – City Council - 7:00 P.M.
- May 14 – Recreation Commission – 7:00 P.M.
- May 19 – Budget Workshop – 6:30 P.M.
- May 20 – Mayors Meeting - 6:00 P.M. - Turlock
- May 21 – Planning Commission – 7:00 P.M.
- May 25 – Memorial Day
- May 26 – City Council - 7:00 P.M.
- May 27-30 - League Of California Cities Mayors & Council Members - Executive Forum & Advanced Academy Workshop - San Diego

- June 8 – NCLUSD Board Meeting - 7:15 P.M.
- June 8 – Baseball Board Meeting – 6:00 P.M.
- June 9 – City Council - 7:00 P.M.
- June 11 – Recreation Commission – 7:00 P.M.
- June 17 – Mayors Meeting - 6:00 P.M. - Modesto
- June 18 – Planning Commission – 7:00 P.M.
- June 23 – City Council - 7:00 P.M.

Proclamation

of the Mayor of the City of Newman

WHEREAS, Asthma has reached epidemic proportions in the United States, affecting about 20 million people; and

WHEREAS, Asthma is the leading cause of childhood hospitalizations, long-term illness and school absenteeism, accounting for more than 14 million missed school days each year; and

WHEREAS, each year 2 million people are rushed to the emergency room and 5,000 die from Asthma; and

WHEREAS, the 2007 California Health Interview Survey estimates that 65,000 people in Stanislaus County have asthma, of which 7,000 are children; and

WHEREAS, the Health Services Agency has established an Asthma Coalition with over 60 representatives from the community, providers, health plans, American Cancer Society, American Lung Association, County and City schools, and the Central California Asthma Project to implement the School Based Asthma Program developed in the Coalition's 2004 Strategic Plan for Asthma in Stanislaus County; and

WHEREAS, the mission of the Stanislaus County Asthma Coalition is "to create an Asthma-friendly community by promoting awareness, education, management and prevention"; and

WHEREAS, the Health Services Agency, the Asthma Coalition, and the U.S. Environmental Protection Agency are encouraging Americans to identify and reduce their exposures to environmental triggers in homes and schools, and incorporate environmental controls into their Asthma management plans; and

WHEREAS, the City of Newman recognizes the need to raise Asthma awareness;

NOW, THEREFORE, I Ed Katen, Mayor, on behalf of the Newman City Council, do hereby proclaim the month of May as Asthma Awareness Month in the City of Newman and commend this observance to all our residents.

Signed the 12th day of May, 2009

Signed _____



Proclamation

of the Mayor of the City of Newman

WHEREAS, in April of 1963, President John F. Kennedy designated May as "Senior Citizens Month", and

WHEREAS, President Jimmy Carter's 1980 designation, changed what was once called Senior Citizens Month, to what is now called "Older Americans Month", and

WHEREAS, Historically, Older Americans Month has been a time to acknowledge the contributions of past and current older persons to our country, in particular those who defended our country, and

WHEREAS, Every President since JFK has issued a formal proclamation during or before the month of May asking that the entire nation pay tribute in some way to older persons in their communities, and

WHEREAS, Older Americans Month has become a national tradition, and

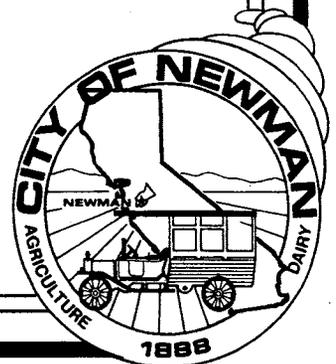
WHEREAS, Older Americans Month is celebrated across the country through ceremonies, events, fairs and other such activities, and

WHEREAS, the City of Newman acknowledges that older Americans make significant contributions to our families, communities, and to society.

NOW, THEREFORE, I Ed Katen, Mayor, on behalf of the Newman City Council, do hereby proclaim the month of May as Older Americans Month in the City of Newman and commend this observance to all our residents.

Signed the 12th day of May, 2009

Signed _____



Proclamation

of the Mayor of the City of Newman

WHEREAS, there are approximately 900,000 law enforcement officers serving in communities across the United States, including 13 sworn members of the Newman Police Department; and

WHEREAS, some 58,000 assaults against law enforcement officers are reported each year, resulting in approximately 16,000 injuries; and

WHEREAS, since the first recorded death in 1792, more than 18,661 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty, including a total of thirteen members from Stanislaus County Law Enforcement Agencies; and

WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial, which was dedicated in 1991 in Washington, D.C.; and

WHEREAS, 387 names are being added to the National Law Enforcement Officers Memorial this spring, including 133 officers killed in 2008 and 254 historical cases involving officers killed in previous years; and

WHEREAS, the service and sacrifice of all officers killed in the line of duty will be honored, and the names of the officers newly engraved on the Memorial will be formally dedicated, during the National Law Enforcement Officers Memorial Fund's 20th Annual Candlelight Vigil, on the evening of Wednesday, May 13, 2008; and

WHEREAS, the Candlelight Vigil is part of National Police Week, which takes place this year on May 10-16; and

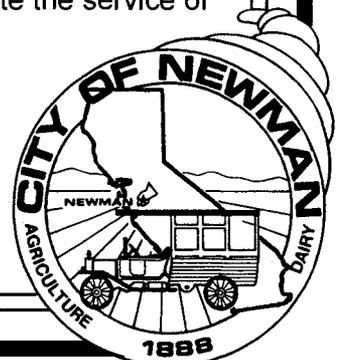
WHEREAS, May 15 is designated as Peace Officers Memorial Day, with federal law (P.L. 103-322) directing that all flags be flown at half-staff on that date in honor of fallen officers and their families; and

WHEREAS, the Peace Officer Memorial Group of Stanislaus County will be observing May 15th with a balloon release at 6:30 pm in Earl Scott Park, Hughson;

NOW, THEREFORE, I Ed Katen, Mayor, on behalf of the Newman City Council, do hereby formally proclaim May 10-16, 2009 as Police Week in Newman, and publicly salute the service of law enforcement officers in our community and in communities across the nation.

Signed the 12th day of May, 2009

Signed _____



Date.: Apr 30, 2009
Time.: 3:20 pm
Run by: EMILY M. FARIA

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

Page.: 1
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
035747	04/24/09	79.90	JESUS J. GARCIA	REIMBURSEMEND FOR CLAIM/CASE #09-1626/GARCIA
035748	04/28/09	106.39	CURTIS & ARATA, A PROFESSIONAL	DOWNTOWN PLAZA/ATORNEY'S FEES
035749	04/28/09	1120.00	COMPUTER TUTOR	COMPUTER CLASSES/3/1/09 TO 3/31/09
Sub-Total:		----- 1306.29		
Grn-Total:		----- 1306.29		
Count:	3			

Date.: May 7, 2009
Time.: 2:53 pm
Run by: EMILY M. FARIA

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

Page.: 1
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
035820	05/08/09	7650.00	MODESTO SAND & GRAVEL	PO #09-62
Sub-Total:		7650.00		
Grn-Total:		7650.00		
Count:	1			

Date.: May 7, 2009
Time.: 11:07 am
Run by: EMILY M. FARIA

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

Page.: 1
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
035628	05/05/09	-188.28	EMBASSY SUITES	Ck# 035628 Reversed
035684	05/05/09	-100.00	MIGUEL VILLALOBOS (NT)	Ck# 035684 Reversed
035726	05/05/09	-660.00	CITY OF PATTERSON	Ck# 035726 Reversed
035750	05/01/09	14.32	UNITED PARCEL SERVICE	PACKAGE SHIPING/MDC REPAIR/PD
035751	05/08/09	.21	AT&T LONG DISTANCE	LONG DISTANCE FOR 668-3946/MAR 09
035751	05/08/09	4.13	AT&T LONG DISTANCE	LONG DISTANCE FOR 634-0508/FEB-MAR 09
035751	05/08/09	.32	AT&T LONG DISTANCE	LONG DISTANCE FOR 862-4636/MAR 09
035752	05/08/09	427.27	AT&T	T1 LINE AT PD/3/20/09 TO 4/19/09
035752	05/08/09	146.58	AT&T	EMERGENCY DISPATCH LINE @ PD/3/20/09 TO 4/19/09
035753	05/08/09	483.54	BASIC CHEMICAL SOL./INC.	180 GALLONS SODIUM HYPOCHLORITE/WELLS
035754	05/08/09	49326.43	BERTOLOTTI DISPOSAL	GARBAGE SERVICE/APRIL 2009
035755	05/08/09	1490.72	BERTOLOTTI DISPOSAL	LANDFILL FEES/APRIL 09
035756	05/08/09	4117.99	W.H. BRESHEARS, INC.	GASOLINE AND DIESEL PURCHASES/APRIL 2009
035757	05/08/09	100.00	JEFF CARTER	PARKING LOT RENT/MAY 2009
035758	05/08/09	222.00	SANTIAGO CASTILLO	MEN'S BASKETBALL REFEREE/CASTILLO
035759	05/08/09	350.00	LORETTA CATON	REFUND MEM BLDG DEPOSIT/PARTIAL RENT/CATON
035760	05/08/09	8500.00	CBA (CALIFORNIA BENEFITS)	PRE-PAID DENTAL-VISION DEPOSIT
035761	05/08/09	240.50	CBA (ADMIN FEES)	DENTAL-VISION BENEFITS ADMIN FEES/MAY 2009
035762	05/08/09	46.31	C B MERCHANT SERVICES, INC	REIMBURSE BAD DEBT
035763	05/08/09	862.19	CENTRAL SANITARY SUPPLY	FACIAL TISSUE/HANDSOAP/PAPER TOWELS/CANLINERS
035764	05/08/09	275.91	CHEVRON	GASOLINE PURCHASES/3/21/09 TO 4/20/09/PD
035765	05/08/09	162.87	CIT TECHNOLOGY FIN SERV, INC	MS GSA OFFICE PRO PLUS/PD/MAY 2009
035766	05/08/09	50.00	CARL J. COELHO (CHUCK)	Veh Operation FIRE/MAY 2009
035767	05/08/09	38.88	ELAINE COLLISON (NT)	REIMBURSE PLANT/FRAMES/CARPET MAT/PD

Date.: May 7, 2009
Time.: 11:07 am
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CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

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Ck #	Check Date	CK Amount	Vendor Name	Description
035769	05/08/09	778.38	CORBIN WILLITS SYS, INC.	SERVICE & ENHANCEMENT FEES/MAY 2009
035770	05/08/09	1137.94	CROP PRODUCTION SERVICES	MAD DOG PLUS 30 GALLONS/WEED SPRAYING
035770	05/08/09	155.93	CROP PRODUCTION SERVICES	AQUAMASTER/WEED SPRAYING
035771	05/08/09	27.60	BILL DAVIS	REIMBURSEMENT FOR PAINT BRUSHES/GRAFITTI
035772	05/08/09	10456.39	ECO:LOGIC, INC	STORAGE BASIN DESIGN/WWTP/FINAL DESIGN PLANS
035773	05/08/09	110.10	ENTENMANN-ROVIN CO.	TWO TONE NEWMAN PD DOME BADGE
035774	05/08/09	34.95	FIREtoWIRE, INC	WEB HOSTING 5/17/09 TO 6/17/09
035775	05/08/09	25.00	FLEX ONE/AFLAC	UNREIMBURSED MEDICAL EXPENSE ADMIN FEE/APRIL 09
035776	05/08/09	200.00	JESUS GALLEGOS	REFUND MEMORIAL BLDG DEPOSIT/ESPINOZA
035777	05/08/09	126.78	GARTON TRACTOR	COMMERCIAL MOWER BLADES/WWTP
035778	05/08/09	210.40	G BAR N VETERINARY CLINIC	SERVICE CALL/HOUSE CALLS/EXAM/EUTHANASIA
035779	05/08/09	500.00	GEORGE SOUZA FARMS, INC	DISCED LOTS @ L ST/PRINCE RD/MERCED ST
035780	05/08/09	1000.00	GOLDEN BY-PRODUCTS SCRAP TIRE	45 FOOT TRAILER SERVICE FOR TIRE AMNESTY
035781	05/08/09	951.94	GROENIGER & CO.	10 5/8 WATER METERS
035782	05/08/09	473.38	HARD DRIVE GRAPHICS	32 12" BY 13" DIGITALLY PRINTED DECALS
035783	05/08/09	552.41	HOWK SYSTEMS, INC.	REPAIRS TO CREEK CANYON LIFT STATION
035784	05/08/09	289.16	HUB INTERNATIONAL OF CA INS SE	LIABILITY INSURANCE/ESPINOZA/CATON
035785	05/08/09	328.38	IKON OFFICE SOLUTIONS	COPIER LEASE 4/25/09 TO 5/24/09/PD
035786	05/08/09	147.50	JOE'S LANDSCAPING &	ABATEMENT OF 2224 GRAND CANYON WAY
035786	05/08/09	147.50	JOE'S LANDSCAPING &	ABATMENT OF 2118 GRAND CANYON WAY
035786	05/08/09	775.00	JOE'S LANDSCAPING &	ABATEMENT OF 783 HAGERMAN PEAK
035786	05/08/09	1235.00	JOE'S LANDSCAPING &	ABATEMENT OF 2230 CANYON BROOK
035786	05/08/09	1700.00	JOE'S LANDSCAPING &	ABATEMENT OF 1214 GERANIUM LANE
035787	05/08/09	300.00	JOHN E. REID AND ASSOCIATES, I	3DAY STREET CRIMES TRAINING/FLORES
035788	05/08/09	623.00	KAISER PERMANENTE	HEALTH INSURANCE PREMIUM/JUNE 2009

Date.: May 7, 2009
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CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

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Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
035789	05/08/09	80.02	MALLARD EXPRESS AUTO	OIL CHANGES/RADIATOR HOSE/PW
035789	05/08/09	916.97	MALLARD EXPRESS AUTO	OIL CHANGES/TIRE ROTATIONS/BRAKES/PD
035790	05/08/09	703.00	CHRIS MESSER	MEN'S BASKETBALL REFEREE/MESSER
035791	05/08/09	969.58	MODESTO BEE	NEWMAN FAMILY APT/FONSI AD
035792	05/08/09	144.00	KRISTEN MOORE	MEN'S BASKETBALL SCOREKEEPER/MOORE
035793	05/08/09	256.00	CORAL MUNOZ	MEN'S BASKETBALL SCOREKEEPER/MUNOZ
035794	05/08/09	1216.81	NEWMAN ACE HARDWARE/JACT, INC	PAINT/BATTERIES/SEALER/MOP/GLOVES/HOSE/TAMPER/CAN
035795	05/08/09	189.44	NORMAC, INC.	POP-UP SPRINKLER/COVER/MPR NOZZLE
035796	05/08/09	1329.00	OPERATING ENGINEERS/	HEALTH INSURANCE PREMIUM/JUNE 2009
035797	05/08/09	37942.68	P G & E	GAS AND ELECTRIC 3/06/09 TO 4/17/09
035798	05/08/09	814.00	FRANK RIVAS	MEN'S BASKETBALL REFEREE/RIVAS
035799	05/08/09	27634.28	RRM DESIGN GROUP, INC.	PROFESSIONAL SERVICES/DOWNTOWN PLAZA
035800	05/08/09	438.49	SAFE-T-LITE	TELESPAR SLEEVE/STREET NAMES/SQUARE POST
035801	05/08/09	2871.23	SALIDA FIRE PROTECTION DISTRIC	20% AGENCY SHARE FOR 25 MOTOROLA MINITOR PAGERS/FD
035802	05/08/09	71.73	SHARPENING SHOP	CARB CLEANER/FILTERS/SPARK PLUGS/STARTER CLUTCH
035802	05/08/09	113.40	SHARPENING SHOP	CARBURATOR/THROTTLE/ECHO
035802	05/08/09	11.27	SHARPENING SHOP	FLANGE/TENSIONER
035803	05/08/09	246.00	STANISLAUS COUNTY DEPT	BUS TICKET SALES 2/1/09 THRU 4/30/09
035804	05/08/09	141.65	STAPLES BUSINESS ADVANTAGE	COLOR PAPER/PENS/MESS BOOK/HP INK CARTRIDGES
035805	05/08/09	596.60	STOCKTON BLUE	10 SETS PLANS WWTP EXPANSION FOR BIDDERS
035806	05/08/09	180.00	BARBARA J. TOSTA	YOUNG AT HEART INSTRUCTOR/APRIL 2009
035807	05/08/09	450.00	FRANCES TYLER	REFUND PARTIAL DEPOSIT & RENT/CANCELLED/TYLER
035808	05/08/09	637.20	UNIFIRST CORPORATION	MAT RENTAL/TOWELS/UNIFORM CLEANING/APR 2009
035809	05/08/09	95.59	VALLEY PARTS SERVICE	HANDLE/FUNNEL/VALVE/LOCK PIN/RATCHETT/SPARK PLUG
035810	05/08/09	50.00	GEORGE VARGAS	VEH OPERATION FIRE/MAY 2009

Date.: May 7, 2009
Time.: 11:07 am
Run by: EMILY M. FARIA

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

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Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
035811	05/08/09	154.14	MIGUEL VILLALOBOS (NT)	REIMBURSE LODGING/PER DIEM/TASER TRNG/VILLALOBOS
035812	05/08/09	810.62	YANCEY LUMBER COMPANY	PAINT/RASP/BOLT CUTTER/CONCRETE/TAPE/BOOTS/PIPE
035813	05/08/09	24.34	AVILA, CURT	MQ CUSTOMER REFUND FOR AVI0033
035814	05/08/09	85.68	JONES, JANICE & TIM	MQ CUSTOMER REFUND FOR JON0008
035815	05/08/09	7.74	LOPEZ, JESUS	MQ CUSTOMER REFUND FOR LOP0074
035816	05/08/09	77.40	NEWSON, PHYLLIS	MQ CUSTOMER REFUND FOR NEW0043
035817	05/08/09	57.81	AARON LEWIS,	MQ CUSTOMER REFUND FOR PRU0003
035818	05/08/09	34.28	STEPHENS & BORRELLI,	MQ CUSTOMER REFUND FOR STE0115
035819	05/08/09	7.70	TOVAR, JORGE LUIS	MQ CUSTOMER REFUND FOR TOV0007

Sub-Total: 167652.18

Grn-Total: 167652.18
Count: 84

MINUTES
NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY
REGULAR MEETING APRIL 28, 2009
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. **Call To Order** - Mayor Katen 7:02 P.M.
2. **Pledge Of Allegiance.**
3. **Invocation** - Mayor Katen
4. **Roll Call PRESENT:** Kelly, Davis, Candea, Martina and Mayor Katen
ABSENT: None
5. **Declaration Of Conflicts Of Interest** - None.
6. **Ceremonial Matters** - None.
7. **Items from the Public** - Non-Agenda Items - Mary Escobar, 1344 Tulare Street, Is Here To Represent A Group Of Citizens From One Of Newman's Oldest Neighborhoods And Stated That They Have Experienced A Great Deal Of Theft, Arson, Drug Deals And Fear. She Submitted Twenty Six Signatures From Her Neighborhood To The City Council Attesting To Her Statement. She Further Commented That Issues In The Park And Surrounding Area Are Causing Fear And The Park Is Unsafe For Children. She Requested That The Council Focus On Safety And Not Just Beatification.

Juan Vargas Followed By Stating That We May Have To Do More Than Just Enforcement.

8. **Consent Calendar**
 - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
 - b. Approval Of Warrants.
 - c. Approval Of Minutes Of The April 14, 2009 Regular Meeting And The April 21, 2009 Special Meeting.

ACTION: On Motion By Martina Seconded By Candea And Unanimously Carried, The Consent Calendar Was Approved.

9. **Public Hearings**
 - a. Adopt Resolution No. 2009- , A Resolution Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4.

Mayor Katen Opened The Public Hearing At 7:08 P.M.

There Being No Public Comment Katen Closed The Public Hearing At 7:09 P.M.

ACTION: On Motion By Davis Seconded By Kelly And Unanimously Carried, Resolution No. 2009-27, A Resolution Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4, Was Adopted.

10. Regular Business

- a. Award Bid For Street Sweeping Services And Authorize The City Manger To Execute A Contract For Services.

ACTION: On Motion By Kelly Seconded By Davis And Unanimously Carried, Resolution No. 2009-28, A Resolution Awarding The Bid For Street Sweeping Services To Contract Sweeping, Inc. In The Amount Of \$24,300.55 And Authorizing The City Manger To Execute A Contract For Services, Was Adopted.

11. Items From District Five Stanislaus County Supervisor

Supervisor De Martini Informed The Council That He Recently Sent A Letter Supporting The West Side Radio Station. He Also Commented That The Next EDAC Meeting Will Be On Thursday April 30th. He Mentioned That EDAC Is Trying To Fund Projects That Create Jobs And Meet Federal Standards. He Told Everyone That The Next Orestimba Creek Flood Control Meeting Has Not Yet Been Set But Should Be Sometime Soon And The West Side Health Care Task Force Meeting Will Take Place In Patterson On May 7th.

12. Items From The City Manager And Staff.

City Manager Holland Informed Everyone That The City Will Post The Street Sweeping Schedule Online To Inform Residents When Their Neighborhood Will Be Swept. He Also Informed The Council That The Air Conditioner At The Louis J. Newman Memorial Building Has Failed And A New One Will Be Installed Within The Next Couple Of Weeks. He Mentioned That The New Sidewalks In Front Of The F.D.E.S. Hall Should Be Poured In The Near Future.

Chief McGill Updated The Council On The Arson And Reminded Them That There Is A Potential Reward Of \$10,000.00. He Stated That The Police Department Has Been Very Busy And Have Arrested Several People For Graffiti. He Reminded The Council That On May 9th, The Low Cost Animal Clinic Will Take Place And On May 19th, There Will Be An ABC Class On Underage Drinking Followed By A Shoulder Tap Operation. He Told Everyone That The Swine Flu Is A Concern But Not Yet An Epidemic. McGill Told The Council That We Are Waiting To Hear On The Results Of The OTS Grant For A Motorcycle Officer And Should Hear Back From Them In May.

Public Works Director Reynolds Informed The Council That Lighting Levels Have Been Increased At The Louis J. Newman Memorial Building And The Park Stops Have Been Painted. He Continued By Informing The Council That Some Of The Park Signs Have Been Touched Up As Well.

13. Items From City Council Members.

Council Member Martina Mentioned That The Graffiti Abatement Program Might Need To Be Revisited And Also Asked Staff To Strengthen The Code In Order To Get Graffiti Cleaned Up In Less

Time. He Addressed The Fact That Mary Escobar Submitted A Letter With 26 Signatures Of People Who Don't Feel Safe.

Council Member Kelly Expressed That He Lost A Good Friend To Newman In Manuel Caton's Passing.

Mayor Katen Stated That He Concurred With Mayor Pro Tem Martina And The Chief Will Work To Remedy The Problem In The Park And Surrounding Area. He Mentioned That Last Thursday Rotary Posthumously Honored Former Mayor Jim Silveira And It Was Very Nice. In Regards To The Fire, The Mayor Asked That We Send A Letter Of Thanks To The Fire Department. He Also Thanked Staff For Their Hard Work.

14. Adjourn To Closed Session 8:03 P.M.

- a. Conference With Labor Negotiator – All Bargaining Groups- G.C. 54957.6.
- b. Conference With Legal Council - Potential Litigation – One Case - G.C. 54956.9.
- c. Public Employee Personnel Evaluation - City Manager - G.C. 54957.
- d. Return To Open Session. 9:15 P.M.

No Reportable Action Was Taken

15. Adjournment.

ACTION: On Motion By Kelly Seconded By Martina And Unanimously Carried, The Meeting Was Adjourned At 9:17 P.M.

Calendar of Events

April 27 - Two On Two Meeting With The School Board - 4:30 P.M.

April 28 - City Council - 7:00 P.M.

May 11 - Baseball Board Meeting - 6:00 P.M.

May 11 - NCLUSD Board Meeting - 7:15 P.M.

May 12 - City Council - 7:00 P.M.

May 14 - Recreation Commission - 7:00 P.M.

May 19 - Budget Workshop - 6:30 P.M.

May 20 - Mayors Meeting - 6:00 P.M. - Turlock

May 21 - Planning Commission - 7:00 P.M.

May 25 - Memorial Day

May 26 - City Council - 7:00 P.M.

May 27-30 - League Of California Cities Mayors & Council Members - Executive Forum & Advanced
Academy Workshop - San Diego

June 8 - NCLUSD Board Meeting - 7:15 P.M.

June 8 - Baseball Board Meeting - 6:00 P.M.

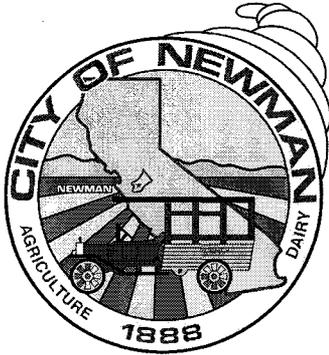
June 9 - City Council - 7:00 P.M.

June 11 - Recreation Commission - 7:00 P.M.

June 17 - Mayors Meeting - 6:00 P.M. - Modesto

June 18 - Planning Commission - 7:00 P.M.

June 23 - City Council - 7:00 P.M.



City of Newman
Director of Public Work's Office
Memorandum

Date: May 1, 2009
To: City Council
From: Garner R. Reynolds

Subject: Louis J. Newman Memorial Building Heating Ventilation Air Conditioning System Replacement

The heating ventilation air conditioning system at the Louis J. Newman Memorial Building is no longer in working condition. The system can not be repaired, and therefore is in need of replacement. This facility is a valuable asset to the community and is rented most weekends throughout the year. Therefore, the Public Works Department is requesting a budget increase of \$19,660.00 from the Capital Repair and Replacement Fund for the replacement of the system and the associated electrical and sheet metal work.

Honorable Mayor and Members
of the Newman City Council

Agenda Item: 9.a.
City Council Meeting
of May 12, 2009

REPORT ON NUISANCE ABATEMENT

RECOMMENDATION:

Adopt Resolution No. 2009- , Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4.

BACKGROUND:

Abatement notices for property maintenance were sent to several properties in accordance with Ordinance 95-4, Chapter 2, Title 8-2-3.

ANALYSIS:

The aforementioned notice informs property owners of all nuisance abatement procedures, option and their right to object at a public hearing. It is anticipated that many property owners will comply with the abatement notices prior to the hearing date. A final compliance survey will be done on Tuesday, May 12, 2009. A list of properties that have not complied with the abatement notice will be handed out at the council meeting prior to the public hearing.

FISCAL IMPACT:

None

CONCLUSION:

This staff report is submitted for City Council consideration and possible future action.

Respectfully submitted,



Garner R. Reynolds
Director of Public Works

REVIEWED/CONCUR:



Michael E. Holland
City Manager

RESOLUTION NO. 2009-

**A RESOLUTION DECLARING THE EXISTENCE OF A PUBLIC NUISANCE UNDER
ORDINANCE 95-4**

WHEREAS, the Director of Public Works has reported a nuisance as outlined in Section 8-2-2 of the Newman Municipal Code located and existing upon property in the City of Newman in violation of Ordinance No. 95-4 of the City of Newman, a description of said property being attached hereto and made part of this resolution by this reference; and,

WHEREAS, the Director of Public Works caused notice to be mailed to the respective owners of the subject properties as in said Ordinance provided, said notice giving notice to abate said nuisance and setting a time and place for hearing objections to the proposed abatement; and,

WHEREAS, said hearing was held on May 12, 2009, at 7:00 p.m., as in said notice provided; and,

WHEREAS, no objections to the proposed abatement were received at said hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman that said City Council of the City of Newman finds that a condition exists with regard to the properties in said City which is dangerous to life, limb and property, and to the public health, safety and morals, in that weeds, rubbish, dirt and rank growth are growing, located and existing upon said property in violation of the provisions of Ordinance No. 95-4 of the City of Newman, which endangers and may injure neighboring property and endangers and injures the welfare of residents in the vicinity of said property, and which is a fire hazard; that a description of said properties is attached hereto and made a part of this resolution by this reference

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 12th day of May 2009 by Council Member _____, who moved its adoption, which motion was duly seconded and was adopted upon roll call vote.

AYES:
NOES:
ABSENT:

APPROVED:

Mayor of the City of Newman

ATTEST:

Deputy City Clerk

CITY OF NEWMAN
ABATEMENT LIST

1. **691 Inyo Avenue** - Tall grass and weeds throughout property.
2. **2011 L Street** - Tall grass and weeds in lot.
3. **0 Inyo Avenue (Dunkley Holdings)** - Tall grass and weeds in lot.
4. **0 Inyo Avenue (Irwin Steinpress)** - Tall grass and weeds in empty lot of property.
5. **0 L Street (Five J's Trucking)** - Tall grass and weeds throughout property.
6. **673 Fig Lane** - Tall grass and weeds in empty lot on property.
7. **660 Hardin Road** - Tall grass and weeds throughout property.
8. **1538 Kern Street** - Tall grass and weeds throughout property.
9. **1121 N Street** - Tall grass and weeds in lot.
10. **0 Q Street (Virginia Vaz)** - Tall grass and weeds in lot.
11. **1563 P Street** - Tall grass and weeds throughout property.
12. **0 Orchard Hills Court (Mr. & Mrs. Alkema)** - Tall grass and weeds in lots of subdivision.
13. **0 Marquez Street (Del Valle Corp.)** - Tall grass and weeds in lots of subdivision.
14. **1941 N Street** - Tall grass and weeds throughout property.
15. **0 Driskell Avenue (Dardon, Driskell Avenue LP)** - Tall grass and weeds throughout property.

City of Newman
Abatement List

1. 2011 L Street

Tall grass and weeds in lot.

2. 0 Inyo Avenue (Irwin Steinpress)

Tall grass and weeds in empty lot of property.

3. 660 Hardin Road

Tall grass and weeds throughout property.

4. 1538 Kern Street

Tall grass and weeds throughout property.

5. 0 Marquez Street (Del Valle Corp.)

Tall grass and weeds in lots of subdivision.

6. 0 Driskell Avenue (Dardon, Driskell Avenue LP)

Tall grass and weeds throught property.

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **10.a**
City Council Meeting
of May 12, 2009

**APPROVAL OF HOME REGULATORY AGREEMENT WITH
751 DRISKELL AVE., LP.**

RECOMMENDATION:

Adopt Resolution #2009- authorizing the City Manager to execute a HOME agreement with 751 Driskell Avenue, LP for the construction of a sixty-eight (68) unit residential apartment complex.

BACKGROUND:

In October 2007, Corporation for Better Housing (also known as 751 Driskell Avenue, LP) submitted a Zone Change and Site Plan Review application for a workforce housing project in October 2007. The proposed project underwent Architectural Review Committee meetings on November 29, December 13 and 20, 2007. The color palette, materials, final elevations, design and fencing were approved at the December 20th Architectural Review Committee meeting. On December 20, 2007, the applicant also applied for a Lot Line Adjustment (LLA 07-03) to assemble the necessary land for the project. That lot line adjustment was completed in June 2008. On January 17, 2008, the Planning Commission held a public hearing, approved the Site Plan Review with amendments and reviewed and recommended the proposed Zone Change to the Council. Following that, Council adopted Ordinance #2008-2 on February 12, 2008, rezoning the project site from R-1 to R-3 in conformance with the General Plan.

In 2008, the applicant requested RDA funds in the amount of \$300,000.00. In April of that year, the Redevelopment Agency set aside those funds through Resolution. In October 2008, the Agency approved a participation agreement for said funds. In addition to RDA funds, the applicant also requested \$200,000.00 in HOME funds from the City. The proposed project qualified for HOME funds and as such, the City began moving forward with the necessary environmental review (NEPA) as required by HUD. Staff anticipates that the environmental process shall reach completion on May 11, 2009.

ANALYSIS:

As required by HOME regulations, the City must provide a minimum 25% match for HOME contributions; the aforementioned RDA set-aside qualifies as such. In order to provide HOME funding to the applicant, the City must also enter into a HOME Regulatory agreement for the purpose of regulating and restricting occupancy, rents, operation, ownership and management of the Development in compliance with the requirements of the HOME Program.

The draft agreement fulfills these requirements and also provides the City security through the use of timeliness deadlines. Should the developer not meet specific deadlines as set forth in the agreement, the City will have the option to rescind its project-dedicated HOME funds.

FISCAL IMPACT:

\$200,000.00, this is a budgeted item in fund 20.

CONCLUSION:

Staff recommends the Council adopt the attached resolution authorizing the City Manager to execute a HOME Regulatory agreement with 751 Driskell Avenue, LP.

ATTACHMENTS:

1. Exhibit A – Excerpted Regulatory Agreement
2. Exhibit B – Resolution No. 2009-

Respectfully submitted,



Stephanie Ocasio
Assistant Planner

REVIEWED/CONCUR



Michael Holland
City Manager

HOME REGULATORY AGREEMENT

By and Between

CITY OF NEWMAN

and

751 DRISKELL AVE., L.P.

HOME REGULATORY AGREEMENT

THIS HOME REGULATORY AGREEMENT ("**Agreement**") is entered into as of _____, 2009, by and between the CITY OF NEWMAN, a public body, corporate and politic (the "**City**") and 751 DRISKELL AVE., L.P. (the "**Developer**"). The City and the Developer agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose of This Agreement

The purpose of this Agreement is to effectuate affordable housing through HOME funds for the City of Newman by providing financial assistance to the Developer for the acquisition and development of that certain real property (the "**Parcel**") by Developer for the purposes of owning and operating a sixty-eight (68) unit residential apartment complex (each, a "**Unit**") that will include a specified number of rental dwelling units (the "**Affordable HOME Units**") restricted to households of very low and low income levels.

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Newman, California (the "**City**"), and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. [§102] The Site

The Site is shown on the "**Map of the Site**" (Attachment No. 1) and is more particularly described in the "**Legal Description of the Site**" (Attachment No. 2). The Site consists of approximately 3.5 acres of land, located generally at 751 Driskell Avenue, in the City.

The Site will be improved with an affordable apartment housing project (the "**Housing Project**") consisting of a total of sixty-eight (68) Units; eleven (11) HOME Units are to be rented to persons qualified as Eligible Households, as provided in Section 501 of this Agreement.

C. [§103] Parties to This Agreement

1. [§104] The City

The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*). The office of the City is located at 1162 Main Street, Newman California 95360. "**City**," as used in this Agreement, includes the City of Newman and any assignee of or successor to its rights, powers and responsibilities.

2. [§105] The Developer

The Developer is 751 Driskell Ave., L.P., a California limited partnership. The principal office of the Developer is located at 15303 Ventura Boulevard, Suite 1100, Sherman Oaks, California 91403. Wherever the term "**Developer**" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Developer are of particular concern to the City and it is because of such qualifications and identity that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the City pursuant to Section 611 hereof if there is any significant change (voluntary or involuntary) in the composition, management or control of the Developer without the prior written approval of the City.

The Developer may assign or transfer its interest in or obligations under this Agreement, without the City's prior written approval, to an affiliate of Developer that is controlled by the Developer; provided that Developer shall notify the City in writing prior to any such assignment or transfer; and provided, further, that such assignee or transferee shall assume all of Developer's interest in and obligations under this Agreement, pursuant to a written assignment and assumption agreement, in such form and content as is reasonably satisfactory to the City.

Except as specifically authorized by this Agreement, the Developer shall not assign all or any part of this Agreement without the prior written approval of the City.

II. [§200] INTENTIONALLY OMITTED

III. [§300] CITY ASSISTANCE

A. [§301] HOME Loan

The City desires to assist the Developer with the costs of developing the Site and creating affordable housing units within the City of Newman. Subject to the conditions set forth herein, the City shall provide one HOME loan to the Developer in the total amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) (the "**Total Loan Amount**").

1. [§302] HOME Loan

The HOME loan disbursed from the City to Developer shall be in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) and shall be used by Developer to develop the Parcel (the "**HOME Loan**"). In connection with the HOME Loan, the Developer shall execute and deliver to the City a promissory note (the "**HOME Note**") in the principal amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000). The HOME Note shall be in substantially the form attached hereto as Attachment No. 7 and incorporated herein by this reference. The HOME Loan shall be repaid pursuant to the terms and conditions set forth in the HOME Note; provided, however, the City agrees to cooperate with the Developer, and the City's City Manager shall have the authority, to approve any reasonable modifications to the terms for repayment of the HOME Loan that may be required by the terms of the Tax Credit Financing (defined below) secured by the Developer for the Housing Project. As security for the

Certificate of Occupancy and the recording of the Affordable Housing Covenant described in Section 302.

A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement, and of full compliance with the terms hereof with respect to such construction. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants contained in the Affordable Housing Covenant, any covenants contained in the deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Sections 501-506 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion, neither the City nor any other person shall have any rights, remedies or controls with respect thereto that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties shall be as set forth in the grant deed, the HOME Note, Deed of Trust, Total Loan Note, and the Affordable Housing Covenant, which shall be in accordance with the provisions of Sections 501-506 of this Agreement.

The City shall not unreasonably withhold any Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion for any Unit after written request from the Developer, the City shall, within ten (10) days of the next regularly scheduled City meeting after such written request, provide the Developer with a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the City will issue its Certificate of Completion upon the posting of a bond by the Developer with the City in an amount representing a fair value of the work not yet completed. If the City shall have failed to provide such written statement within said ten (10) day period after such City meeting, the Developer shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

V. [§500] USE OF THE SITE

A. [§501] Units

The Site shall be developed with an affordable housing project (the "**Housing Project**") consisting of sixty-eight (68) rental dwelling units, of which a minimum of eleven (11) HOME units shall be restricted as affordable units more particularly described below (each an "**Affordable Unit**", and collectively, the "**Affordable Units**"), and rented to Low Income Households, or Very Low Income Households, (sometimes collectively referred to as "**Eligible**

Households"). The Developer covenants and agrees that the Affordable Units shall be rented as follows:

(a) Required Affordable Units. Maximum of eleven (11) HOME units.

(b) Affordability Level. The foregoing Affordable Units shall be provided in the following numbers, in the following categories:

(i) **"Low Income Households"** (as defined below): (i) eight (8) one-bedroom Units, (ii) two (2) two-bedroom Units, and (iii) five (5) three-bedroom Units;

(ii) **"Very Low Income Households"** (as defined below): (i) eight (8) one-bedroom Units; (ii) five (5) two-bedroom Units, and (iii) seven (7) three-bedroom Units.

For the purposes of this Section, **"Low Income Households"** means households earning not greater than sixty percent (60%) of Area Median Income, as defined in California Health and Safety Code Section 50093, as adjusted for family size. **"Very Low Income Households"** mean households earning not greater than fifty percent (50%) of Area Median Income, as adjusted for family size. The income levels and maximum housing cost of each Eligible Household must comply with the regulations promulgated by the California Department of Housing and Community Development sections 6910-6932 of Title 25 of the California Code of Regulations (to the extent applicable). The Developer must elect to have a property manager residing on the Site, and; shall provide one (1) of the Units may be used as a resident manager's unit, and such Unit shall not be subject to the above affordability restrictions so long as such Unit is made available to and occupied by an on-site manager for the Housing Project.

B. [\$502] Property Management; Maintenance of the Project

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and enter into an agreement with a property management company (the **"Property Management Company"**) preapproved by the City to manage the Housing Project. The Developer shall submit a copy of such agreement to the City, provided the City shall not have the right to approve or disapprove such agreement except to ensure compliance of such agreement with the provisions of this Agreement and the Affordable Housing Covenant. The property management agreement shall name the City as a third-party beneficiary permitting the City the right to enforce the agreement upon the default (after expiration of all notice and cure periods) of the Property Management Company.

For purposes of this Section 502, the City hereby approves of Beacon Property Management as an approved Property Management Company. The Developer shall promptly notify the City in the event there is any change in the Property Management Company managing the Housing Project. The City shall have the right to approve any new Property Management Company, which approval shall not be unreasonably withheld. In the event that the Property Management Company changes, Developer shall prepare and enter into an agreement with another property management company and submit such agreement to the City to ensure compliance as stated above.

ATTACHMENT NO. 5-A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Newman
1162 Main Street
Newman, CA 95360
Attn: City Manager

Exempt from Recording Fees Pursuant to
Government Code Section 27383

AFFORDABLE HOUSING COVENANT

For valuable consideration, the receipt of which is hereby acknowledged, CITY OF NEWMAN ("**City**"), acting to carry out the obligations under Section 33334.2 of the California Health and Safety Code establishing an affordable housing program for the City of Newman, hereby agrees with 751 DRISKELL AVE., L.P. a California limited partnership ("**Owner**"), with respect to that certain parcel of real property (the "**Site**") legally described on **Exhibit A**, that the Site and the multi-family residential units to be constructed thereon (the "**Housing Project**") will be subject to the conditions, restrictions, reservations and rights of City specified below:

1. USE OF THE SITE. The Owner hereby covenants and agrees, for itself, its lessees, successors and assigns, as follows:

A. Development. Developer shall promptly commence and diligently construct sixty-eight (68) apartment units ("**Units**") and all applicable related improvements, including, without limitation, recreational, parking and landscaping improvements (collectively, the "**Housing Project**"), of which a minimum of eleven (11) Units shall be restricted as affordable units as more particularly described below ("**Affordable HOME Units**"). The Project shall be developed in accordance with that certain HOME Regulatory Agreement entered into by and between the City and the Developer, dated _____, 2009, which is fully incorporated herein by this reference (the "**HOME Regulatory Agreement**"). In consideration for the City's contribution to the acquisition of the Site and the development of the Project, the City and Owner have executed this Agreement to assure the Site and the Affordable Units to be constructed thereon meet the requirements of California Health and Safety Code Sections 33334.2 and 33413, and remain affordable for the longest feasible period, but for not for fewer than fifty-five (55) years.

B. Rent and Income Restrictions. The Affordable Units shall at all times be rented to persons and families that qualify as Very Low Income Households and Low Income Households (as defined below) (Very Low Income Households and Low Income Households are also collectively referred to herein as "**Eligible Households**");

Low Income Households: Affordable Units constructed on the Site shall be rented to and occupied by Eligible Households whose gross income does not exceed sixty percent (60%) of the Area Median Income (as defined below). The rents for these Affordable Units shall not exceed thirty percent (30%) of the adjusted income of a household whose gross income equals sixty percent (60%) of the Area Median Income, adjusted for family size appropriate for the unit.

Very Low Income Households: Affordable Units shall be rented to and occupied by households whose gross monthly income is at or below fifty percent (50%) of the Area Median Income. The rents for these Affordable Units shall not exceed thirty percent (30%) of the adjusted income of a household whose gross income equals fifty percent 50% of the Area Median Income, adjusted for family size appropriate for the unit.

Notwithstanding the foregoing, Owner may, in its sole reasonable judgment, elect to have a property manager residing on the Site, in which event one (1) of the Units may be used as a resident manager's unit, and such Unit shall not be subject to the above affordability restrictions so long as such Unit is made available to and occupied by an on-site manager for the Housing Project.

The maximum housing cost of the Eligible Households for each of the income levels set forth above must comply with the regulations promulgated by the California Department of Housing and Community Development Sections 6910-6932 in Title 25 of the California Code of Regulations, or with the eligibility requirements established by the Tax Credit Financing or the regulatory agreement relating to any other federally administered program providing financing for the Housing Project.

For purposes of this Covenant:

"Area Median Income" shall mean the median income for households in Stanislaus County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD") in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended, and as defined in Title 25, California Code of Regulations, Section 6932. In the event that such income determinations are no longer published by HUD, or are not updated for a period of at least 18 months, the City shall provide the Owner with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

C. Reporting Requirements. Annual reports and annual income recertifications must be submitted to the City. The reports, at a minimum, shall include:

- (1) The number of persons per unit
- (2) Tenant name
- (3) Initial occupancy date
- (4) Rent paid per month

- (5) Gross income per year
- (6) Percent of rent paid in relation to income.

Such information shall be reported to the City pursuant to Health and Safety Code Section 33418, in substantially the form attached hereto as Exhibit B, or in a substantially equivalent format acceptable to the City.

Annual income recertifications shall also contain those documents used to certify eligibility. City may, from time to time during the term of this Covenant, request additional or different information and Owner shall promptly supply such information in the reports required hereunder. Owner shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by City with respect to all matters covered by this Covenant. Owner, at such time and in such forms as City may require, shall furnish to City statements, records, reports, data and information pertaining to matters covered by this Covenant. Upon request for examination by City, Owner, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Covenant. Owner shall permit City to audit, examine and make excerpts or transcripts from these records.

2. MAINTENANCE. The Owner and all successors in interest, agree that they shall maintain, or cause to be maintained, the Site in a manner consistent with the provisions set forth therefor in the Newman Municipal Code, and shall keep the entire Site reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Owner fails to maintain the Site, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from City to Owner, City may perform the necessary corrective maintenance, and Owner shall pay such costs as are reasonably incurred for such maintenance. The City shall have the right to place a lien on the Site should Owner not reimburse City for such costs within sixty (60) days following City's written demand to Owner for reimbursement of such costs. Owner, on behalf of itself its heirs, successors and assigns, hereby grants to City and its officers, employees and agents, an irrevocable license to enter upon the Site to perform such maintenance during normal business hours after receipt of written notice from City as hereinabove described and Owner's failure to cure or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Owner, and City shall indemnify and hold Owner harmless from any claims or liabilities pertaining to any such entry by City.

Failure by Owner to maintain the Site in the condition provided in this Section 2 may, in City's reasonable discretion, constitute a default under this Covenant.

3. NO TRANSFER. Except with respect to Approved Transferees, the Owner shall not sell, transfer, convey, encumber, assign or lease the whole or any part of the Site without the prior approval of the City, which shall not be unreasonably withheld. Owner shall request approval by written notice at least ninety (90) days prior to any proposed transfer. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the

rehabilitation or development of the Site or to prohibit or restrict the rental or leasing of units when the rehabilitation of the Project is completed.

4. MANAGEMENT. During the term of this Covenant, Owner shall promptly notify the City in the event there is any change in the property management company managing the Project. The property management and maintenance agreement shall name the City as a third-party beneficiary permitting the City the right to enforce the Agreement. Owner shall submit a copy of such agreement to the City, provided the City shall not have the right to approve or disapprove such agreement except to ensure compliance of such agreement with the provisions of this paragraph 4.

5. NO DISCRIMINATION. The Owner covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Site.

6. NONDISCRIMINATION AND NONSEGREGATION CLAUSES. All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof shall contain or be subject to substantially the following nondiscrimination clauses:

- (1) **In deeds:** (a) "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivisions (d) of Section 51 and Section 1360 of the Civil Code and subdivision (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

(2) **In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

(a) "That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivisions (d) of Section 51 and Section 1360 of the Civil Code and subdivision (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

3. **In contracts:** "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926,

12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

7. NO IMPAIRMENT OF LIEN. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Covenant shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Owner to the Site shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. DURATION. The covenants contained in paragraph 1 of this Covenant shall be deemed to run with the land in accordance with Section 33334.3(f) of the Health and Safety Code or any successor statute and shall remain in effect for not less than fifty-five (55) years following issuance of a certificate of occupancy for the Housing Project. The covenants against discrimination contained in paragraphs 5 and 6 of this Covenant shall be deemed to run with the land in accordance with Section 33438 of the Health and Safety Code or any successor statute and shall remain in effect in perpetuity.

9. SUCCESSORS AND ASSIGNS. The covenants contained in this Covenant shall be binding for the benefit of the City and its respective successors and assigns, third party beneficiaries, and any successor in interest to the Site or any part thereof, and such covenants shall run in favor of the City and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. The City, and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Covenant shall be for the benefit of and shall be enforceable only by the City, and its respective successors and assigns, third party beneficiaries, and such aforementioned parties.

10. SUBORDINATION. Upon written request by Owner, City shall agree that the terms and conditions of this Covenant shall be subject to and subordinate to the terms and conditions of financing obtained by Owner, through a lender or lenders acceptable to the City (the "Lender") and upon terms and conditions reasonably approved by the City, for tax credit financing, construction or permanent financing, to be secured by a mortgage against the Site; provided the total aggregate amount of financing secured by Owner together with the Note and provided for under the certain HOME Regulatory Agreement; and provided, further, any Lender for construction or permanent financing that is not obtained through an approved federal or state program shall agree to include in its subordination agreement and deed of trust the following

conditions: (i) City shall receive any notices of default issued by Lender to Owner; (ii) City shall have the right to cure any default by Owner within forty-five (45) days after a notice of default; (iii) City shall have the right to foreclose its Deed of Trust without Lender accelerating its debt, provided City has cured or is attempting to cure any defaults under the deed of trust; and (iv) City shall have the right to transfer the Project to another nonprofit corporation, or to a limited partnership whose general partner is a nonprofit corporation, who shall own and operate the Project as an affordable rental housing project with the consent of Lender, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the City and Owner have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this ____ day of _____, 200__.

CITY OF NEWMAN
a public body, corporate and politic

By: _____
City Manager

ATTEST

By: _____
Secretary

[SIGNATURES CONTINUE]

RESOLUTION NO. 2009-

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A HOME REGULATORY AGREEMENT WITH 751 DRISKELL AVE., LP (CORPORATION FOR BETTER HOUSING) FOR THE DEVELOPMENT OF NEWMAN FAMILY APARTMENTS

WHEREAS, on January 17, 2008 the City of Newman Planning Commission approved an application from Corporation for Better Housing (751 Driskell Ave., L.P., a California limited partnership) to build an affordable residential housing project called Newman Family Apartments; and

WHEREAS, on October 28, 2008 the Newman Redevelopment Agency approved a participation agreement with 751 Driskell Ave., L.P. for an RDA loan in the amount of \$300,000.00; and

WHEREAS, the applicant has requested HOME funds from the City of Newman; and

WHEREAS, the City is a member of the City of Turlock/Stanislaus County HOME Consortium and has been allocated HOME funds for a wide range of activities that include building, buying, and/or rehabilitating affordable housing for renting or homeownership or to provide direct rental assistance to low-income people; and

WHEREAS, prior to funding a project with HOME funds, a HOME Regulatory agreement is required for the purpose of regulating and restricting occupancy, rents, operation, ownership and management of the Development in compliance with the requirements of the HOME Program; and

WHEREAS, The City of Newman is desirous of providing affordable housing in the City; and

WHEREAS, Newman Family Apartments qualifies for funding under HOME guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Newman City Council hereby authorizes the City Manager to execute an agreement with 751 Driskell Ave., LP (Corporation for Better Housing) for the development of Newman Family Apartments, therefore allowing the City to allocate HOME funds to said project.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 12th day of May, 2009 by Council Member _____, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following roll call vote:

AYES:

NOES:

ABSENT:

APPROVED:

Mayor of the City of Newman

ATTEST:

Deputy City Clerk of the City of Newman

Honorable Chair and Members
of the Newman Redevelopment Agency

Redevelopment Agency Meeting
of May 12, 2009

APPROVAL OF ADDENDUM TO RDA PARTICIPATION AGREEMENT

RECOMMENDATION:

Approve addendum to an existing Participation Agreement between the Agency and 751 Driskell Ave., L.P.

BACKGROUND:

In July 2007, the Newman Redevelopment Agency approved the 2007-2012 Implementation Plan. The Plan includes Newman's housing requirement according to California Redevelopment Law. In addition, CA Redevelopment Law requires agencies to set aside 20% of the revenues to assist with development of affordable housing.

In April 2008, the Agency approved a Resolution setting aside \$300,000 of Low and Moderate Housing Funds for the purpose of loaning said funds to the developer. After working with attorneys, an agreement was reached.

In October 2008, the Agency approved a participation agreement that lends \$300,000 to the non-profit organization for the development of a 72-unit low and moderate housing project. In an effort to make their application more competitive on a State-wide basis, the housing organization is proposing a minor modification to the project and schedule of performance.

ANALYSIS:

The applicant is proposing to reduce the total unit count from 72 units to 68 units. This small reduction achieves a higher equity rating and enhances the public partnership requirement during the application process. Since the Tax Credit Allocation process is very competitive, the applicant believes these adjustments will strengthen the tie-breaker portion of the application.

From a project perspective, the reduction in units will provide additional open-space, generate less traffic, reduce utility consumption and reduce impacts on City services. Additionally, the 68 units will assist the City in meeting its requirement for a minimum of 45 affordable units be constructed within the boundaries of the Newman Redevelopment Agency

FISCAL IMPACT:

None

CONCLUSION:

Staff has worked with the developer and our attorneys to ensure appropriate Agency protections have been placed within the agreement. These protections are provided in the form of a "Deed of Trust" and a schedule of performance. The proposed modification to the schedule of performance and a minor reduction in the total number of units will not have a negative impact upon the City or Agency.

Respectfully submitted,



Michael Holland
Executive Director

Addendum # 1

This addendum to the Participation Agreement by and between Newman Redevelopment Agency and 751 Driskell Ave.,L.P. dated October 28th, 2008 is to reflect the changes in the site plan and amend the Schedule of Performance.

The development shall be sixty-eight (68) units; thirty-three (33) of the Units are to be rented to persons qualified as Eligible Households.

The amended Schedule of Performance is attached hereto.

SCHEDULE OF PERFORMANCE

ACTION	DATE
1. <u>Execution and Delivery of Agreement by Developer.</u> The Developer shall execute and deliver this Agreement to the City.	May 6, 2009
2. <u>Execution of Agreement by City.</u> The City and City Council shall hold a public hearing to authorize execution of this Agreement by the City, and if so authorized, the City shall execute and deliver this Agreement to the Developer. (Section 900)	Within 30 days after City Council action or deliver of executed Agreement by Developer, which ever occurs later.
3. <u>Developer Acquires the Parcel.</u> The Developer shall acquire the Parcel.	Complete
4. <u>Deposit of Executed Documents and All Required Sums – Acquisition Loan.</u> The Developer shall deposit the executed Acquisition Note, Deed of Trust, Affordable Housing Covenant, and all required sums into escrow. (Section 300)	Prior to disbursement of any portion of the Acquisition Loan.
5. <u>Submission – Basic Concept Drawings.</u> The Developer shall prepare and submit to the City for review and approval Basic Concept Drawings and related documents containing the overall plan for development of the Site. (Section 303)	Complete
6. <u>Approval – Basic Concept Drawings.</u> The City shall approve or disapprove the Developer's Basic Concept Drawings and related documents. (Section 303)	Complete
7. <u>Submission – Construction Drawings and Landscaping and Grading Plans.</u> The Developer shall prepare and submit to the City for review and approval Preliminary Construction Drawings and Landscaping and Grading Plans for the Site. (Section 304)	Within 60 days after receiving approval of Tax Credit Financing.

ACTION

DATE

8. Approval –Construction Drawings and Landscaping and Grading Plans. The City shall approve or disapprove the Developer's Preliminary Construction Drawings and Landscaping and Grading Plans. (Section 305) Within 30 days after receipt thereof by the City.
9. Submission –Construction Drawings and Landscaping and Grading Plans. The Developer shall prepare and submit to the City for review and approval Final Construction Drawings and Landscaping and Grading Plans for the Site. (Section 304) Not later than 14 days after disapproval of the Construction Drawings.
10. Submission – Evidence of Equity Capital and Tax Credit Financing or State Funding. The Developer shall submit to the City for review and approval evidence of equity capital and Tax Credit Financing necessary for development of the Site. (Section 303) Within approximately 120 days of receipt of approval of Tax Credit Financing.
11. Approval – Final Construction Drawings and Landscaping and Grading Plans. The City shall approve or disapprove the Developer's Final Construction Drawings and Landscaping and Grading Plans. (Section 305) Prior to construction commencement of vertical construction.
12. Approval – Evidence of Equity Capital and Mortgage Financing. The City shall approve or disapprove the Developer's evidence of equity capital and mortgage financing. (Section 303) Developer to provide interim reports to the City regarding financing. Within 30 days after receipt thereof by the City.

ACTION

DATE

13. Deposit of Executed Documents and All Required Sums – Construction Loan. The Developer shall deposit the executed Total Loan Note, Modification to Deed of Trust, Affordable Housing Covenant, and all required sums into escrow. (Section 300) Prior to disbursement of any portion of the Construction Loan.
14. Submission – Certificates of Insurance. The Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 308) Prior to the date set forth herein for the commencement of construction of the Developer's improvements on the Site.
15. Governmental Permits. The Developer shall obtain any and all permits required by the City or any other governmental City. (Section 309) Prior to the date set forth herein for the commencement of construction of the Developer's vertical improvements on the Site.
16. Commencement of Construction of Developer's Improvements. The Developer shall commence construction of the improvements to be constructed on the Site. (Section 307) Within 15 days of receipt of building permits.
17. Property Management Agreement. The Developer shall enter into an agreement with the approved Property Management Company. (Section 502) Prior to completion of construction of the improvements on the Site.
18. Completion of Construction of Affordable Units. The Developer shall complete construction of the Affordable Units to be constructed on the Site. Within 18 months after commencement thereof by the Developer.
19. Issuance – Certificate of Completion. The City shall furnish the Developer with Certificate of Completion. (Section 422) Promptly after completion of all construction required to be completed on the Site and upon written request therefor by the Developer.

ACTION

DATE

- | | | |
|----|--|--|
| 20 | <u>Rental Units Occupied.</u> Developer causes the Affordable Units to be occupied using the prescribed rent levels in accordance with the Agreement (Section 501) | Within one hundred (100) days after the time established for completion of construction in this Schedule of Performance. |
|----|--|--|

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **10.c.**
City Council Meeting
of May 12, 2009

**ACCEPT PROPOSAL FOR WASTEWATER TREATMENT PLANT STORAGE BASIN
CONSTRUCTION MANAGEMENT SERVICES FROM ECO:LOGIC ENGINEERING**

RECOMMENDATION:

It is recommended that the City Council accept the proposal for Waste Water Treatment Plant Storage Basin Construction Management Services from ECO:LOGIC Engineering for an amount not to exceed \$205,000.00.

BACKGROUND:

The Waste Water Treatment Plant Storage Basin Project is identified in the 2008 Waste Water Treatment and Disposal Master Plan and is necessary to meet the requirements of the Regional Water Quality Control Board Waste Discharge Requirement for treatment facilities to be able to meet a 100 year flood requirement. Bids for the Project are due May 6, 2009 with construction estimated to start in June 2009. Eco:Logic Engineering completed the 2008 Waste Water Treatment and Disposal Master Plan, and is the design engineer for the Storage Basin Project. Eco:Logic Engineering is well known for their experience and expertise in the field of waste water engineering and have been a valuable resource to the City. Due to the nature and complexity of this project it is recommended to have construction management services provided by the engineering firm responsible for the design. The Public Works Department has received a proposal for Construction Management Services for the Storage Basin Project from Eco:Logic Engineering in the amount of \$205,000.00. The work is detailed in attachment A.

Typical construction management services provided for in the proposal include:

- Bid Period Services
- Basic Engineering Services During Construction
- Construction Management and Inspection Services
- Soil Compaction Testing Services
- Operation and Maintenance Manual Revisions

ANALYSIS:

A proposal has been submitted for Construction Management Services for the Storage Basin Project from ECO:LOGIC Engineering for a not-to-exceed cost of \$205,000.00, the Engineer responsible for the design of the Project. This type of work is best performed by ECOLOGIC Engineering due to their expertise and experience in this field and their work on the design phase of this Project. The Public Works Director has reviewed the proposal and has found the proposal to be in proper order.

The City has \$205,000.00 available in the sewer fund (contract services) to move forward with this proposal.

FISCAL IMPACT:

Proposal amount \$205,000.00

08/09 budgeted amount \$205,000.00

CONCLUSION:

The Public Works Department has a need for construction management services for the Waste Water Treatment Plant Storage Basin Project. ECO:LOGIC Engineering is the engineer responsible for the design phase of the Project, and has the experience and expertise necessary to complete the work. ECO:LOGIC Engineering has submitted a proposal for a not-to-exceed cost of \$205,000.00. Therefore, staff recommends that the City Council accept the proposal from ECO:LOGIC Engineering.

Respectfully submitted,



Garner R. Reynolds
Director of Public Works

REVIEWED/CONCUR:



Michael E. Holland
City Manager

CITY OF NEWMAN

This is the Agreement between ECO:LOGIC Engineering Incorporated, a California Corporation of consulting engineers, whose address is 3875 Atherton Road Rocklin, CA (hereinafter referred to as "ENGINEER"), and the client City of Newman (hereinafter referred to as "OWNER").

I. PROFESSIONAL SERVICES

- A. General Scope. OWNER hereby engages ENGINEER and ENGINEER shall do all work and shall serve as OWNER'S professional engineer for and during all phases of the project as herein set forth and shall consult with and advise OWNER and its staff as required and as directed during the performance of any work required by this agreement.
- B. Specific Services. ENGINEER shall do all work identified in the proposal letter dated November 12, 2008 titled "*Proposal for Bid Period and Construction Phase Engineering and Inspecton Services*", attached hereto and incorporated herein as Exhibit A (the "Specific Services").
- C. Additional Services. ENGINEER shall perform additional services, as expressly directed and authorized by the OWNER. (the "Additional Services", and together with the Specific Services; collectively the "Services")

II. COMPENSATION

- A. Payment for all services performed by ENGINEER shall be as set forth in this Article and shall be considered as full compensation for all personnel, consultants, subcontractors, materials, supplies, services and equipment used in carrying out the work described by this agreement.
- B. Compensation shall be as follows:
 - 1) For Specific Services, the ENGINEER shall be compensated on a time and expense basis in accordance with the then current Hourly Rate Fee Schedule. The estimated fee for this project shall not exceed **\$205,000** without express authorization by OWNER.
 - 2) For additional services, ENGINEER shall be compensated on a time and expense basis in accordance with the then current Hourly Rate Fee Schedule.
- C. For all services, ENGINEER will submit statements ("Statements") showing the employee categories, appropriate hourly rates, and expenses incurred for personnel and subcontractors directly involved on the assignment.
- D. When ENGINEER has submitted monthly statements as required above, and they are approved by OWNER, such statements shall be paid by OWNER within thirty (30) days of their receipt. In the event payment is not received within 45 days of receipt, an interest charge of one and one half percent per month may be added thereafter to the amount due. Payment thereafter shall first be applied to any accrued interest and then to the principal unpaid balance.
- E. If OWNER fails to make payments when due or is otherwise in breach of this agreement, ENGINEER may suspend performance of services upon five (5) calendar days notice to OWNER. ENGINEER shall have no liability whatsoever to OWNER for any costs or damages that result from such suspension.

F. If the work is halted for any reason, compensation will be based on the services actually performed to date.

III. TERM OF AGREEMENT

ENGINEER is authorized to commence performance of the Services upon mutual approval of this Agreement.

This Agreement terminates on May 1, 2010, unless terminated earlier pursuant to the terms and conditions of this Agreement. ENGINEER shall complete the Subcontracted Services in accordance with the time schedule set forth in Attachment A, including any intermediate milestones and phase submittals.

IV. STANDARD TERMS AND CONDITIONS

Attachment A is the Standard Terms and Conditions that are incorporated by reference as though set out in full.

V. NOTICE

Any notice or communication required or permitted by this Agreement shall be deemed sufficiently given if in writing and when delivered personally or upon receipt of registered or certified mail, postage prepaid with the U.S. Postal Service, and addressed as follows:

OWNER:	Or,	ENGINEER:
City of Newman		ECO:LOGIC Engineering
Attn: Michael Holland		Attn: Brandee Bews, Contracts
P.O. Box 787/1162 Main Street		3875 Atherton Road
Newman, CA 95360		Rocklin, CA 95765

or to such other address as the party to whom notice is to be given has furnished by the receiving party in writing.

VI. APPROVAL

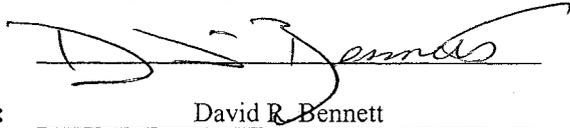
This is the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed herein.

The above is mutually agreed to this _____ day of _____ 2009.

City of Newman

ECO:LOGIC Engineering, Inc.

By: _____

By:  _____

Name: _____

Name: David R. Bennett

Title: _____

Title: CEO



3875 Atherton Road
Rocklin, CA 95765

916.773.8100
916.773.8448

November 12, 2008

Michael Holland
City Manager
City of Newman
P.O. Box 787
1162 Main Street
Newman, CA 95360

RE: Proposal for Bid Period and Construction Phase Engineering and Inspection Services

Dear Michael,

ECO:LOGIC Engineering is pleased to submit to the City of Newman this scope of work and fee proposal to perform bid period and construction management services on the WWTP Effluent Storage Expansion Project. The project consists of the construction of a new 135 million gallon earthen effluent storage basin adjacent to the existing effluent storage basin on the existing City WWTP site.

We propose the following scope of work tasks:

Bid Period Services

ECO:LOGIC will prepare and distribute plans and specifications to prospective bidders and builders exchanges, conduct a pre-bid meeting, respond to inquiries from prospective bidders, issue addenda to construction documents as necessary for the project, review bids received for completeness and accuracy, and make a recommendation to the City for award of a construction contract. We estimate bid period services will cost approximately \$20,000 based on a maximum of two addenda that relate specifically to the current project design.

Basic Engineering Services during Construction

ECO:LOGIC will provide basic design-related engineering services during construction. Engineering services during construction include responding to requests for information (RFI) from the contractor or the construction manager (CM), reviewing material and equipment submittals, making periodic site visits, providing clarifications to the design intent, reviewing prospective changes, participating in a final inspection, and preparation of record drawings. We estimate these services will cost approximately \$45,000 based on up to thirty (30) combined RFIs and submittal reviews, up to four (4) site visits including the final inspection, and no changes to the design intent.

Construction Management and Inspection

ECO:LOGIC will provide construction management and inspection services for the project. Construction Management is a critical element of the project and can minimize change orders that otherwise can result in cost increases, claims, conflicts, and delays. The construction manager (CM)

Michael Holland
City of Newman
November 12, 2008
Page 2

facilitates management of the project as the City's representative, including bonding and insurance verification, on-site observation of construction activities, progress assessment and schedule management, review of contractor progress payment requests, change order negotiations, day to day input on project status, and periodic reporting of project status to the City, etc. Embankment soil compaction testing will be required and will be provided by Kleinfelder as a sub-consultant to ECO:LOGIC. Our estimated fee for construction management and inspection on the project is \$125,000 based on one qualified person working full time for the duration of the projected 3 month construction period, and including an allowance of \$30,000 for soil compaction testing.

Special Services – Operation and Maintenance Manual Revision

ECO:LOGIC will prepare revisions to the existing WWTP operation and maintenance manual to incorporate the new effluent storage basin. We estimate the revisions to cost approximately \$15,000 based on providing them in multiple copies to be inserted in the existing manual documents and in electronic file format.

Our total estimated fee is \$205,000 for bid and construction period services, which amounts to approximately eight percent of the current estimated construction cost of \$2.6 million.

We look forward to the opportunity to provide these services to the City. Please feel free to contact me or Tiffany Knapp if you have any questions regarding this proposal.

Sincerely,

ECO:LOGIC Engineering



Charles G. Bunker, PE,
Principal

cc: Tiffany Knapp, P.E., ECO:LOGIC Engineering

ATTACHMENT A

Agreement for Professional Services Standard Terms and Conditions

Article 1. Authority

Each party has full power and authority to enter into and perform this contract, and the person signing this contract on behalf of each party has been properly authorized and empowered to enter into this contract. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

Article 2. Documents

All documents, including drawings, specifications, and computer software, prepared by ENGINEER pursuant to this Agreement are instruments of service in respect to this Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of this Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER.; and OWNER shall indemnify and hold harmless ENGINEER against all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from such reuse.

Article 3. Insurance

ENGINEER agrees to maintain (1) statutory workers' compensation insurance coverage; and (2) comprehensive general liability insurance coverage, and automobile liability insurance coverage in the sum of not less than one million dollars (\$1,000,000). ENGINEER also agrees to maintain professional liability insurance in the sum of not less than one million dollars (\$1,000,000) annual aggregate, on a claims-made basis, as long as it is reasonably available under standard policies at rates comparable to those currently in effect.

Article 4. Limitation of Liability

Notwithstanding any other provision of this agreement, OWNER agrees and covenants to limit the professional liability of ENGINEER, its subconsultants and all of its employees, agents and officers to the OWNER, arising from ENGINEER'S negligent acts, errors or omissions, such that the total aggregate liability of ENGINEER to all those named shall not exceed the amount of the fee.

Article 5. Dispute Resolution

Any claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this agreement shall be submitted to non-binding mediation prior to the initiation of any suit or other litigation. The cost of said mediation shall be split equally between the parties. This agreement to mediate shall be specifically enforceable under the prevailing law of the jurisdiction in which this agreement is signed.

In the event of a dispute regarding the scope of work, OWNER and ENGINEER agree to meet and clarify any ambiguities as early and quickly as practicable.

Claims up to \$100,000, and disputes regarding ENGINEER's fees under this agreement, shall be subject to binding arbitration in accordance with the then-most current rules of the American Arbitration Association, unless the parties mutually agree otherwise. The cost of the arbitration shall be split equally between the parties.

In the event that legal action is brought by either party against the other, the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments, or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, expert witness fees and other documented expenses.

Article 6. Termination

This agreement may be terminated at any time by either party upon thirty (30) days written notice. In the event of any such termination, the ENGINEER shall be fairly compensated for all work performed to the date of termination.

If this agreement with the ENGINEER is terminated, and the work is completed by others, the ENGINEER shall be released from all responsibility for his uncompleted work and for work performed by others.

Article 7. Contingency

The OWNER and the ENGINEER agree that preparation of the contract drawings, specifications and documents without omissions, ambiguities, or inconsistencies is neither possible, practical, or cost

effective. In addition, the OWNER and ENGINEER agree that additional costs may be incurred during construction due to unforeseen site conditions and/or project changes required for any reason. As a consequence, the OWNER and the ENGINEER agree that certain increased costs and changes may be required during construction of the project and that the final construction cost of the Project may exceed the bid amount. The OWNER agrees to set aside an appropriate reserve as a contingency to be used, as required, to pay for any such increased costs and changes. OWNER further agrees to make no claim by way of direct or third-party action against ENGINEER or its subconsultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

Article 8. Opinions of Cost and Schedule

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over contractors', subcontractors', or vendors methods of determining prices, or over competitive bidding or market conditions, ENGINEER'S cost estimates shall be made on the basis of qualification and experience as a professional engineer. Such opinions of probable cost do not constitute representations, warranties or guarantees of the accuracy of such opinions, as compared to bid or actual costs.

Since ENGINEER has no control over the resources provided by others to meet contract schedules, ENGINEER'S forecast schedules shall be made on the basis of qualification and experience as a professional engineer. ENGINEER cannot and does not guarantee that proposals, bids or actual project costs will not vary from his cost estimates or that actual schedules will not vary from his forecast schedules.

Article 9. Design Without Construction Administration

It is understood and agreed that the ENGINEER'S Basic Services under this Agreement do not include project observation or review of the Contractor's performance, and that such services may be provided for by the OWNER. The OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the OWNER waives any claims against the ENGINEER that may be in any way connected thereto. In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all

damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the ENGINEER. If the OWNER requests in writing that the ENGINEER provide specific construction phase services and if the ENGINEER agrees in writing to provide such services, then they shall be compensated for as Additional Services as provided in Article 2.

Article 10. Jobsite Safety

Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees or subconsultants at the construction site, shall relieve the General Contractor and any other entity of their obligations, duties, and responsibilities including but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health and safety precautions required by any regulatory agencies. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The OWNER agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the OWNER'S agreement with the General Contractor. The OWNER also agrees that the OWNER, the ENGINEER, and the ENGINEERS consultants shall be indemnified and shall be made additional insureds under the General Contractor's general liability insurance policy.

Article 11. Personal Liability Protection

It is intended by the parties to this Agreement that the ENGINEER'S services in connection with the project shall not subject ENGINEER'S individual employees, officers, or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary herein, OWNER agrees that as the OWNER'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the ENGINEER, a California Corporation, and not against any of the ENGINEER'S employees, officers, or directors.

Article 13. Miscellaneous Provisions

- A. This Contract shall be governed by the laws of California and constitutes the entire agreement between the parties relative to the engineering services specified herein, and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this agreement. There are no understandings, agreements, conditions, representations, warranties, or promises, with respect to the subject matter of this contract except those contained in or referred to in this writing or duly amended hereto.

- B. The OWNER, by signature of this agreement, recognizes that the scope of work is predicated upon the requisite level of work known to the ENGINEER. Should unknown factors occur, the OWNER will compensate the ENGINEER for those tasks that are not inclusive of this scope of services.

- C. If any provision of this agreement is held to be unenforceable, the remainder of this agreement shall be severable and not affected thereby.