



**AGENDA**  
**REGULAR MEETING**  
\* \* \*  
**CLAYTON CITY COUNCIL**  
\*\*\*

**TUESDAY, May 15, 2012**

**7:00 p.m.**

*Hoyer Hall, Clayton Community Library  
6125 Clayton Road, Clayton, CA 94517*

**Mayor:** Howard Geller  
**Vice Mayor:** Joseph A. Medrano

**Council Members**  
Julie K. Pierce  
David T. Shuey  
Hank Stratford

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review in City Hall located at 6000 Heritage Trail on Monday prior to the Council meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at [www.ci.clayton.ca.us](http://www.ci.clayton.ca.us)
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda will be made available for public inspection in the City Clerk's office located at 6000 Heritage Trail during normal business hours.
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

**\* CITY COUNCIL \***

**May 15, 2012**

**7:00 P.M.**

1. **CALL TO ORDER THE CITY COUNCIL** – Mayor Geller.

2. **CLOSED SESSION** - None

3. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.

4. **CONSENT CALENDAR**

*Consent Calendar items are typically routine in nature and are considered for approval by the City Council with one single motion. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or input may request so through the Mayor.*

(a) Approve the minutes of the regular meeting of May 1, 2012. ([View Here](#))

(b) Approve the Financial Demands and Obligations of the City. ([View Here](#))

(c) Adopt a Resolution approving the Engineer's Report and declaring intention to levy and collect assessments for the Clayton Street Lighting Assessment District for Fiscal Year 2012-2013, and giving notice of the time and place for hearing on the levy of the proposed real property assessments. ([View Here](#))

(d) Adopt a Resolution approving an Agreement reentering into reimbursement of two previous Loan Agreements by and between the City of Clayton and the Successor Agency to the former Redevelopment Agency of the City. ([View Here](#))

(e) Adopt a Resolution ordering the annexation of Lots 1 through 24, inclusive, of Subdivisions 8719 (Diablo Pointe) to the Citywide Street Lighting Assessment District. ([View Here](#))

5. **RECOGNITIONS AND PRESENTATIONS**

(a) Certificate of Recognition to Joshua Harmon for his Eagle Scout Project installing three bicycle racks and associated concrete pad at the North Valley Park. ([View Here](#))

(b) Certificates of Recognition to "Do The Right Thing" students of the month for exemplifying "Integrity" during March and April 2012.

6. **REPORTS**

(a) Planning Commission – Commissioner Bob Armstrong

(b) Trails and Landscaping Committee – No meeting held.

(c) City Manager/Staff.

(d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

(e) Other

**7. PUBLIC COMMENT ON NON - AGENDA ITEMS**

*Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To facilitate the recordation of comments, it is requested each speaker complete a speaker card available on the Lobby table and submit it in advance to the City Clerk. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. When one's name is called or you are recognized by the Mayor as wishing to speak, the speaker shall approach the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.*

*Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.*

**8. PUBLIC HEARINGS**

- (a) Public Hearing on proposed real property assessments for the Diablo Estates at Clayton Benefit Assessment District (BAD), determination of lack of majority protest vote, and consideration of a Resolution ordering the levy of the real property assessments for operation and maintenance of the BAD in FY 2012-13. (City Engineer) ([View Here](#))

Staff recommendation: **1.)** Receive the staff presentation; **2.)** Open the Public Hearing and receive public comments; **3.)** Close the Public Hearing; **4.)** Request the City Clerk open the sealed returned ballots and announce the vote results; and **5.)** If majority protest does not occur, approve a motion to adopt the Resolution.

**9. ACTION ITEMS**

- (a) Consider Second Reading and Adoption of Ordinance No. 441 adding Chapter 15.90 to the *Clayton Municipal Code* establishing a process for individuals with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City's land use, zoning or building standards, regulations, policies and procedures (ZOA 01-12). ([View Here](#)) (Community Development Director)

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comments; **3)** By motion, authorize the City Clerk to read Ordinance No. 441 by title and number only; and **4)** Following that reading, by motion adopt Ordinance 442.

- (b) Consider Second Reading and Adoption of Ordinance No. 442 adding and amending certain sections of the *Clayton Municipal Code* relating to claims for refunds of City taxes and actions challenging City taxes, assessments and fees. (City Attorney) ([View Here](#))

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comments; **3)** By motion, authorize the City Clerk to read Ordinance No. 442 by title and number only; and **4)** Following that reading, by motion adopt Ordinance 442.

- (c) Review and determine the scope of work for the 2012 Annual Neighborhood Street Repaving Project (CIP No. 10411) plus inclusion of deductive bids for the resurfacing of the parking lots at City Hall, the Clayton Community Library and Lydia Lane Park, and repaving part of Clayton's Trail System (Bruce Lee Trail segment). ([View Here](#)) (City Engineer)

Staff recommendation: Following staff report and public comments, that Council provide policy direction regarding the preferred scope of work option for the 2012 Annual Neighborhood Street Repaving Project and whether proposed deductive bid projects should be included.

- (d) Action Item of City serving as Successor Agency to the former Clayton RDA  
Consideration of an Agreement reentering into reimbursement of two previous Loan Agreements by and between the City of Clayton and the Successor Agency to the former Redevelopment Agency of the City, as recommended by the Oversight Board of the Successor Agency of the City of Clayton. (City Manager) ([View Here](#))

Staff recommendation: Following staff report and receipt of public comments, that Council adopt the Successor Agency Resolution.

**10. COUNCIL ITEMS** – limited to requests and directives for future meetings.

**11. ADJOURNMENT** – the next regularly scheduled City Council meeting is June 5, 2012.

# # # # #

**MINUTES  
OF THE  
REGULAR MEETING  
CLAYTON CITY COUNCIL**

**Agenda Date:** 5-15-12

**Agenda Item:** 4a

**TUESDAY, May 1, 2012**

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:20 p.m. by Mayor Geller in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Vice Mayor Medrano, Councilmembers Pierce, Shuey (arrived at 6:21 p.m.), and Stratford. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Assistant to the City Manager Laura Hoffmeister, and City Engineer Rick Angrisani, and City Clerk Laci Jackson.
  
2. **CLOSED SESSION** – Mayor Geller announced the following purpose for closed session and then adjourned into Closed Session at 6:21 p.m.
  - (a) *Government Code Section 54956.9, Conference with Legal Counsel*  
Existing Litigation: *JFC Construction, Inc. v. City of Clayton, and related cross action*  
Superior Court of CA, Contra Costa County; Case No. C-10-00293

**Report out of Closed Session:** Mayor Geller reported the Council gave direction to special legal counsel.
  
3. **PLEDGE OF ALLEGIANCE**- led by Mayor Geller.
  
4. **CONSENT CALENDAR**- It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve the Consent Calendar as submitted (Passed; 5-0 vote).
  - (a) Information Only
    1. Updated Clayton Trails & Landscaping Brochure.
    2. Adopted Rules of Procedure of the Oversight Board, Clayton Successor Agency.
  - (b) Approved the minutes of the regular meeting of April 17, 2012.
  - (c) Approved the Financial Demands and Obligations of the City.
  - (d) Adopted Resolution 18-2012 rescinding Resolution No. 72-92 and defining City volunteers for purpose of City workers' compensation benefit eligibility.
  - (e) Adopted Resolution 19-2012 calling for the preparation and filing of the Engineer's Annual Report for the levy of FY 2012-2013 assessments in the Clayton Street Lighting Assessment District (pursuant to the Street Lighting Act of 1919).
  - (f) Approved Save Mount Diablo as an acceptable third-party non-profit entity for developer dedication of real property title to and responsibility of Lot 25 (APN 119-630-011), satisfying the developer's (Toll Brothers, Inc.) open space mitigation parcel requirement pursuant to Condition No. 4 of the Diablo Estates at Clayton residential subdivision (SPR 01-11).

5. **RECOGNITIONS AND PRESENTATIONS** – None.

6. **REPORTS**

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) The City Manager reported the City is seeking citizens interested in serving on two citizen advisory committees for the CCCTA and CCTA and he noting applicants for three seats on the Planning Commission. He noted all applications are available on the City's website.
- (d) City Council

Councilmember Stratford thanked the Clayton Pioneer for sponsoring the Clayton Cleans Up. He also thanked the citizens involved in the Mormon Helping Hands project and noted a good size group worked on trail restoration from Peacock Creek to Diablo View Middle School.

Vice Mayor Medrano stated Dave Linzey was hired as the first Executive Director for the Clayton Valley Charter High School. He noted all bands have been booked for the weeknight concerts and 11 concert sponsors, 5 of which are downtown businesses, have committed to helping fund the Thursday night series. He thanked Ed's Mudville Grill, the Clayton Club Saloon, the Royal Rooster, Diablo Ford, Tipperary Construction, Inc, Oakhurst Country Club, Subway, Diablo View Construction Inc., CBCA, the Passport to Communities Foundation, and the Clayton Community Church's Labor Day Derby for committing to be sponsors.

Councilmember Pierce attended the Contra Costa Transportation Authority meeting, the ABAG General Assembly, and worked at the Clayton Cleans Up. She thanked the Clayton Pioneer and Allied Waste for their sponsorship of the event. Lastly, she attended the California Council of Governments Conference in Monterey.

Councilmember Shuey met the new Clayton Valley Charter High School Executive Director Mr. Dave Linzey and noted there will be a meet and greet Thursday, May 10<sup>th</sup> at 6:30p.m. in the multi-use room at Clayton Valley High School. He attended the League of California Cities East Bay Division Bocce fundraiser and a mediation session regarding litigation for the City.

Mayor Geller thanked the Pioneer for sponsoring the Clayton Cleans Up. He attended the Knights of Columbus Blue Night Award ceremony where Clayton Police Officer Allan Pike was honored. He attended the Mayors' Club meeting with the local Mayors where they discussed reducing costs. He noted Clayton resident and former State Senator Dan Boatright passed away recently. He reminded everyone about CBCA's Art and Wine Festival this weekend. He stated CBCA still needed volunteers. He stated the first Concert in The Grove will be May 12<sup>th</sup> and the Farmers' Market starts at 8am the same day.

- (e) Other – None.

## **7. PUBLIC COMMENTS**

Gail Murray, Clayton's representative to the BART Board of Directors, invited interested Councilmembers, staff, and citizens to BART's Rust, Dust and Rail Tour from 8:30-10:30 a.m. on June 8<sup>th</sup>.

Councilmember Pierce thanked Gail for attending all of the BART and CCTA meetings and noted BART has the oldest fleet of trains in the country.

Keith Haydon thanked the Council for the promotion for Art and Wine Festival and noted the festival is where CBCA raises the majority of their funds for community benefit and charity. He thanked the City staff for their work leading up to the festival and for staffing the weekend.

## **8. PUBLIC HEARINGS**

- (a) Consideration of the Introduction and First Reading of Planning Commission-recommended Ordinance No. 441 adding Chapter 15.90 to the *Clayton Municipal Code* establishing a process for individuals with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City's land use, zoning or building standards, regulations, policies and procedures (ZOA 01-12).

The Community Development Director presented the staff report. He indicated with the certification of the City's Housing Element in 2010 many implementation measures were required to be adopted. He stated one of the implementation measures was to adopt a reasonable accommodations ordinance. He mentioned that currently the City reviews reasonable accommodation requests on a case by case basis. He stated in this proposed Ordinance a procedure and evaluation criteria for addressing reasonable accommodations requests are clearly defined and can be performed at a staff level in many circumstances within 30 days of receiving the request. He noted once approved the party making the request would have to act on the approval within 12 months. He stated when the need for the accommodation goes away, there may be a need for a modified structure to accommodate the request to be restored to its original condition. He stated the fee for this would be established at a later date by Council resolution.

Councilmember Pierce asked how staff will keep track of the accommodations on the properties to assure they are removed once the need is no longer present?

The Community Development Director stated there would be a deed restriction on the property to let the future owner of the property know. If it were determined the new owner needed the accommodation, it could be retained, or if the accommodation blended in architecturally (assuming a structural modification was involved), it could be retained; otherwise, staff could ask to have the property restored to its original condition.

Mayor Geller stated a deed restriction will appear on a preliminary title report but will not assure the new owner notifies staff. The Community Development Director acknowledged the concern, but stated the new owner would be obligated to contact the City.

Mayor Geller asked if there could be a notice to the City upon property transfer so that staff would be made aware of the change in ownership.

The Council consensus was to have the City Attorney add language in the Ordinance under Section 15.90.090C. to require there be a deed restriction recorded so that the City would be notified of a transfer of property ownership or circumstance eliminating the need for the reasonable accommodation.

Mayor Geller opened the Public Hearing at 7:43 p.m. No comments were received and closed the Public Hearing at 7:44 p.m.

**It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to have the City Clerk to read Ordinance No. 441 by title and number only as amended to modify the language to a more affirmative requirement in Section 090C by replacing the word "could" with "shall" (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 441 by title and number only.

**It was moved by Councilmember Shuey, seconded by Councilmember Pierce, to approve Ordinance 441 for Introduction as amended (Passed; 5-0 vote).**

## **9. ACTION ITEMS**

- (a) Consideration of the Trails and Landscaping Committee's (TLC) recommendations on the priority to partially fund a joint landscaping project of Daffodil Hill with the Clayton Business and Community Association (CBCA), incorporate the targeted City-owned parcel into the Citywide Landscape Maintenance District (CFD 2007-1), and determine the of source of maintenance funds following completion of the joint landscape project.

The Assistant to the City Manager presented the staff report. She stated the Council referred this matter back to the TLC for its recommendation on whether Daffodil Hill should be added to the Landscape Maintenance District and whether or not the district should help fund the construction/planting and ongoing maintenance. The TLC had a long thoughtful discussion on this matter and looked at the original language in Measure B (2007). They also discussed the intent of the voters, the definitions of the tax, and the area for consideration which is adjacent to Clayton Road and open space. She stated the TLC deliberated over the budget of the District and were hesitant to take on more ongoing costs. She noted the CBCA President and its Landscape Designer were present at the TLC meeting. She stated at the end of their discussion the TLC decided to recommend including the area into the Landscape District, sharing the costs for the construction/planting 50-50 with the CBCA, and have the City's General Fund pay for the ongoing maintenance.

Vice Mayor Medrano stated when the Committee discussed this they were aware that even though they do not want to pay for the ongoing maintenance, if Daffodil Hill was brought into the District, the District would still be obligated to pay for it.

When questioned, the City Manager stated the \$26,000 presented to the TLC was the amount at that time, but the recommendation tonight is not to exceed \$29,000 for the City's 50% share.

Councilmember Stratford stated he would like to make sure the City Maintenance staff looks at the plants and makes changes to the plan to bring in lower maintenance plants. The City Manager stated the plan bid on was part of the give and take design between



the CBCA committee and City staff. He stated down the road when the plants die they may not be replanted with the same plant.

Mayor Geller stated we have already made a lot of changes to the plan and the estimate given by City Maintenance for the cost of ongoing maintenance (\$12,000), was a worst case scenario.

Vice Mayor Medrano stated he would be against delaying this project any longer.

Councilmember Pierce stated when the Council approved these plans we knew we were going to take care of it one way or another. She suggested Council approve the amount as recommended and replace the plants with something else if it does not work.

The City Manager clarified this design plan only encompasses landscaping on the City parcel and noted land behind the upper monument sign is Diamond Terrace property.

Keith Haydon stated the maintenance department participated in the review of the plans and made changes. He stated from CBCA's prospective this is a good overall plan. He stated the CBCA membership approved up to \$29,000 as the amount given to build in a contingency.

No other public comments were received.

**It was moved by Vice Mayor Medrano, seconded by Councilmember Stratford, to approve by motion the incorporation of the Daffodil Hill parcel into the Landscape Maintenance District (CFD 2007-1) (Passed; 5-0 vote).**

**It was moved by Vice Mayor Medrano, seconded by Councilmember Stratford, to agree to share the negotiated cost to complete the landscape beautification project on Daffodil Hill with CBCA at a 50-50 cost share not to exceed a City expense of \$29,000 paid by Landscape Maintenance District funds (Passed; 5-0 vote).**

**It was moved by Councilmember Pierce, seconded by Councilmember Stratford, that the Landscape Maintenance District be the source of funds for the completed project's maintenance costs (Passed; 4-1 vote; No- Medrano).**

- (b) Public Meeting on the proposed formation of a Diablo Estates at Clayton Benefit Assessment District (BAD) for the Diablo Pointe Subdivision 8719, 24 residential parcels east of Regency Drive and north of Rialto Drive (approx. 19 acres).

The City Engineer presented the staff report and stated at its March 20<sup>th</sup> meeting the City Council approved moving forward with the formation of the BAD in accordance with Proposition 219 requirements. He stated on May 15<sup>th</sup> the Council will hold another meeting to count the ballots. He stated the assessment will be \$3,072.62 per parcel per year with an annual CPI increase up to 4%.

No public comments were received.

No action was taken.

- (c) Consideration of the Introduction and First Reading of Ordinance No. 442 adding and amending certain sections of the *Clayton Municipal Code* relating to claims for refunds of City taxes and actions challenging City taxes, assessments and fees.

The City Attorney presented the staff report for a pay first ordinance based on recent case law which would require citizens to pay fees, assessments, or taxes before they are able to challenge them.

Vice Mayor Medrano asked what the financial impact would be based on this change? The City Attorney stated thus far the City has not received any challenge.

No public comments were received.

**It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to have the City Clerk to read Ordinance No. 442 by title and number only (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 442 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to approve Ordinance 442 for Introduction (Passed; 5-0 vote).**

10. **COUNCIL ITEMS**- None.

11. **ADJOURNMENT**- On call by Mayor Geller the meeting adjourned at 8:12 p.m.

Respectfully submitted,

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Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

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Howard Geller, Mayor



Agenda Date: 5/15/12

Agenda Item: 4B

Approved:

Gary A. Napper  
City Manager/Executive Director

# STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MERRY PELLETIER, FINANCE MANAGER 

DATE: May 15, 2012

SUBJECT: INVOICE SUMMARY

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**RECOMMENDATION**

**Approve the following Invoices.**

|         |                                     |                            |
|---------|-------------------------------------|----------------------------|
| 5/9/12  | Cash Requirements Report            | \$303,015.22               |
| 5/2/12  | JFC Construction, Inc.              | \$142,000.00*              |
| 4/30/12 | State Controller's Office           | \$100.00*                  |
| 5/9/12  | Dan Ashley for current concert      | \$100.00*                  |
| 5/9/12  | Don Stone for current concert       | \$650.00*                  |
| 5/9/12  | Priority Payments (credit card fee) | \$28.24*                   |
| 5/9/12  | Don Stone for 9 subsequent concerts | \$5,850.00                 |
|         | <b>TOTAL REQUEST</b>                | <b><u>\$451,743.46</u></b> |

Attachments:

Cash Requirements Report dated 5/10/12 (5 pages)

**City of Clayton**  
**Cash Requirements Report**  
 City Council Meeting 5/15/2012

| Vendor Name                                | Transaction Date | Transaction Number | Transaction Type | Description                                     | Transaction Amount | Post Date  | Invoice Balance |
|--------------------------------------------|------------------|--------------------|------------------|-------------------------------------------------|--------------------|------------|-----------------|
| <b>Access One</b>                          |                  |                    |                  |                                                 |                    |            |                 |
| Access One                                 | 5/2/2012         | 1257463            | Invoice          | Lond Distance Service                           | \$49.36            | 5/1/2012   | \$49.36         |
|                                            |                  |                    |                  | Totals for Access One:                          |                    | \$49.36    |                 |
| <b>All City Management Services, Inc.</b>  |                  |                    |                  |                                                 |                    |            |                 |
| All City Management Services, Inc.         | 4/20/2012        | 26632              | Invoice          | Crossing Guard Svcs                             | \$232.50           | 5/9/2012   | \$232.50        |
|                                            |                  |                    |                  | Totals for All City Management Services, Inc.:  |                    | \$232.50   |                 |
| <b>ALTEC Industries, Inc.</b>              |                  |                    |                  |                                                 |                    |            |                 |
| ALTEC Industries, Inc.                     | 4/13/2012        | 4966946            | Invoice          | Annual Inspection                               | \$651.15           | 5/9/2012   | \$651.15        |
|                                            |                  |                    |                  | Totals for ALTEC Industries, Inc.:              |                    | \$651.15   |                 |
| <b>American Fidelity Assurance Company</b> |                  |                    |                  |                                                 |                    |            |                 |
| American Fidelity Assurance Company        | 4/16/2012        | A819625            | Invoice          | May Premium                                     | \$256.82           | 5/9/2012   | \$256.82        |
|                                            |                  |                    |                  | Totals for American Fidelity Assurance Company: |                    | \$256.82   |                 |
| <b>AT&amp;T CalNet 2</b>                   |                  |                    |                  |                                                 |                    |            |                 |
| AT&T CalNet 2                              | 5/3/2012         | 4/12               | Invoice          | April Billing                                   | \$1,688.68         | 5/9/2012   | \$1,688.68      |
|                                            |                  |                    |                  | Totals for AT&T CalNet 2:                       |                    | \$1,688.68 |                 |
| <b>Bay Area Barricade Serv.</b>            |                  |                    |                  |                                                 |                    |            |                 |
| Bay Area Barricade Serv.                   | 4/23/2012        | 0281296-JN         | Invoice          | leather driving gloves                          | \$116.80           | 5/9/2012   | \$116.80        |
| Bay Area Barricade Serv.                   | 4/23/2012        | 0281294-JN         | Invoice          | safety glasses and gloves                       | \$172.26           | 5/9/2012   | \$172.26        |
| Bay Area Barricade Serv.                   | 4/17/2012        | 0281062-JN         | Invoice          | signs                                           | \$261.00           | 5/9/2012   | \$261.00        |
|                                            |                  |                    |                  | Totals for Bay Area Barricade Serv.:            |                    | \$550.06   |                 |
| <b>Blackbaud</b>                           |                  |                    |                  |                                                 |                    |            |                 |
| Blackbaud                                  | 4/17/2012        | 90436250           | Invoice          | consulting services 4/3-4/16                    | \$315.00           | 5/9/2012   | \$315.00        |
|                                            |                  |                    |                  | Totals for Blackbaud:                           |                    | \$315.00   |                 |
| <b>BMI (Broadcast Music Inc)</b>           |                  |                    |                  |                                                 |                    |            |                 |
| BMI (Broadcast Music Inc)                  | 5/2/2012         | 22295671           | Invoice          | Music Licensing - Concerts                      | \$320.00           | 5/9/2012   | \$320.00        |
|                                            |                  |                    |                  | Totals for BMI (Broadcast Music Inc):           |                    | \$320.00   |                 |

|                                                       |                     |         |                                                                   |             |           |             |
|-------------------------------------------------------|---------------------|---------|-------------------------------------------------------------------|-------------|-----------|-------------|
| CalPERS Retirement                                    | 5/2/2012 4/29/12    | Invoice | PPE 4/29/12                                                       | \$21,986.44 | 5/9/2012  | \$21,986.44 |
|                                                       |                     |         | Totals for CalPERS Retirement:                                    |             |           | \$21,986.44 |
| CCC Library                                           | 4/14/2012 4/14/12   | Invoice | Additional Hours Q3 FY11/12                                       | \$5,739.07  | 5/9/2012  | \$5,739.07  |
|                                                       |                     |         | Totals for CCC Library:                                           |             |           | \$5,739.07  |
| CCC Office of the Sheriff, Forensic Services Division | 4/24/2012 CLPD-1203 | Invoice | Toxicology and Alcohol Screening                                  | \$1,641.00  | 5/9/2012  | \$1,641.00  |
|                                                       |                     |         | Totals for CCC Office of the Sheriff, Forensic Services Division: |             |           | \$1,641.00  |
| CCC Sheriff - LETC                                    | 5/4/2012 12-1724    | Invoice | Range Use April 2012 - Marsh Creek                                | \$370.00    | 5/11/2012 | \$370.00    |
|                                                       |                     |         | Totals for CCC Sheriff - LETC:                                    |             |           | \$370.00    |
| Clean Street                                          | 4/30/2012 67196     | Invoice | Sweep Fee                                                         | \$3,500.00  | 5/9/2012  | \$3,500.00  |
|                                                       |                     |         | Totals for Clean Street:                                          |             |           | \$3,500.00  |
| Comcast                                               | 4/5/2012 040512     | Invoice | Internet                                                          | \$392.48    | 5/9/2012  | \$392.48    |
|                                                       |                     |         | Totals for Comcast:                                               |             |           | \$392.48    |
| Contra Costa Water Dist.                              | 5/7/2012 series K   | Invoice | 3/1/12-5/2/12                                                     | \$10,220.57 | 5/9/2012  | \$10,220.57 |
|                                                       |                     |         | Totals for Contra Costa Water Dist.:                              |             |           | \$10,220.57 |
| Cropper Accountancy Corp                              | 4/30/2012 610       | Invoice | Third Progress Billing - audit ending 6/30/11                     | \$8,600.00  | 5/9/2012  | \$8,600.00  |
|                                                       |                     |         | Totals for Cropper Accountancy Corp:                              |             |           | \$8,600.00  |
| Daniel Ashley                                         | 5/1/2012 051212     | Invoice | Basist Fee                                                        | \$100.00    | 5/8/2012  | \$100.00    |
| Daniel Ashley                                         | 5/8/2012 28500      | Payment |                                                                   | (\$100.00)  | 5/8/2012  | \$0.00      |
|                                                       |                     |         | Totals for Daniel Ashley:                                         |             |           | \$0.00      |
| De Lage Landen Financial Services, Inc.               | 5/6/2012 13686554   | Invoice | Lease for Konica                                                  | \$431.68    | 5/9/2012  | \$431.68    |
|                                                       |                     |         | Totals for De Lage Landen Financial Services, Inc.:               |             |           | \$431.68    |

Dick Hom or Kathleen Kane

|                                          |                      |                                                      |                                                              |                    |          |             |
|------------------------------------------|----------------------|------------------------------------------------------|--------------------------------------------------------------|--------------------|----------|-------------|
| Dick Horn or Kathleen Kane               | 5/1/2012 050112      | Invoice                                              | refund for double payment of alarm registration fees         | \$26.00            | 5/9/2012 | \$26.00     |
|                                          |                      | Totals for Dick Horn or Kathleen Kane:               |                                                              | <u>\$26.00</u>     |          |             |
| Don Stone                                |                      |                                                      |                                                              |                    |          |             |
| Don Stone                                | 4/30/2012 051212     | Invoice                                              | Concert #1 Consultant Fee                                    | \$650.00           | 5/8/2012 | \$650.00    |
| Don Stone                                | 5/8/2012 28501       | Payment                                              |                                                              | (\$650.00)         | 5/8/2012 | \$0.00      |
|                                          |                      | Totals for Don Stone:                                |                                                              | <u>\$0.00</u>      |          |             |
| Environtech Enterprises                  |                      |                                                      |                                                              |                    |          |             |
| Environtech Enterprises                  | 5/1/2012 A001B-1B-12 | Invoice                                              | OS Main spraying                                             | \$13,999.75        | 5/9/2012 | \$13,999.75 |
| Environtech Enterprises                  | 5/1/2012 A001A-1B-12 | Invoice                                              | OS Main Spraying                                             | \$8,708.00         | 5/9/2012 | \$8,708.00  |
|                                          |                      | Totals for Environtech Enterprises:                  |                                                              | <u>\$22,707.75</u> |          |             |
| Gerald Koehne                            |                      |                                                      |                                                              |                    |          |             |
| Gerald Koehne                            | 5/1/2012 050112      | Invoice                                              | refund of double pmt of alarm reg fee                        | \$25.00            | 5/9/2012 | \$25.00     |
|                                          |                      | Totals for Gerald Koehne:                            |                                                              | <u>\$25.00</u>     |          |             |
| Graybar Electric Co, Inc                 |                      |                                                      |                                                              |                    |          |             |
| Graybar Electric Co, Inc                 | 4/17/2012 959841365  | Invoice                                              | PCRK PLC-Multipoint Inc                                      | \$334.60           | 5/9/2012 | \$334.60    |
| Graybar Electric Co, Inc                 | 4/23/2012 959932798  | Invoice                                              | Light Pole                                                   | \$4,220.83         | 5/9/2012 | \$4,220.83  |
| Graybar Electric Co, Inc                 | 4/23/2012 959932797  | Invoice                                              | Light Pole                                                   | \$4,220.83         | 5/9/2012 | \$4,220.83  |
| Graybar Electric Co, Inc                 | 4/23/2012 959932796  | Invoice                                              | light pole                                                   | \$3,928.89         | 5/9/2012 | \$3,928.89  |
|                                          |                      | Totals for Graybar Electric Co, Inc:                 |                                                              | <u>\$12,705.15</u> |          |             |
| Gregory Chan                             |                      |                                                      |                                                              |                    |          |             |
| Gregory Chan                             | 5/3/2012 050312      | Invoice                                              | refund for double payment for Frank Mellon's att. Mayors con | \$50.00            | 5/9/2012 | \$50.00     |
|                                          |                      | Totals for Gregory Chan:                             |                                                              | <u>\$50.00</u>     |          |             |
| Health Care Dental Trust                 |                      |                                                      |                                                              |                    |          |             |
| Health Care Dental Trust                 | 4/25/2012 4/25/12    | Invoice                                              | May Dental                                                   | \$2,683.70         | 5/9/2012 | \$2,683.70  |
|                                          |                      | Totals for Health Care Dental Trust:                 |                                                              | <u>\$2,683.70</u>  |          |             |
| Hyde Printing Inc                        |                      |                                                      |                                                              |                    |          |             |
| Hyde Printing Inc                        | 4/24/2012 60481      | Invoice                                              | Concert In the Grove Flyers                                  | \$1,260.41         | 5/9/2012 | \$1,260.41  |
|                                          |                      | Totals for Hyde Printing Inc:                        |                                                              | <u>\$1,260.41</u>  |          |             |
| Interstate All Battery Center - East Bay |                      |                                                      |                                                              |                    |          |             |
| Interstate All Battery Center - East Bay | 5/1/2012 041112      | Invoice                                              |                                                              | \$223.23           | 5/9/2012 | \$223.23    |
|                                          |                      | Totals for Interstate All Battery Center - East Bay: |                                                              | <u>\$223.23</u>    |          |             |
| J & R Floor Services                     |                      |                                                      |                                                              |                    |          |             |

|                                |                     |         |                                            |                |           |                     |
|--------------------------------|---------------------|---------|--------------------------------------------|----------------|-----------|---------------------|
| J & R Floor Services           | 5/1/2012 Apr 2012   | Invoice | services                                   | \$4,909.99     | 5/9/2012  | \$4,909.99          |
|                                |                     |         | Totals for J & R Floor Services:           |                |           | <u>\$4,909.99</u>   |
| Jason Delmar                   |                     |         |                                            |                |           |                     |
|                                |                     |         |                                            |                |           |                     |
| Jason Delmar                   | 5/4/2012 217        | Invoice | Rebuild D Woltering's PC                   | \$300.00       | 5/9/2012  | \$300.00            |
|                                |                     |         | Totals for Jason Delmar:                   |                |           | <u>\$300.00</u>     |
| JFC Construction Inc           |                     |         |                                            |                |           |                     |
| JFC Construction Inc           | 5/2/2012 05022012   | Invoice | Settlement Check                           | \$142,000.00   | 5/2/2012  | \$142,000.00        |
|                                | 5/2/2012 28498      | Payment | Totals for JFC Construction Inc:           | (\$142,000.00) | 5/2/2012  | \$0.00              |
|                                |                     |         |                                            |                |           |                     |
| LarryLogic Productions         |                     |         |                                            |                |           |                     |
|                                |                     |         |                                            |                |           |                     |
| LarryLogic Productions         | 5/2/2012 1240       | Invoice | CC Mtg 5/1/12                              | \$350.00       | 5/9/2012  | \$350.00            |
|                                |                     |         | Totals for LarryLogic Productions:         |                |           | <u>\$350.00</u>     |
| Marken Mechanical Services Inc |                     |         |                                            |                |           |                     |
| Marken Mechanical Services Inc | 5/1/2012 412-1151-5 | Invoice | City Hall Maint                            | \$150.00       | 5/9/2012  | \$150.00            |
|                                | 5/1/2012 412-1152-5 | Invoice | Library Maint                              | \$150.00       | 5/9/2012  | \$150.00            |
|                                |                     |         | Totals for Marken Mechanical Services Inc: |                |           | <u>\$300.00</u>     |
| Metro PCS                      |                     |         |                                            |                |           |                     |
|                                |                     |         |                                            |                |           |                     |
| Metro PCS                      | 4/27/2012 727407    | Invoice | Investigations                             | \$100.00       | 5/11/2012 | \$100.00            |
|                                |                     |         | Totals for Metro PCS:                      |                |           | <u>\$100.00</u>     |
| Motorola                       |                     |         |                                            |                |           |                     |
|                                |                     |         |                                            |                |           |                     |
| Motorola                       | 5/11/2012           | Invoice | PD Radios                                  | \$150,017.11   | 5/11/2012 | \$150,017.11        |
|                                |                     |         | Totals for Motorola:                       |                |           | <u>\$150,017.11</u> |
| Municipal Pooling Authority    |                     |         |                                            |                |           |                     |
|                                |                     |         |                                            |                |           |                     |
| Municipal Pooling Authority    | 4/30/2012 A041203   | Invoice | Unmet Liability Deductible                 | \$2,538.40     | 5/9/2012  | \$2,538.40          |
|                                | 5/1/2012 May        | Invoice | May Premiums                               | \$1,179.91     | 5/9/2012  | \$1,179.91          |
|                                |                     |         | Totals for Municipal Pooling Authority:    |                |           | <u>\$3,718.31</u>   |
| Neopost Leasing (Mail Finance) |                     |         |                                            |                |           |                     |
|                                |                     |         |                                            |                |           |                     |
| Neopost Leasing (Mail Finance) | 4/28/2012 N3244895  | Invoice | Lease Payment                              | \$222.02       | 5/9/2012  | \$222.02            |
|                                |                     |         | Totals for Neopost Leasing (Mail Finance): |                |           | <u>\$222.02</u>     |
| Pacific Telemanagement Svc     |                     |         |                                            |                |           |                     |
|                                |                     |         |                                            |                |           |                     |
| Pacific Telemanagement Svc     | 4/25/2012 386943    | Invoice | May Fees                                   | \$73.00        | 5/9/2012  | \$73.00             |
|                                |                     |         | Totals for Pacific Telemanagement Svc:     |                |           | <u>\$73.00</u>      |

|                                                     |                                                                 |         |                             |             |          |             |
|-----------------------------------------------------|-----------------------------------------------------------------|---------|-----------------------------|-------------|----------|-------------|
| PERMCO, Inc.                                        | 5/7/2012 9733-8742                                              | Invoice | 4/21/12-5/4-12              | \$10,748.44 | 5/9/2012 | \$10,748.44 |
|                                                     | Totals for PERMCO, Inc.:                                        |         |                             |             |          | \$10,748.44 |
| PG&E                                                |                                                                 |         |                             |             |          |             |
| PG&E                                                | 4/26/2012 0412                                                  | Invoice | Service 3/23-4/23/2012      | \$552.07    | 5/9/2012 | \$552.07    |
| PG&E                                                | 4/26/2012 4/12                                                  | Invoice | Service 3/23-4/23/12        | \$1,817.72  | 5/9/2012 | \$1,817.72  |
|                                                     | Totals for PG&E:                                                |         |                             |             |          | \$2,369.79  |
| Priority Payment Systems (Merchant Bankcard System) |                                                                 |         |                             |             |          |             |
| Priority Payment Systems (Merchant Bankcard System) | 4/30/2012 043012                                                | Invoice | Merchant Fees for 4/12      | \$28.24     | 5/3/2012 | \$28.24     |
| Priority Payment Systems (Merchant Bankcard System) | 5/9/2012 9100141                                                | Payment |                             | (\$28.24)   | 5/9/2012 | \$0.00      |
|                                                     | Totals for Priority Payment Systems (Merchant Bankcard System): |         |                             |             |          | \$0.00      |
| Rex Lock & Safe, Inc.                               |                                                                 |         |                             |             |          |             |
| Rex Lock & Safe, Inc.                               | 4/18/2012 98820                                                 | Invoice | New door lever for restroom | \$638.06    | 5/9/2012 | \$638.06    |
|                                                     | Totals for Rex Lock & Safe, Inc.:                               |         |                             |             |          | \$638.06    |
| Riso Products of Sacramento                         |                                                                 |         |                             |             |          |             |
| Riso Products of Sacramento                         | 4/18/2012 89930                                                 | Invoice | PD Copy contract            | \$94.79     | 5/9/2012 | \$94.79     |
|                                                     | Totals for Riso Products of Sacramento:                         |         |                             |             |          | \$94.79     |
| Rita Howe                                           |                                                                 |         |                             |             |          |             |
| Rita Howe                                           | 4/30/2012 petty cash                                            | Invoice | petty cash                  | \$203.42    | 5/9/2012 | \$203.42    |
|                                                     | Totals for Rita Howe:                                           |         |                             |             |          | \$203.42    |
| Rita McIntosh                                       |                                                                 |         |                             |             |          |             |
| Rita McIntosh                                       | 4/30/2012 4/30                                                  | Invoice | CCP usage refund 5/19       | \$172.00    | 5/9/2012 | \$172.00    |
|                                                     | Totals for Rita McIntosh:                                       |         |                             |             |          | \$172.00    |
| Ron's Window Coverings                              |                                                                 |         |                             |             |          |             |
| Ron's Window Coverings                              | 5/7/2012 615687                                                 | Invoice | Drapes for Endeavor Hall    | \$4,002.00  | 5/9/2012 | \$4,002.00  |
|                                                     | Totals for Ron's Window Coverings:                              |         |                             |             |          | \$4,002.00  |
| Sprint Comm (PD)                                    |                                                                 |         |                             |             |          |             |
| Sprint Comm (PD)                                    | 4/29/2012 763335311-125                                         | Invoice | PD Nextel                   | \$299.00    | 5/9/2012 | \$299.00    |
|                                                     | Totals for Sprint Comm (PD):                                    |         |                             |             |          | \$299.00    |
| Sprint Comm (PW & ADM)                              |                                                                 |         |                             |             |          |             |
| Sprint Comm (PW & ADM)                              | 4/29/2012 531409315-120                                         | Invoice | PW Nextel                   | \$268.55    | 5/9/2012 | \$268.55    |
|                                                     | Totals for Sprint Comm (PW & ADM):                              |         |                             |             |          | \$268.55    |







Agenda Date: 5-15-12

Agenda Item: 4c (Updated)

**ENGINEER'S REPORT**

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**DATE: MAY 15, 2012**  
**TO: CITY COUNCIL**  
**FROM: CITY ENGINEER**  
**RE: STREET LIGHT ASSESSMENT DISTRICT - FISCAL YEAR 2012-13**

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This report has been prepared in accordance with the requirements of the Street Lighting Act of 1919 (Section 18091 of the Street and Highways Code).

HISTORICAL REVIEW

Prior to 1979, the year the City formed the Street Light Assessment District, all subdivisions were annexed to the City's Lighting District #1. This district became a Special District, which made it eligible for a small portion of the property tax as well as Special Augmentation Funds for special districts.

When the Assessment District was formed, primarily to pay for street lighting in residential areas with street lights, the City ceased annexing new subdivisions to Lighting District #1. While the City continues to receive moneys on Lighting District #1 as Special Augmentation Funds, the amounts are expected to decrease. The expected income for FY 2012-13 is approximately \$26,195.

Until this year, all of the residential subdivisions with street lighting, except Diablo Pointe, had been annexed to the district and were being assessed annually. Diablo Pointe was intended to be annexed upon acceptance of the subdivision improvements. However, there is a possibility that lot purchases may precede acceptance of the improvements. Therefore, the residential lots in Diablo Pointe were annexed to the District in an earlier action by the City Council.

When the Street Light Assessment District was formed, it was the City Council's policy that the residential street lighting be paid by the Assessment District and arterial street lighting by Lighting District #1.

PROPOSITION 218

In 2001, significant increases in electric charges from PG&E were anticipated and a large increase was proposed in the annual assessments. It was finally determined that any increases over the amounts being assessed when Proposition 218 was approved, were subject to the terms of Proposition 218. A ballot election was held and the proposed increases were rejected by almost 60% of the votes cast. Based upon that result, a public meeting and public hearing was held on the pre-218 assessments based upon the old majority protest procedures. Since there was not a majority protest, the pre-218 assessments were levied.

Due to the current fiscal climate, I again do not recommend that the City attempt another 218 election in order to increase the assessments. However, the Diablo Pointe

lots are being assessed for the first time and a Proposition 218 ballot election is required prior to the assessment levy.

#### DETERMINATION OF SPECIAL BENEFIT

For this district, being limited to street lighting, the finding of a special benefit is relatively simple. Those properties, occupied and located on a lighted public street, receive a special benefit relative to those properties located on unlit streets. This benefit may be described as additional protection for residents from criminal activity and, to a lesser extent, vehicular traffic. It should be noted that I am saying that the lights protect the pedestrians from vehicular traffic by increasing the pedestrians' ability to see and not the other way around.

There may be some who would argue that since pedestrians benefit from the additional protection and that some of the pedestrians may be other than the actual residents, a general benefit exists. However, I believe that the number of trips by non-residents would be minuscule compared to the residents' trips and impossible to reasonably quantify.

There are some publicly owned parcels (open space areas) that do have some frontage along lighted public streets. However, since these properties are not occupied, no benefit, either special or general, is received.

Therefore, I can only find that no "general" benefit exists.

#### DISTRICT IMPROVEMENTS

The district improvements consist of streetlights located on residential streets. The streetlights may be mounted on PG&E poles or on their own poles (either wood, metal or concrete).

#### ESTIMATED COSTS

Actual PG&E costs for FY 2011-12 will be approximately \$96,500. Based upon expenditures to date, the City's labor, materials and overhead costs should be approximately \$34,511.

We are not anticipating any increase in electrical costs and are therefore proposing that the maintenance and administrative budgets be set at \$34,511.

#### METHOD OF ASSESSMENT

In detached, single family subdivisions with public streets, the special benefit received from street lights is equal to all the lots, regardless of size, and the assessment should, therefore, be equal for every lot and will be assigned an assessment unit of one.

In those subdivisions with private streets, but served or traversed by public, lit streets, the property owners already pay for a share of their private street lighting and the ratio of lots to the number of public lights is higher than those in subdivisions with all public streets. Therefore, in order to provide an equitable assessment, I have

assigned assessment units of one-half to single family and duet subdivisions (Oak Hollow, Black Diamond, and Diablo Pointe) and one-quarter to multifamily subdivisions (Diablo Ridge, Chaparral Springs, Marsh Creek Villas).

See the chart on pages 4 and 5 for a complete breakdown on the assessment units.

#### UNEXPENDED FUNDS

The fund balance at the beginning of FY 2011/12 was approximately \$136,019.

We estimate that the final costs for FY 2011/12 should be approximately \$131,011 and the final income amount should be \$127,459, resulting in a shortfall of \$3,552. This shortfall will decrease the fund balance to \$132,467 for the beginning of FY 2012/13.

This fund balance will cover the costs of the District until receipt of the first tax payment in December.

#### PER UNIT ALLOCATION

If we were able to spread the costs strictly by the number of assessment units in the District, we would have the following cost per assessment unit:

|                               |                   |
|-------------------------------|-------------------|
| Estimated PG&E cost           | \$96,500.00       |
| City Maintenance Costs        | 17,659.00         |
| City Administrative Costs     | 10,280.00         |
| Legal (ads, notice, etc.)     | 2,905.00          |
| County Collection of Levy Fee | <u>3,667.00</u>   |
| Total Budget                  | \$131,011.00      |
| Less Interest Income          | <u>(2,000.00)</u> |
| Net Assessment Required       | \$129,011.00      |
| Total Assessment Units        | 2908.5            |
| Total Assessment Per Unit     | <u>\$44.36</u>    |

However, since we are unable to increase assessments beyond their current level without a ballot election, we recommend that the current assessments remain the same for FY 2012-13 (see table on pages 4 and 5). Based upon the current assessment levels, the District will receive approximately \$125,991.08. Therefore, we must project a shortfall of approximately \$3,020 in FY 2012-13 which will decrease the existing fund balance at the end of FY 2012-13 to \$129,447.

## ASSESSMENT HISTORY

|                   |                         |
|-------------------|-------------------------|
| Proposed FY 12-13 | between \$0 and \$43.54 |
| FY 11-12          | between \$0 and \$43.54 |
| FY 10-11          | between \$0 and \$43.54 |
| FY 09-10          | between \$0 and \$43.54 |
| FY 08-09          | between \$0 and \$43.54 |
| FY 07-08          | between \$0 and \$43.54 |
| FY 06-07          | between \$0 and \$43.54 |
| FY 05-06          | between \$0 and \$43.54 |
| FY 04-05          | between \$0 and \$43.54 |
| FY 03-04          | between \$0 and \$43.54 |
| FY 02-03          | between \$0 and \$43.54 |
| FY 01-02          | between \$0 and \$43.54 |
| FY 00-01          | \$34.34                 |
| FY 99-00          | \$33.38                 |
| FY 98-99          | \$33.38                 |
| FY 97-98          | \$33.38                 |
| FY 96-97          | \$43.54                 |

| <b>CITY OF CLAYTON</b>                 |           |             |      |                |              |            |                    |            |
|----------------------------------------|-----------|-------------|------|----------------|--------------|------------|--------------------|------------|
| <b>STREETLIGHT ASSESSMENT DISTRICT</b> |           |             |      |                |              |            |                    |            |
| <b>FY 2012-13</b>                      |           |             |      |                |              |            |                    |            |
| <b>PROPOSED ASSESSMENTS</b>            |           |             |      |                |              |            |                    |            |
| Subd. Name                             | Subd. No. | No. of Lots | Type | Public Streets | A.U. per lot | Total A.U. | Assessment Per Lot | Total \$   |
| Cardinet Glen I                        | 2556      | 22          | SF   | Y              | 1.00         | 22.00      | \$43.54            | \$957.88   |
| Cardinet Glen II                       | 2572      | 30          | SF   | Y              | 1.00         | 30.00      | \$43.54            | \$1,306.20 |
| Glen Almond                            | 3434      | 23          | SF   | Y              | 1.00         | 23.00      | \$43.54            | \$1,001.42 |
| Dana Hills I                           | 3576      | 29          | SF   | Y              | 1.00         | 29.00      | \$43.54            | \$1,262.66 |
| Mission Manor                          | 3659      | 25          | SF   | Y              | 1.00         | 25.00      | \$43.54            | \$1,088.50 |
| Dana Hills II                          | 4011      | 55          | SF   | Y              | 1.00         | 55.00      | \$43.54            | \$2,394.70 |
| Dana Hills III                         | 4012      | 50          | SF   | Y              | 1.00         | 50.00      | \$43.54            | \$2,177.00 |
| Dana Hills IV                          | 4013      | 93          | SF   | Y              | 1.00         | 93.00      | \$43.54            | \$4,049.22 |
| Dana Hills V                           | 4014      | 50          | SF   | Y              | 1.00         | 50.00      | \$43.54            | \$2,177.00 |
| Dana Hills VI                          | 4015      | 30          | SF   | Y              | 1.00         | 30.00      | \$43.54            | \$1,306.20 |
| Dana Hills VII                         | 4016      | 65          | SF   | Y              | 1.00         | 65.00      | \$43.54            | \$2,830.10 |
| Dana Hills VIII                        | 4017      | 46          | SF   | Y              | 1.00         | 46.00      | \$43.54            | \$2,002.84 |
| Dana Hills IX                          | 4018      | 32          | SF   | Y              | 1.00         | 32.00      | \$43.54            | \$1,393.28 |
| Dana Hills X                           | 4019      | 52          | SF   | Y              | 1.00         | 52.00      | \$43.54            | \$2,264.08 |
| Marsh Creek                            | 4240      | 109         | MF   | N              | 0.25         | 27.25      | \$15.64            | \$1,704.76 |
| Regency Woods I                        | 4343      | 77          | SF   | Y              | 1.00         | 77.00      | \$43.54            | \$3,352.58 |
| St. James Place                        | 4403      | 16          | SF   | Y              | 1.00         | 16.00      | \$43.54            | \$696.64   |
| Casey Glen                             | 4449      | 24          | SF   | Y              | 1.00         | 24.00      | \$43.54            | \$1,044.96 |
| Briarwood I                            | 4451      | 19          | SF   | Y              | 1.00         | 19.00      | \$43.54            | \$827.26   |
| Jeffrey Ranch                          | 4499      | 68          | SF   | Y              | 1.00         | 68.00      | \$43.54            | \$2,960.72 |
| Dana Ridge                             | 4504      | 86          | MF   | N              | 0.25         | 21.50      | \$15.64            | \$1,345.04 |
| Clayton Greens                         | 4515      | 78          | SF   | Y              | 1.00         | 78.00      | \$43.54            | \$3,396.12 |
| Regency Woods II                       | 4543      | 71          | SF   | Y              | 1.00         | 71.00      | \$43.54            | \$3,091.34 |
| Regency Woods III                      | 4643      | 37          | SF   | Y              | 1.00         | 37.00      | \$43.54            | \$1,610.98 |
| Briarwood II                           | 4654      | 40          | SF   | Y              | 1.00         | 40.00      | \$43.54            | \$1,741.60 |
| Regency Woods IV                       | 4798      | 145         | SF   | Y              | 1.00         | 145.00     | \$43.54            | \$6,313.30 |
| Easley Estates I                       | 4805      | 48          | SF   | Y              | 1.00         | 48.00      | \$43.54            | \$2,089.92 |
| Silver Creek I                         | 4827      | 26          | SF   | Y              | 1.00         | 26.00      | \$43.54            | \$1,132.04 |
| Silver Creek II                        | 4956      | 94          | SF   | Y              | 1.00         | 94.00      | \$43.54            | \$4,092.76 |
| Easley Estates II                      | 5048      | 51          | SF   | Y              | 1.00         | 51.00      | \$43.54            | \$2,220.54 |
| Easley Estates III                     | 5049      | 40          | SF   | Y              | 1.00         | 40.00      | \$43.54            | \$1,741.60 |
| Easley Estates IV                      | 5050      | 55          | SF   | Y              | 1.00         | 55.00      | \$43.54            | \$2,394.70 |
| Douglas Court                          | 5267      | 9           | SF   | Y              | 1.00         | 9.00       | \$43.54            | \$391.86   |

|                      |      |             |      |   |      |               |         |                     |
|----------------------|------|-------------|------|---|------|---------------|---------|---------------------|
| Regency Meadows      | 5722 | 96          | SF   | Y | 1.00 | 96.00         | \$43.54 | \$4,179.84          |
| Westwood             | 6001 | 65          | SF   | Y | 1.00 | 65.00         | \$43.54 | \$2,830.10          |
| Westwood             | 6001 | 4           | MF   | Y | 0.50 | 2.00          | \$15.64 | \$62.56             |
| Windmill Canyon I    | 6990 | 92          | SF   | Y | 1.00 | 92.00         | \$43.54 | \$4,005.68          |
| Black Diamond I      | 7065 | 108         | Duet | N | 0.50 | 54.00         | \$31.28 | \$3,378.24          |
| Chaparral Springs I  | 7066 | 117         | MF   | N | 0.25 | 29.25         | \$8.34  | \$975.78            |
| Peacock Creek I      | 7249 | 69          | SF   | Y | 1.00 | 69.00         | \$33.38 | \$2,303.22          |
| Peacock Creek II     | 7255 | 72          | SF   | Y | 1.00 | 72.00         | \$33.38 | \$2,403.36          |
| Eagle Peak I         | 7256 | 70          | SF   | Y | 1.00 | 70.00         | \$43.54 | \$3,047.80          |
| Eagle Peak II        | 7257 | 60          | SF   | Y | 1.00 | 60.00         | \$43.54 | \$2,612.40          |
| Falcon Ridge I       | 7260 | 75          | SF   | Y | 1.00 | 75.00         | \$33.38 | \$2,503.50          |
| Falcon Ridge II      | 7261 | 70          | SF   | Y | 1.00 | 70.00         | \$43.54 | \$3,047.80          |
| Windmill Canyon II   | 7262 | 99          | SF   | Y | 1.00 | 99.00         | \$43.54 | \$4,310.46          |
| Windmill Canyon III  | 7263 | 101         | SF   | Y | 1.00 | 101.00        | \$43.54 | \$4,397.54          |
| Windmill Canyon IV   | 7264 | 102         | SF   | Y | 1.00 | 102.00        | \$33.38 | \$3,404.76          |
| Chaparral Springs II | 7303 | 52          | MF   | N | 0.25 | 13.00         | \$8.34  | \$433.68            |
| Black Diamond II     | 7311 | 118         | Duet | N | 0.50 | 59.00         | \$31.28 | \$3,691.04          |
| Diablo Ridge I       | 7766 | 60          | MF   | N | 0.25 | 15.00         | \$8.34  | \$500.40            |
| Oak Hollow           | 7766 | 35          | SF   | N | 0.50 | 17.50         | \$16.68 | \$583.80            |
| Diablo Ridge II      | 7767 | 76          | MF   | N | 0.25 | 19.00         | \$8.34  | \$633.84            |
| Oak Hollow IIA       | 7768 | 55          | SF   | N | 0.50 | 27.50         | \$31.28 | \$1,720.40          |
| Oak Hollow IIB       | 7769 | 53          | SF   | N | 0.50 | 26.50         | \$31.28 | \$1,657.84          |
| Stranahan            | 7887 | 54          | SF   | Y | 1.00 | 54.00         | \$33.38 | \$1,802.52          |
| Diablo Village       | 8215 | 33          | SF   | Y | 1.00 | 33.00         | \$43.54 | \$1,436.82          |
| Rachel Ranch         | 8355 | 8           | SF   | Y | 1.00 | 8.00          | \$43.54 | \$348.32            |
| Bridlewood           | 8358 | 19          | SF   | Y | 1.00 | 19.00         | \$43.54 | \$827.26            |
| Diablo Pointe        | 8719 | 24          | SF   | N | 0.50 | 12.00         | \$22.18 | \$532.32            |
|                      |      |             |      |   |      |               |         |                     |
| <b>TOTALS</b>        |      | <b>3482</b> |      |   |      | <b>2908.5</b> |         | <b>\$125,991.08</b> |



**RESOLUTION NO.**

**A RESOLUTION APPROVING ENGINEER'S REPORT AND DECLARING INTENTION TO  
LEVY AND COLLECT ASSESSMENTS FOR THE STREET LIGHTING ASSESSMENT  
DISTRICT FOR FISCAL YEAR 2012-13, AND GIVING NOTICE OF THE TIME AND PLACE  
FOR HEARING ON THE LEVY OF THE PROPOSED ASSESSMENT.**

**THE CITY COUNCIL  
City of Clayton, California**

**WHEREAS**, by Resolution No. 11-79, adopted May 2, 1979, the Clayton City Council converted Street Lighting District No. 1 to a benefit assessment district and confirmed an assessment for fiscal year 1979-80, pursuant to the Street Lighting Act of 1919; and

**WHEREAS**, by City Resolution No. 19-2012, adopted May 1, 2012, the Engineer has been ordered by the Council to prepare and file a report setting forth the information called for in Section 18091 of the Streets and Highways Code and Article XIII C of the California Constitution for the 2012-13 assessment; and

**WHEREAS**, the City Council reviewed the Engineer's Report at its regular meeting on May 15, 2012, and found same to be satisfactory and in compliance with Section 18091 of the California Streets and Highway Code and Article XIII C of the California Constitution for the 2012-13 assessment; and

**WHEREAS**, the City Council, by City Resolution No. xx-2012, annexed Lots 1 through 24, inclusive, of Subdivision 8719 (Diablo Pointe) into the City's Streetlight Assessment District; and

**WHEREAS**, the levy of an initial assessment on the annexed lots in Subdivision 8719 requires approval of a majority of the affected property owners through a Proposition 218 ballot election; and

**WHEREAS**, it is now necessary for the City Council to establish the date for the public meeting and public hearing, and for the tabulation of ballots, on the levying of the proposed assessments for fiscal year 2012-13 and to direct the Clerk to give the required notice of such hearing.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of Clayton, California as follows:

1. The report, dated May 15, 2012, prepared by the City Engineer as the Engineer for the Assessment District, and each part thereof, is sufficient in each particular, has fairly and properly apportioned the cost of the improvement to each parcel of land in the assessment district in proportion to the estimated benefits to be received by each parcel respectively from such improvements, and is hereby approved as filed.

2. The City Council hereby declares its intention to levy and collect assessments pursuant to the Street Lighting Act of 1919 for fiscal year 2012-13 in the amounts specified on the attached Exhibit A for each of the residential parcels within all of the subdivisions located in the Street Lighting Assessment District.

4. The Assessment District includes all territory within the present boundaries of the Street Lighting Assessment District, and consists of all of the following subdivisions: #2556, #2572, #3434, #3576, #3659, #4011, #4012, #4013, #4014, #4015, #4016, #4017, #4018, #4019, #4240, #4343, #4403, #4449, #4451, #4499, #4504, #4515, #4543, #4643, #4654, #4798, #4805, #4827, #4956, #5048, #5049, #5050, #5267, #5722, #6001, #6990, #7065, #7066, #7249, #7255, #7256, #7257, #7260, #7261, #7262, #7263, #7264, #7303, #7311, #7766, #7767, #7768, #7769, #7887, #8215, #8355, #8358, and #8719 as such maps appear of record in the Contra Costa County Recorder's Office.

5. As shown on the report on file with the City Clerk, the City will pay for the lighting cost of some 800 subdivision street lights on local residential streets within the Street Lighting Assessment District by the proposed assessments during fiscal year 2012-13. The proposed assessments are the same as the existing assessments from fiscal year 2011-12 for all parcels except those in Subdivision 8719 which are proposed for an initial assessment of \$22.18.

6. **A public meeting will be held on Tuesday, June 19, 2012, at the hour of 7:00 p.m., of said day, at a regular City Council meeting and a public hearing shall be held on Tuesday, July 17, 2012, at the hour of 7:00 p.m., of said day, at a regular City Council meeting, each at Hoyer Hall in the Clayton Community Library situated at 6125 Clayton Road, Clayton, California,** the regular meeting place of the Clayton City Council; any and all persons having any interest in the lands within the Street Lighting Assessment District, liable to be assessed for the expenses of the District

for fiscal year 2012-13, may be heard, and any such persons may also present their protests against the proposed assessments with City Clerk at or before the time set for hearing.

7. Ballots from the owners of the lots in Subdivision 8719 must be received by the City Clerk prior to the close of the public hearing on July 17, 2012. After the public hearing is closed, all ballots received will be tabulated by the City Clerk, and the results immediately presented to the City Council.

8. The City Clerk shall give notice of the passage of this resolution and of the time and place of hearing of protests as herein designated by causing a copy of this resolution to be published and by causing a joint notice of the passage of this resolution and of the time and place of the public meeting and the public hearing of protests to be mailed to all owners of property within the District as required by Section 54954.6 of the Government Code.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on 15<sup>th</sup> day of May 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

---

Howard Geller, Mayor

ATTEST:

---

Laci J. Jackson, City Clerk

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at a regular meeting held on May 15, 2012.

---

Laci J. Jackson, City Clerk

| CITY OF CLAYTON                               |           |             |      |                |              |            |                    |            |
|-----------------------------------------------|-----------|-------------|------|----------------|--------------|------------|--------------------|------------|
| STREETLIGHT ASSESSMENT DISTRICT<br>FY 2012-13 |           |             |      |                |              |            |                    |            |
| PROPOSED ASSESSMENTS                          |           |             |      |                |              |            |                    |            |
| Subd. Name                                    | Subd. No. | No. of Lots | Type | Public Streets | A.U. per lot | Total A.U. | Assessment Per Lot | Total \$   |
| Cardinet Glen I                               | 2556      | 22          | SF   | Y              | 1.00         | 22.00      | \$43.54            | \$957.88   |
| Cardinet Glen II                              | 2572      | 30          | SF   | Y              | 1.00         | 30.00      | \$43.54            | \$1,306.20 |
| Glen Almond                                   | 3434      | 23          | SF   | Y              | 1.00         | 23.00      | \$43.54            | \$1,001.42 |
| Dana Hills I                                  | 3576      | 29          | SF   | Y              | 1.00         | 29.00      | \$43.54            | \$1,262.66 |
| Mission Manor                                 | 3659      | 25          | SF   | Y              | 1.00         | 25.00      | \$43.54            | \$1,088.50 |
| Dana Hills II                                 | 4011      | 55          | SF   | Y              | 1.00         | 55.00      | \$43.54            | \$2,394.70 |
| Dana Hills III                                | 4012      | 50          | SF   | Y              | 1.00         | 50.00      | \$43.54            | \$2,177.00 |
| Dana Hills IV                                 | 4013      | 93          | SF   | Y              | 1.00         | 93.00      | \$43.54            | \$4,049.22 |
| Dana Hills V                                  | 4014      | 50          | SF   | Y              | 1.00         | 50.00      | \$43.54            | \$2,177.00 |
| Dana Hills VI                                 | 4015      | 30          | SF   | Y              | 1.00         | 30.00      | \$43.54            | \$1,306.20 |
| Dana Hills VII                                | 4016      | 65          | SF   | Y              | 1.00         | 65.00      | \$43.54            | \$2,830.10 |
| Dana Hills VIII                               | 4017      | 46          | SF   | Y              | 1.00         | 46.00      | \$43.54            | \$2,002.84 |
| Dana Hills IX                                 | 4018      | 32          | SF   | Y              | 1.00         | 32.00      | \$43.54            | \$1,393.28 |
| Dana Hills X                                  | 4019      | 52          | SF   | Y              | 1.00         | 52.00      | \$43.54            | \$2,264.08 |
| Marsh Creek                                   | 4240      | 109         | MF   | N              | 0.25         | 27.25      | \$15.64            | \$1,704.76 |
| Regency Woods I                               | 4343      | 77          | SF   | Y              | 1.00         | 77.00      | \$43.54            | \$3,352.58 |
| St. James Place                               | 4403      | 16          | SF   | Y              | 1.00         | 16.00      | \$43.54            | \$696.64   |
| Casey Glen                                    | 4449      | 24          | SF   | Y              | 1.00         | 24.00      | \$43.54            | \$1,044.96 |
| Briarwood I                                   | 4451      | 19          | SF   | Y              | 1.00         | 19.00      | \$43.54            | \$827.26   |
| Jeffry Ranch                                  | 4499      | 68          | SF   | Y              | 1.00         | 68.00      | \$43.54            | \$2,960.72 |
| Dana Ridge                                    | 4504      | 86          | MF   | N              | 0.25         | 21.50      | \$15.64            | \$1,345.04 |
| Clayton Greens                                | 4515      | 78          | SF   | Y              | 1.00         | 78.00      | \$43.54            | \$3,396.12 |
| Regency Woods II                              | 4543      | 71          | SF   | Y              | 1.00         | 71.00      | \$43.54            | \$3,091.34 |
| Regency Woods III                             | 4643      | 37          | SF   | Y              | 1.00         | 37.00      | \$43.54            | \$1,610.98 |
| Briarwood II                                  | 4654      | 40          | SF   | Y              | 1.00         | 40.00      | \$43.54            | \$1,741.60 |
| Regency Woods IV                              | 4798      | 145         | SF   | Y              | 1.00         | 145.00     | \$43.54            | \$6,313.30 |
| Easley Estates I                              | 4805      | 48          | SF   | Y              | 1.00         | 48.00      | \$43.54            | \$2,089.92 |
| Silver Creek I                                | 4827      | 26          | SF   | Y              | 1.00         | 26.00      | \$43.54            | \$1,132.04 |
| Silver Creek II                               | 4956      | 94          | SF   | Y              | 1.00         | 94.00      | \$43.54            | \$4,092.76 |
| Easley Estates II                             | 5048      | 51          | SF   | Y              | 1.00         | 51.00      | \$43.54            | \$2,220.54 |
| Easley Estates III                            | 5049      | 40          | SF   | Y              | 1.00         | 40.00      | \$43.54            | \$1,741.60 |
| Easley Estates IV                             | 5050      | 55          | SF   | Y              | 1.00         | 55.00      | \$43.54            | \$2,394.70 |
| Douglas Court                                 | 5267      | 9           | SF   | Y              | 1.00         | 9.00       | \$43.54            | \$391.86   |

|                      |      |             |      |   |      |               |         |                     |
|----------------------|------|-------------|------|---|------|---------------|---------|---------------------|
| Regency Meadows      | 5722 | 96          | SF   | Y | 1.00 | 96.00         | \$43.54 | \$4,179.84          |
| Westwood             | 6001 | 65          | SF   | Y | 1.00 | 65.00         | \$43.54 | \$2,830.10          |
| Westwood             | 6001 | 4           | MF   | Y | 0.50 | 2.00          | \$15.64 | \$62.56             |
| Windmill Canyon I    | 6990 | 92          | SF   | Y | 1.00 | 92.00         | \$43.54 | \$4,005.68          |
| Black Diamond I      | 7065 | 108         | Duet | N | 0.50 | 54.00         | \$31.28 | \$3,378.24          |
| Chaparral Springs I  | 7066 | 117         | MF   | N | 0.25 | 29.25         | \$8.34  | \$975.78            |
| Peacock Creek I      | 7249 | 69          | SF   | Y | 1.00 | 69.00         | \$33.38 | \$2,303.22          |
| Peacock Creek II     | 7255 | 72          | SF   | Y | 1.00 | 72.00         | \$33.38 | \$2,403.36          |
| Eagle Peak I         | 7256 | 70          | SF   | Y | 1.00 | 70.00         | \$43.54 | \$3,047.80          |
| Eagle Peak II        | 7257 | 60          | SF   | Y | 1.00 | 60.00         | \$43.54 | \$2,612.40          |
| Falcon Ridge I       | 7260 | 75          | SF   | Y | 1.00 | 75.00         | \$33.38 | \$2,503.50          |
| Falcon Ridge II      | 7261 | 70          | SF   | Y | 1.00 | 70.00         | \$43.54 | \$3,047.80          |
| Windmill Canyon II   | 7262 | 99          | SF   | Y | 1.00 | 99.00         | \$43.54 | \$4,310.46          |
| Windmill Canyon III  | 7263 | 101         | SF   | Y | 1.00 | 101.00        | \$43.54 | \$4,397.54          |
| Windmill Canyon IV   | 7264 | 102         | SF   | Y | 1.00 | 102.00        | \$33.38 | \$3,404.76          |
| Chaparral Springs II | 7303 | 52          | MF   | N | 0.25 | 13.00         | \$8.34  | \$433.68            |
| Black Diamond II     | 7311 | 118         | Duet | N | 0.50 | 59.00         | \$31.28 | \$3,691.04          |
| Diablo Ridge I       | 7766 | 60          | MF   | N | 0.25 | 15.00         | \$8.34  | \$500.40            |
| Oak Hollow           | 7766 | 35          | SF   | N | 0.50 | 17.50         | \$16.68 | \$583.80            |
| Diablo Ridge II      | 7767 | 76          | MF   | N | 0.25 | 19.00         | \$8.34  | \$633.84            |
| Oak Hollow IIA       | 7768 | 55          | SF   | N | 0.50 | 27.50         | \$31.28 | \$1,720.40          |
| Oak Hollow IIB       | 7769 | 53          | SF   | N | 0.50 | 26.50         | \$31.28 | \$1,657.84          |
| Stranahan            | 7887 | 54          | SF   | Y | 1.00 | 54.00         | \$33.38 | \$1,802.52          |
| Diablo Village       | 8215 | 33          | SF   | Y | 1.00 | 33.00         | \$43.54 | \$1,436.82          |
| Rachel Ranch         | 8355 | 8           | SF   | Y | 1.00 | 8.00          | \$43.54 | \$348.32            |
| Bridlewood           | 8358 | 19          | SF   | Y | 1.00 | 19.00         | \$43.54 | \$827.26            |
| Diablo Pointe        | 8719 | 24          | SF   | N | 0.50 | 12.00         | \$22.18 | \$532.32            |
|                      |      |             |      |   |      |               |         |                     |
| <b>TOTALS</b>        |      | <b>3482</b> |      |   |      | <b>2908.5</b> |         | <b>\$125,991.08</b> |

**JOINT NOTICE OF PUBLIC MEETING AND PUBLIC HEARING ON THE  
LEVYING OF ASSESSMENTS ON REAL PROPERTY IN THE STREET  
LIGHTING ASSESSMENT DISTRICT PURSUANT TO STREETS AND  
HIGHWAYS CODE 18070 AND GOVERNMENT CODE 54954.6.**

**KNOW ALL INTERESTED PARTIES BY THIS NOTICE THAT:**

1. The City Engineer did present on May 15, 2012, to the City Council, his report dated May 15, 2012, indicating a total budget for FY 2012-13 of \$131,011.00 and recommending assessments of between \$0 and \$44.36 per residential unit to pay for the obligations of the Street Lighting Assessment District ("District") during the 2012-13 fiscal year. The exact assessments proposed are shown on the attached Exhibit A.

2. The City Council accepted and approved the report on May 15, 2012, by adopting a Resolution, which set forth, among other things:

a. The Council's intent to levy and collect assessments of between \$0 and \$44.36 per residential unit to pay for the obligations of said District during the 2012-13 fiscal year.

b. The dates of Tuesday, June 19, 2012 and Tuesday, July 17, 2012, at 7:00 p.m., at Hoyer Hall in the Clayton Community Library, situated at 6125 Clayton Road, Clayton, California, as the dates, times and place for the public meeting and public hearing, respectively, required for the hearing of protests against the levying of said assessments in the District for the cost of operating in fiscal year 2012-13.

3. The existing assessments for the 2012-13 fiscal year were between \$0 and \$43.54 per assessment unit.

▶ **The proposed assessments do not constitute an increase over the existing assessments which have remained at the same rates for the last 11 years.** ◀

4. A general description of the items to be maintained and operated in the District and paid for by the assessment is as follows: Street lights located on public streets in residential subdivisions within the City except for those on arterial streets.

5. All interested parties may obtain further particulars concerning the proposed assessments in the District and a description and map of the boundaries of the District by referring to the resolution and the report of May 15, 2012, which are on file with the City Clerk in the Clayton City Office. In addition, interested parties may contact the City Engineer directly by phone at (925) 363-7433 or in person at 5375 Clayton Road, Concord, California.

NOW, THEREFORE, any and all persons having any interest in lands within the District liable to be assessed for the expenses of the district for fiscal year 2012-13, may appear at the public meeting and the public hearing, the time and place thereof being set forth above, and offer protest to said assessments, and any of said persons may also present any objections that they may have by written protest filed with the City Clerk, City of Clayton, 6000 Heritage Trail, Clayton, California, 94517, at or before the time set for public hearing.

LACI J. JACKSON  
City Clerk  
City of Clayton  
Phone: 925/673-7300  
DATED: May 16, 2012

**CITY OF CLAYTON**

**STREETLIGHT ASSESSMENT DISTRICT  
FY 2012-13**

**PROPOSED ASSESSMENTS**

| Subd. Name         | Subd. No. | No. of Lots | Type | Public Streets | A.U. per lot | Total A.U. | Assessment Per Lot | Total \$   |
|--------------------|-----------|-------------|------|----------------|--------------|------------|--------------------|------------|
| Cardinet Glen I    | 2556      | 22          | SF   | Y              | 1.00         | 22.00      | \$43.54            | \$957.88   |
| Cardinet Glen II   | 2572      | 30          | SF   | Y              | 1.00         | 30.00      | \$43.54            | \$1,306.20 |
| Glen Almond        | 3434      | 23          | SF   | Y              | 1.00         | 23.00      | \$43.54            | \$1,001.42 |
| Dana Hills I       | 3576      | 29          | SF   | Y              | 1.00         | 29.00      | \$43.54            | \$1,262.66 |
| Mission Manor      | 3659      | 25          | SF   | Y              | 1.00         | 25.00      | \$43.54            | \$1,088.50 |
| Dana Hills II      | 4011      | 55          | SF   | Y              | 1.00         | 55.00      | \$43.54            | \$2,394.70 |
| Dana Hills III     | 4012      | 50          | SF   | Y              | 1.00         | 50.00      | \$43.54            | \$2,177.00 |
| Dana Hills IV      | 4013      | 93          | SF   | Y              | 1.00         | 93.00      | \$43.54            | \$4,049.22 |
| Dana Hills V       | 4014      | 50          | SF   | Y              | 1.00         | 50.00      | \$43.54            | \$2,177.00 |
| Dana Hills VI      | 4015      | 30          | SF   | Y              | 1.00         | 30.00      | \$43.54            | \$1,306.20 |
| Dana Hills VII     | 4016      | 65          | SF   | Y              | 1.00         | 65.00      | \$43.54            | \$2,830.10 |
| Dana Hills VIII    | 4017      | 46          | SF   | Y              | 1.00         | 46.00      | \$43.54            | \$2,002.84 |
| Dana Hills IX      | 4018      | 32          | SF   | Y              | 1.00         | 32.00      | \$43.54            | \$1,393.28 |
| Dana Hills X       | 4019      | 52          | SF   | Y              | 1.00         | 52.00      | \$43.54            | \$2,264.08 |
| Marsh Creek        | 4240      | 109         | MF   | N              | 0.25         | 27.25      | \$15.64            | \$1,704.76 |
| Regency Woods I    | 4343      | 77          | SF   | Y              | 1.00         | 77.00      | \$43.54            | \$3,352.58 |
| St. James Place    | 4403      | 16          | SF   | Y              | 1.00         | 16.00      | \$43.54            | \$696.64   |
| Casey Glen         | 4449      | 24          | SF   | Y              | 1.00         | 24.00      | \$43.54            | \$1,044.96 |
| Briarwood I        | 4451      | 19          | SF   | Y              | 1.00         | 19.00      | \$43.54            | \$827.26   |
| Jeffry Ranch       | 4499      | 68          | SF   | Y              | 1.00         | 68.00      | \$43.54            | \$2,960.72 |
| Dana Ridge         | 4504      | 86          | MF   | N              | 0.25         | 21.50      | \$15.64            | \$1,345.04 |
| Clayton Greens     | 4515      | 78          | SF   | Y              | 1.00         | 78.00      | \$43.54            | \$3,396.12 |
| Regency Woods II   | 4543      | 71          | SF   | Y              | 1.00         | 71.00      | \$43.54            | \$3,091.34 |
| Regency Woods III  | 4643      | 37          | SF   | Y              | 1.00         | 37.00      | \$43.54            | \$1,610.98 |
| Briarwood II       | 4654      | 40          | SF   | Y              | 1.00         | 40.00      | \$43.54            | \$1,741.60 |
| Regency Woods IV   | 4798      | 145         | SF   | Y              | 1.00         | 145.00     | \$43.54            | \$6,313.30 |
| Easley Estates I   | 4805      | 48          | SF   | Y              | 1.00         | 48.00      | \$43.54            | \$2,089.92 |
| Silver Creek I     | 4827      | 26          | SF   | Y              | 1.00         | 26.00      | \$43.54            | \$1,132.04 |
| Silver Creek II    | 4956      | 94          | SF   | Y              | 1.00         | 94.00      | \$43.54            | \$4,092.76 |
| Easley Estates II  | 5048      | 51          | SF   | Y              | 1.00         | 51.00      | \$43.54            | \$2,220.54 |
| Easley Estates III | 5049      | 40          | SF   | Y              | 1.00         | 40.00      | \$43.54            | \$1,741.60 |
| Easley Estates IV  | 5050      | 55          | SF   | Y              | 1.00         | 55.00      | \$43.54            | \$2,394.70 |
| Douglas Court      | 5267      | 9           | SF   | Y              | 1.00         | 9.00       | \$43.54            | \$391.86   |
| Regency Meadows    | 5722      | 96          | SF   | Y              | 1.00         | 96.00      | \$43.54            | \$4,179.84 |
| Westwood           | 6001      | 65          | SF   | Y              | 1.00         | 65.00      | \$43.54            | \$2,830.10 |
| Westwood           | 6001      | 4           | MF   | Y              | 0.50         | 2.00       | \$15.64            | \$62.56    |

|                      |      |      |      |   |      |        |         |              |
|----------------------|------|------|------|---|------|--------|---------|--------------|
| Windmill Canyon I    | 6990 | 92   | SF   | Y | 1.00 | 92.00  | \$43.54 | \$4,005.68   |
| Black Diamond I      | 7065 | 108  | Duet | N | 0.50 | 54.00  | \$31.28 | \$3,378.24   |
| Chaparral Springs I  | 7066 | 117  | MF   | N | 0.25 | 29.25  | \$8.34  | \$975.78     |
| Peacock Creek I      | 7249 | 69   | SF   | Y | 1.00 | 69.00  | \$33.38 | \$2,303.22   |
| Peacock Creek II     | 7255 | 72   | SF   | Y | 1.00 | 72.00  | \$33.38 | \$2,403.36   |
| Eagle Peak I         | 7256 | 70   | SF   | Y | 1.00 | 70.00  | \$43.54 | \$3,047.80   |
| Eagle Peak II        | 7257 | 60   | SF   | Y | 1.00 | 60.00  | \$43.54 | \$2,612.40   |
| Falcon Ridge I       | 7260 | 75   | SF   | Y | 1.00 | 75.00  | \$33.38 | \$2,503.50   |
| Falcon Ridge II      | 7261 | 70   | SF   | Y | 1.00 | 70.00  | \$43.54 | \$3,047.80   |
| Windmill Canyon II   | 7262 | 99   | SF   | Y | 1.00 | 99.00  | \$43.54 | \$4,310.46   |
| Windmill Canyon III  | 7263 | 101  | SF   | Y | 1.00 | 101.00 | \$43.54 | \$4,397.54   |
| Windmill Canyon IV   | 7264 | 102  | SF   | Y | 1.00 | 102.00 | \$33.38 | \$3,404.76   |
| Chaparral Springs II | 7303 | 52   | MF   | N | 0.25 | 13.00  | \$8.34  | \$433.68     |
| Black Diamond II     | 7311 | 118  | Duet | N | 0.50 | 59.00  | \$31.28 | \$3,691.04   |
| Diablo Ridge I       | 7766 | 60   | MF   | N | 0.25 | 15.00  | \$8.34  | \$500.40     |
| Oak Hollow           | 7766 | 35   | SF   | N | 0.50 | 17.50  | \$16.68 | \$583.80     |
| Diablo Ridge II      | 7767 | 76   | MF   | N | 0.25 | 19.00  | \$8.34  | \$633.84     |
| Oak Hollow IIA       | 7768 | 55   | SF   | N | 0.50 | 27.50  | \$31.28 | \$1,720.40   |
| Oak Hollow IIB       | 7769 | 53   | SF   | N | 0.50 | 26.50  | \$31.28 | \$1,657.84   |
| Stranahan            | 7887 | 54   | SF   | Y | 1.00 | 54.00  | \$33.38 | \$1,802.52   |
| Diablo Village       | 8215 | 33   | SF   | Y | 1.00 | 33.00  | \$43.54 | \$1,436.82   |
| Rachel Ranch         | 8355 | 8    | SF   | Y | 1.00 | 8.00   | \$43.54 | \$348.32     |
| Bridlewood           | 8358 | 19   | SF   | Y | 1.00 | 19.00  | \$43.54 | \$827.26     |
| Diablo Pointe        | 8719 | 24   | SF   | N | 0.50 | 12.00  | \$22.18 | \$532.32     |
|                      |      |      |      |   |      |        |         |              |
| <b>TOTALS</b>        |      | 3482 |      |   |      | 2908.5 |         | \$125,991.08 |





Agenda Date: 5-15-12

Agenda Item: 4d

Approved:

Gary A. Napper  
City Manager

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: CITY MANAGER**

**DATE: 15 MAY 2012**

**SUBJECT: APPROVE AGREEMENT WITH SUCCESSOR AGENCY  
REENTER REIMBURSEMENT OF PRIOR RDA LOANS TO CITY**

---

## **RECOMMENDATION**

It is recommended the City Council adopt a Resolution (attached) approving an Agreement with the Successor Agency to the former Clayton RDA reentering into reimbursement of two previous City loans to the former Clayton Redevelopment Agency (RDA).

## **BACKGROUND**

In June 1999, the City Council and the RDA Board approved an agreement selling title to unimproved City real property (approximately 1.18 acres) generally located at the southeast corner of Clayton Road and what is now Center Street. The RDA approved and executed a Promissory Note to the City in the principal amount of \$475,000.00 for the land with an annual interest rate of 6.5% until the principle loan was paid in full to the City on or before 01 January 2023. In turn, the RDA gifted the vacant parcel to the Central Contra Costa County Consolidated Fire District (now known as the Contra Costa County Fire Protection District) for its eventual construction of the existing Fire Station No. 11 on Center Street.

In calendar year 2009 while researching other matters on the RDA, it was discovered the City had never received payment for its "2% election" monies (approved by City Resolution No. 31-87 on 01 July 1987) when the RDA was initially created and established. The City's 2% election payments should have been transmitted directly from the County Auditor-Controller but were never fulfilled. Instead, the City's 2% election monies were mistakenly disbursed to the RDA. Through contacts with the County, the County Auditor-Controller's Office researched, acknowledged its error, and then calculated the amount due the City to be a total of \$501,898.64 for the 21-year oversight. By action on 16 February 2010 (RDA Resolution No. 02-2010), the RDA Board of Directors agreed to repay this full amount over a 4-year repayment schedule (without accrued interest) in an effort to honor the obligation owed the City yet not repay in one lump sum so as not to decimate the RDA's programs that were already suffering under heavy-handed mandated State Budget diversions of local tax revenues (i.e., SERAF payment of \$1.966 million).

The four-year RDA payment scheduled called for an annual repayment of \$125,474.66 to the City starting in FY 2010-11. After this discovery, the City's annual 2% election payments have been transmitted directly to the City starting in FY 2010-11 and each year thereafter as long as the RDA (and the Successor Agency) remained in existence. The City is still due its full repayment of \$501,898.64 as of this date.

Combined, the two unpaid RDA loans owed the City amount to a total just shy of \$1 million (\$976,898.64).

### **DISSOLUTION OF THE RDA**

The infamous state legislation ABx1 26 (the "Dissolution Act"), enacted in July 2011 and confirmed in December 2011 as constitutional by the California Supreme Court, terminated all redevelopment agency activities in the state and dissolved each agency as of 01 February 2012. Among its more nefarious provisions is that, generally, loan agreements between a city and its redevelopment agency as described above are not Enforceable Obligations that can be honored, and the California Department of Finance (DOF) is universally vetoing any local actions to obligate such inter-agency repayments thru approval of one's Recognized Obligation Payment Schedules (ROPS). The Clayton Successor Agency did include these repayments for approval by the DOF and certification by the County Auditor-Controller. In related fact, remedial state legislation has passed the State Assembly (AB 1585) which would clarify the public policy to honor these lawful and contractual obligations. In dismay, the DOF is steadfastly rejecting all such local submittals throughout the state.

### **AUTHORIZATION TO REENTER LOAN AGREEMENTS**

The former RDA's and the current Successor Agency's special legal counsel (Karen Tiedemann, Esq.) has carefully reviewed the Dissolution Act and has advised her clients that Section 34178(a) of the California Health and Safety Code does allow and authorize a successor agency and its local governing body [i.e., city council] to reenter into said loan agreements provided the action receives Oversight Board approval. At its initial meeting held on 26 April 2012, Ms. Tiedemann advised the Oversight Board of this option and the Oversight Board swiftly and unanimously took action to approve such an agreement. It was the Oversight Board's clear expression and sentiment that these two (2) loan agreements were legally enacted during the lawful existence of the former Clayton Redevelopment Agency, that said loans not only benefited the City of Clayton but also its RDA, the Clayton community, and in particular the Contra Costa County Fire Protection District (a separate public taxing entity), and that it was not right for the state to deny the repayments.

Consequently, pursuant to Oversight Board action and recommendation, an Agreement has been prepared for both the City and the Successor Agency to approve, thereby reentering into the original two (2) loan agreements and restoring the legal and ethical obligations owed the City of Clayton in this regard.

### **FISCAL IMPACT**

The City of Clayton is owed almost \$1 million from the former Clayton Redevelopment Agency, which repayment thereof has been thwarted and blocked by the State of California in shameful act and intent. ABx1 26 provisions (Section 34178(a)) allow the City and the Successor Agency to reenter into agreement to honorably repay the amounts committed to the City of Clayton during the wind down of Successor Agency affairs and payment of Enforceable Obligations. The \$976,898.64 owed the City would be General Fund monies that will greatly aid the City's continued capability to provide local services to its community.

Attachments:    1. City Resolution [2 pp.]  
                      A. Agreement Reentering into Reimbursement of Prior Loan Agreements [13 pp.]

**RESOLUTION NO. - 2012**

**A RESOLUTION AUTHORIZING AND APPROVING AN  
AGREEMENT REENTERING INTO REIMBURSEMENT OF  
TWO PREVIOUS LOAN AGREEMENTS BY AND BETWEEN THE  
CITY OF CLAYTON AND THE SUCCESSOR AGENCY TO THE  
FORMER REDEVELOPMENT AGENCY OF THE CITY OF CLAYTON**

**THE CITY COUNCIL  
City of Clayton, California**

**WHEREAS**, on June 15, 1999 at a public meeting thereof the former Redevelopment Agency of the City of Clayton (the "Agency") took action approving an Agreement with the City of Clayton (the "City") for its purchase of a real property (approximately 1.18 acres) from the City for a future fire station site to be constructed by the Central Contra Costa County Consolidated Fire District; and

**WHEREAS**, the Board of Directors of the former Redevelopment Agency of the City of Clayton, by adoption of Resolution No. 99-6, did approve and execute a Promissory Note to the City of Clayton for the sum of \$475,000.00 for said City land, which principle and interest amount was to fully be repaid on or before January 1, 2023; and

**WHEREAS**, on February 16, 2010 at a public meeting thereof the former Redevelopment Agency of the City of Clayton took action acknowledging and approving a four (4) year repayment plan (without incurred interest) to the City of Clayton in recognition of unpaid "2% Election" monetary payments due the City since inception of the Agency in 1987, which debt obligation of the Agency totaled a principle amount of \$501,898.64; and

**WHEREAS**, by legislative action of the State of California in the form of ABx1 26 (the "Dissolution Act"), every redevelopment agency in the state was terminated and dissolved effective February 1, 2012, including the former Redevelopment Agency of the City of Clayton; and

**WHEREAS**, the draconian nature of the Agency's demise caused its expiration before the Agency could fulfill its lawful intent and contractual agreement to repay the City the full monetary amounts due the City that were tendered in its support of the Agency's projects, programs and activities within the Redevelopment Project Area; and

**WHEREAS**, the Dissolution Act generally provides that such loan agreements described above between the former Agency and the City are not Enforceable Obligations yet the Dissolution Act does authorize the Successor Agency and the City, with Oversight Board approval, to reenter into said loan agreements pursuant to Section 34178(a) of the California Health and Safety Code; and

**WHEREAS**, at its duly-noticed public meeting held on April 26, 2012, the Oversight Board for the Successor Agency to the former Redevelopment Agency of the City of Clayton took action

by unanimous vote authorizing the Successor Agency to reenter into the loan agreements described in the above Recitals with the City; and

**WHEREAS**, upon the recommendation of staff and legal counsel the City Council has determined that reentering into the loan agreements noted above is in the best interests and welfare of the City such that the City is fully repaid its monetary loans which benefited the Agency, the City and the Clayton community alike.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California does hereby find and determine the following:

Section 1. The above Recitals are true and correct facts pertaining to this matter and combined with the presentations and recommendations by staff and legal counsel at this meeting coupled with its own determinations do constitute the basis for the City Council's action herein.

Section 2. That an Agreement Reentering into Reimbursement of Two Previous Loan Agreements by and between the City of Clayton and the Successor Agency to the Former Redevelopment Agency of the City of Clayton, a copy of said Agreement attached hereto as "Attachment A" and incorporated herein as if fully set forth, is hereby authorized and approved.

Section 3. The Mayor of the City of Clayton is herewith authorized to sign and execute said Agreement ("Attachment A") for and in behalf of the City Council of Clayton.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 15<sup>th</sup> day of May 2012 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CALIFORNIA

---

Howard Geller, Mayor

ATTEST:

---

Laci J. Jackson, City Clerk

# # # # #

**AN AGREEMENT REENTERING INTO REIMBURSEMENT OF TWO  
PREVIOUS LOAN AGREEMENTS BY AND BETWEEN THE CITY OF  
CLAYTON AND THE SUCCESSOR AGENCY TO THE FORMER  
REDEVELOPMENT AGENCY OF THE CITY OF CLAYTON**

This Agreement Reentering into Reimbursement Agreement ("Agreement") is entered into this 15<sup>th</sup> day of May 2012 by and between the City of Clayton, a California municipal corporation ("City") and the City of Clayton acting as the Successor Agency to the former Redevelopment Agency of the City of Clayton ("Successor Agency").

**WHEREAS**, the City and the Redevelopment Agency of the City of Clayton ("Redevelopment Agency") entered into two (2) certain Loan Agreements, one dated 17 June 1999 attached hereto as Exhibit A and the second dated 16 February 2010 attached hereto as Exhibit B (collectively "Loan Agreements") whereby the City agreed to loan the former Redevelopment Agency funds to be used for purposes of completing projects and activities benefitting the Redevelopment Project Area and the community, of which the former Redevelopment Agency lawfully agreed to repay the City over time from available tax increment revenues; and

**WHEREAS**, on February 1, 2012, pursuant to ABx1 26 (the "Dissolution Act") the former Redevelopment Agency, along with all redevelopment agencies in the State of California, was dissolved, and all assets and obligations of the former Redevelopment Agency were transferred by operation of law to the Successor Agency and by affirmative action of the Clayton City Council at a regular public meeting thereof held on 17 January 2012 (ref. City Resolution No. 03-2012); and

**WHEREAS**, the Dissolution Act creates an oversight board for each redevelopment agency to oversee the wind down of the former Redevelopment Agency ("Oversight Board"); and

**WHEREAS**, the Dissolution Act requires that the Successor Agency prepare and the Oversight Board approve a Recognized Obligation Payment Schedule (ROPS) setting forth all Enforceable Obligations (as defined in the Dissolution Act) of the former Redevelopment Agency. The Dissolution Act generally provides that such Loan Agreements between the former Redevelopment Agency and the City are not Enforceable Obligations yet the Dissolution Act does authorize the Successor Agency and the City, with Oversight Board approval, to reenter into such loan agreements (ref. Section 34178(a) of the California Health and Safety Code); and

**WHEREAS**, at its 26 April 2012 duly noticed public meeting the Oversight Board for the Successor Agency by unanimous vote authorized the Successor Agency to reenter into the Loan Agreements noted and referenced above and attached hereto as Exhibits A and B; and

**WHEREAS**, the City and the Successor Agency have determined that reentering into the Loan Agreements is in the best interests of the City and the Successor Agency.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. The Successor Agency and the City hereby agree to reenter into the two Loan Agreements, attached hereto as Exhibits A and Exhibit B incorporated herein by reference, under the terms and conditions set forth in the Loan Agreements, provided, however, all references in the Loan Agreements to the Redevelopment Agency of the City of Clayton or Agency shall be deemed to refer to the Successor Agency. The City and the Successor Agency agree that notwithstanding anything set forth in the Loan Agreements, with approval of the Oversight Board the Successor Agency can prepay the full amount owed under the Loan Agreements at any time without penalty.
2. In executing this Agreement and reentering into the Loan Agreements, the City is acting in its capacity as a municipal corporation, while the Successor Agency is acting in its capacity as the successor to the former Redevelopment Agency; and both the City and the Successor Agency are acting pursuant to the specific authority granted by the Oversight Board and by Health & Safety Code Sections 34178(a) and 34180(h) authorizing agreements between the City and the Successor Agency. In consequence, the parties to this Agreement and the Loan Agreements are not merged.
3. Nothing in this Agreement shall be deemed to invalidate or amend the terms of the Loan Agreements, except as specifically amended by the provisions of this Agreement (the "Amendments"). The Loan Agreements shall remain in full force and effect according to its original terms, as modified by the Amendments, notwithstanding those provisions of the Dissolution Act regarding Enforceable Obligations.
4. Nothing in this Agreement shall abrogate, waive, impair or in any other manner affect the right or ability of the City to initiate and prosecute any litigation with respect to any agreement or other arrangement between the City and the former Redevelopment Agency, including, without limitation, any litigation contesting the purported invalidity of such agreement or arrangement pursuant to the Dissolution Act.
5. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.
6. Except as amended by the foregoing provisions of this Agreement, the Loan Agreements shall remain in full force and effect.
7. This Agreement shall take effect from and after the date of execution of this Agreement by both parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereof as of the date first written above.

**CITY OF CLAYTON, CALIFORNIA,  
a California municipal corporation**

---

Howard Geller, Mayor

Approved as to Form:

---

Mala Subramanian, City Attorney

Attest:

---

Laci J. Jackson, City Clerk

**CITY OF CLAYTON, CALIFORNIA,  
a California municipal corporation  
acting as the Successor Agency  
to the former Redevelopment Agency  
of the City of Clayton**

---

Howard Geller, Mayor

Approved as to Form:

---

Karen M. Tiedemann, Special Legal Counsel

Attest:

---

Laci J. Jackson, City Clerk



## STRAIGHT NOTE

\$475,000.00

Clayton, California

June 17, 1999

On or before January 1, 2023, for value received, the Clayton Redevelopment Agency promises to pay to the City of Clayton, or order, at 6000 Heritage Trail, Clayton, California, the sum of FOUR HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$475,000.00), with interest from July 1, 1999, until paid at the rate of six and one-half percent (6.5%) per annum, interest payable quarterly, commencing October 1, 1999.

Principal and interest payable in lawful money of the United States of America. Should default be made in payment of interest when due, the whole sum of principal and interest shall become immediately due at the option of the holder of this note and after said breach, said obligation shall continue to accrue interest at the rate of 6.5% per annum. This note is unsecured.

REDEVELOPMENT AGENCY OF THE  
CITY OF CLAYTON

By:   
Chairperson

By:   
Executive Director

*This is an  
original  
document -  
Keep*

DO NOT DESTROY

**RESOLUTION NO. 99-6**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF  
CLAYTON AUTHORIZING EXECUTION OF AGREEMENT WITH THE CITY OF  
CLAYTON FOR PURCHASE OF FUTURE FIRE STATION SITE**

**WHEREAS**, the Redevelopment Agency of the City of Clayton proposes to purchase from the City of Clayton approximately 1.18 acres of unimproved land at the southeast corner of Clayton Road and the future extension of Oakhurst Drive in Clayton (herein the "Property"); and

**WHEREAS**, the Property is proposed as a site for the construction of a new fire station of the Central Contra Costa Consolidated Fire District (herein "Fire District"); and

**WHEREAS**, the City has been in negotiations with the Fire District concerning the construction and funding of a new fire station on such site; and

**WHEREAS**, as part of the plan for achieving the new fire station, the City shall sell the Property to the Agency who shall ultimately convey the same to the Fire District pursuant to an Agreement to be reached with the Fire District; and

**WHEREAS**, based upon information set forth in the staff report presented to the Agency in connection with its consideration of this Resolution, the Agency finds:

(a) The proposed buildings, facilities, structures and other improvements are of benefit to the Project Area or its immediate neighborhood; and

(b) No other reasonable means of financing the buildings, facilities, structures and other improvements are available to the community; and

(c) The payment of funds for the acquisition of land or the cost of improvements will assist in the elimination of one or more blighting conditions inside the Project Area is consistent with the Agency's implementation plan adopted pursuant to Section 33490 of the California Health and Safety Code; and

(d) The sale will assist in the elimination of blight; and

(e) The consideration to be paid for the Property is not less than the fair market value at its highest and best use in accordance with the Redevelopment Plan.

**WHEREAS**, an Agreement setting forth the terms for the purchase by the Agency from the City has been prepared by the City Attorney, and recommended for approval by the Executive Director, a true and correct copy of which is attached hereto.

**WHEREAS**, notice of a public hearing on the proposed expenditure of Agency funds as aforesaid and the ultimate conveyance of the Property to the Fire District for a new fire station

site has been given in accordance with Sections 33679 and 33433 of the California Health and Safety Code and a public hearing held before the Redevelopment Agency at its regular meeting of June 15, 1999.

**NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency of the City of Clayton that the Chairperson and Executive Director are hereby authorized to execute for and on behalf of the Agency, the Purchase and Sale Agreement for Future Fire Station Site in the form as set forth in Exhibit "A" and the Chairperson and Executive Director are authorized to take all appropriate steps to conclude the purchase of the Property from the City by the Agency as required by the Purchase and Sale Agreement.

Adopted by the Redevelopment Agency Board of Directors of the City of Clayton at a regular meeting of said Agency held on June 15, 1999, by the following vote:

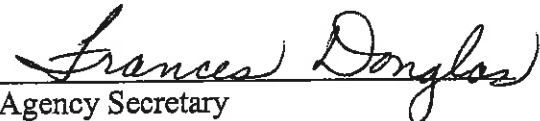
AYES: Agency Members Laurence, Littorno, Pierce, Vice Chair Manning,  
Chair Peterson

NOES: None

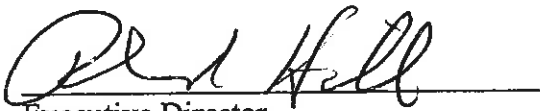
ABSENT: None

  
Chairperson

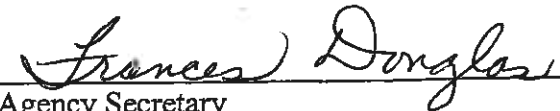
ATTEST:

  
Agency Secretary

APPROVED BY ADMINISTRATION:

  
Executive Director

I hereby certify that the foregoing resolution was duly and regularly passed by the Redevelopment Agency of the City of Clayton at a duly noticed regular meeting held on June 15, 1999.

  
Agency Secretary

## **PURCHASE AND SALE AGREEMENT**

### **FUTURE FIRE STATION SITE SOUTHEAST CORNER OF CLAYTON ROAD AND FUTURE EXTENSION OF OAKHURST DRIVE**

#### **1. PARTIES.**

This Agreement is made on June 17, 1999, between the CITY OF CLAYTON, a municipal corporation (herein referred to as "CITY") and the REDEVELOPMENT AGENCY OF THE CITY OF CLAYTON (herein referred to as "AGENCY").

#### **2. AGREEMENT TO SELL AND TO PURCHASE: DESCRIPTION OF PROPERTY.**

CITY agrees to sell, and AGENCY agrees to purchase, the 1.1 acre parcel more or less situated at the southeast corner of Clayton Road and the future extension of Oakhurst Drive in the City of Clayton, County of Contra Costa, California, more particularly described in Exhibit "A-1" attached hereto and made a part hereof including any subsequent adjustments to said parcel by lot line adjustment between the CITY and Presley Homes.

#### **3. PURCHASE PRICE.**

The purchase price for the property is FOUR HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$475,000.00), payable as follows:

By promissory note from AGENCY to CITY in the amount of the full purchase price, bearing interest at the rate of six and one half percent (6 1/2%) per annum, interest payable quarterly, the principal balance payable in full on or before January 1, 2023. Said note to be an obligation of the AGENCY and its assets but otherwise unsecured by the property.

#### **4. CLOSE OF TRANSACTION.**

The subject transaction shall close by recording of a Grant Deed from CITY to AGENCY in exchange for receipt of the aforementioned promissory note from AGENCY to CITY, all to be handled by CITY staff. AGENCY may elect to require title insurance in the amount of the purchase price at AGENCY'S cost, in which event AGENCY shall make the appropriate arrangements to obtain such insurance. Both CITY and AGENCY shall adopt resolutions approving this Agreement. Each parties obligation thereunder is subject to compliance with all applicable laws, rules or regulations covering sale by CITY and purchase by AGENCY of the property. Recordation shall occur when

both parties are prepared to conclude this purchase and AGENCY adopts a resolution accepting the Grant Deed for recordation.

**5. NO ASSIGNMENT OF AGREEMENT BY AGENCY.**

AGENCY may not assign this Agreement without CITY's prior written consent.

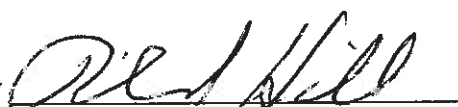
**6. NO REAL ESTATE AGENTS INVOLVED.**

The parties acknowledge that neither of them has been represented by any real estate agents in this transaction and there are no commissions or other obligations owing by either party to realtors or other sales agents.

Executed in duplicate this 17<sup>th</sup> day of June, 1999.

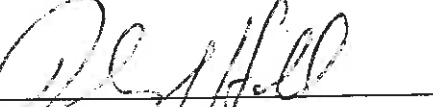
CITY OF CLAYTON

REDEVELOPMENT AGENCY OF  
THE CITY OF CLAYTON

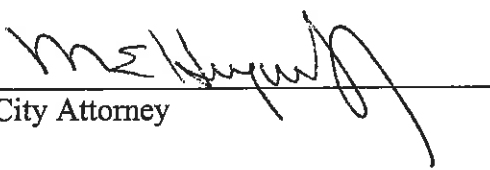
By   
City Manager

By   
Chairperson

By   
Mayor

By   
Executive Director

APPROVED AS TO FORM:

  
City Attorney

MEH:pcb/ph  
PurchaseandSaleAgrmt990609 (rev)

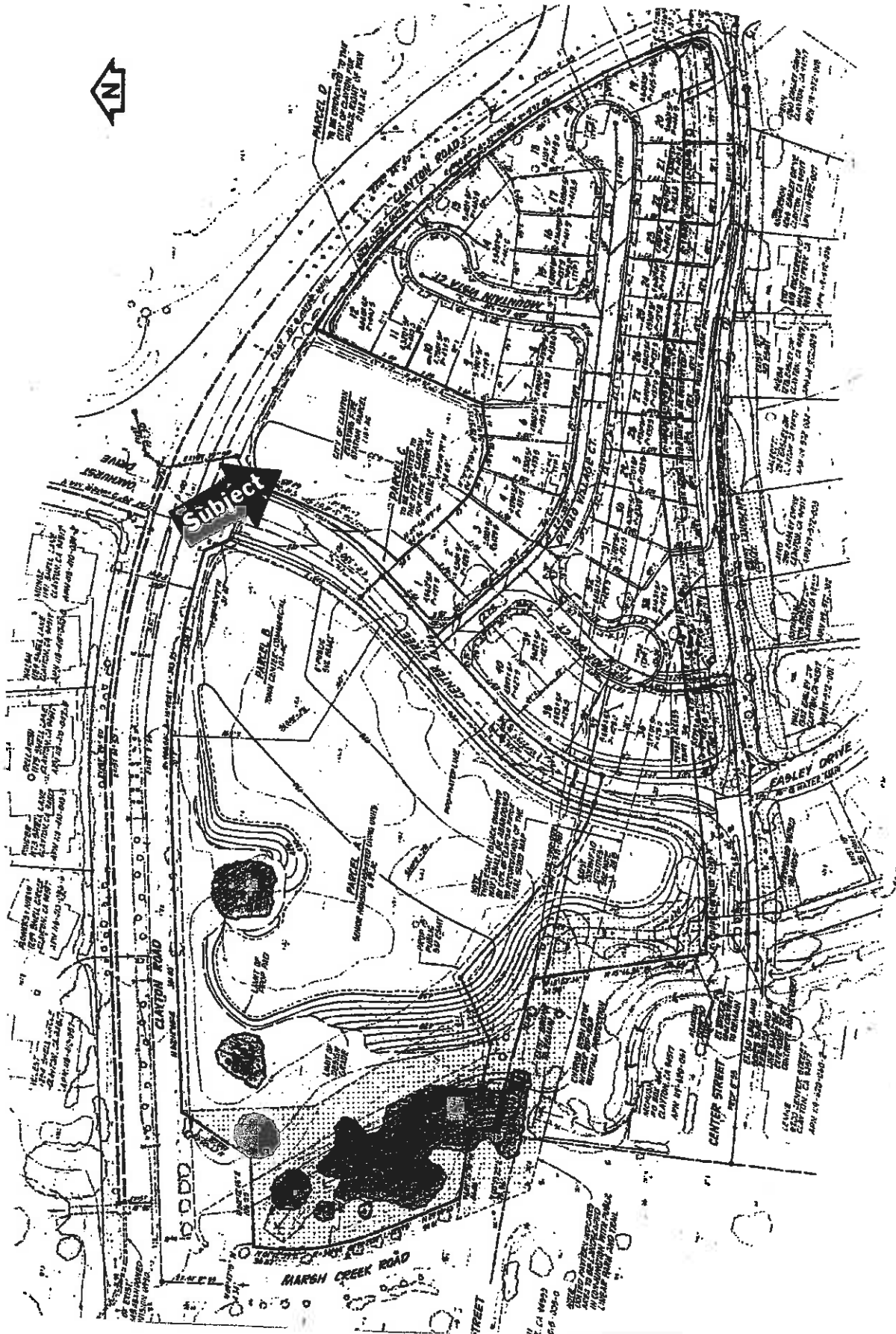
## **EXHIBIT A-1**

All that certain real property situated in the City of Clayton, Contra Costa County, California, being a portion of Parcel 1 as said parcel is shown on that certain Parcel Map entitled Parcel Map "MS 419-90" recorded August 19, 1993 in Book 163 of Parcel Maps at Page 1, Official Contra Costa County Records, more particularly described as follows:

Beginning at the most easterly terminus of that certain line annotated "T-7" on sheet 4 of 4 of said Parcel Map (163 PM 1); thence south  $14^{\circ} 06' 43''$  west 64.65 feet to a point on a tangent curve, concave to the northwest having a radius of 417.36 feet; thence southerly along the arc of said curve, an arc distance of 138.14 feet, through a central angle of  $18^{\circ} 57' 51''$  to a point from which the center bears north  $56^{\circ} 55' 25''$  west; thence south  $49^{\circ} 58' 59''$  east 84.94; thence south  $55^{\circ} 49' 19''$  east 34.65 feet; thence south  $75^{\circ} 18' 58''$  east 54.71 feet; thence north  $73^{\circ} 57' 13''$  east 58.91 feet; thence north  $17^{\circ} 26' 09''$  east 223.00 feet to the northerly line of said Parcel 1, said point being on a curve concave to the south, having a radius of 950.00 feet, whose center bears south  $26^{\circ} 48' 27''$  west; thence westerly along the arc of said curve as arc distance of 186.30 feet, through a central angle of  $11^{\circ} 14' 09''$  to a point from which the center bears south  $15^{\circ} 34' 17''$  west; thence continuing along the boundary of said parcel 1 south  $52^{\circ} 48' 31''$  west 32.43 feet to the point of beginning.

Containing 1.18 acres, more or less.

# Plat Map



**RDA RESOLUTION NO. 02- 2010****A RESOLUTION ACKNOWLEDGING AN UNPAID 2% ELECTION  
PAYMENT DUE THE CITY OF CLAYTON SINCE INCEPTION OF  
THE CLAYTON REDEVELOPMENT AGENCY AND ESTABLISHING  
A 4-YEAR PLAN FOR PAYMENT OF SAID DEBIT OBLIGATION****THE BOARD OF DIRECTORS  
Clayton Redevelopment Agency**

**WHEREAS**, the Clayton Redevelopment Agency ("Agency") was formed in July 1987 in accordance with *California Redevelopment Law* for a 50-year life to expire in July 2037; and

**WHEREAS**, during its formation the City Council of the City of Clayton, California did adopt Resolution No. 31-87 on 01 July 1987 ordering "2% election" payments to the City each year by the Agency, as authorized by Section 33676 of the *California Health and Safety Code*, in connection with the Clayton Redevelopment Project; and

**WHEREAS**, said 2% election payments to the City were to commence after the tax year in which the ordinance adopting the Clayton Redevelopment Plan became effective, namely Fiscal Year 1988-89; and

**WHEREAS**, during examination of the Agency's remaining fiscal status and condition during calendar year 2009, it was discovered by Agency staff and its consultant, Seifel Consulting, Inc., that these 2% election payments had never been made to the City of Clayton; and

**WHEREAS**, subsequent verification by Contra Costa County's Auditor-Controller of this payment omission resulted in the County's calculation that the Agency owes the City of Clayton a total of \$501,898.64 in unpaid 2% election payments from Fiscal Year 1988-89 through Fiscal Year 2008-09; and

**WHEREAS**, 2% election payments originate from the gross tax increment revenue collected each year for the Agency prior to the extraction of other public taxing entities' pass-through payments and Agency debt service; and

**WHEREAS**, due to the failure in allocating the 2% election payments to the City of Clayton during the last twenty one (21) fiscal years, the Agency now incurs a debit obligation to the City for the principal amount owed of \$501,898.64; and

**WHEREAS**, lump sum payment of the Agency's debit obligation could negatively impact the financial status of the Agency to perform its 5-Year Implementation Plan, achieve its mission to cure blight, and seriously disable the reserves of the Agency in the wake of a \$1.966 million illegal SERAF shift by the State of California this fiscal year.



NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Clayton Redevelopment Agency that:

1. The above Recitals are true and correct facts pertaining to the omission of the Agency making 2% election payments to the City of Clayton, California since Fiscal Year 1988-89 through Fiscal Year 2008-09, in accord with Section 33676 of the *California Health and Safety Code*.
2. The Board of Directors herein acknowledges and accepts the fact the Agency does owe the City of Clayton its past 2% election payments in the principal amount of \$501,898.64, and hereby wishes to correct this oversight and fulfill its monetary obligation in this regard.
3. In order to pay the debit obligation of \$501,898.64 without decimation of the Agency's existing reserves and future tax increment revenue allocations, the Board of Directors does herewith adopt and order the following 4-year payment plan to satisfy its fiscal obligation:

| <u>Fiscal Year</u> | <u>Non-Housing</u>   | <u>Affordable Housing</u> | <u>Total Funds</u>   |
|--------------------|----------------------|---------------------------|----------------------|
| 2010-11            | \$ 100,379.73        | \$ 25,094.93              | \$ 125,474.66        |
| 2011-12            | \$ 100,379.73        | \$ 25,094.93              | \$ 125,474.66        |
| 2012-13            | \$ 100,379.73        | \$ 25,094.93              | \$ 125,474.66        |
| 2013-14            | <u>\$ 100,379.73</u> | <u>\$ 25,094.93</u>       | <u>\$ 125,474.66</u> |
| Totals:            | \$ 401,518.92        | \$ 100,379.72             | \$ 501,898.64        |

4. The Board of Directors does hereby instruct its Executive Director to notify and provide a copy of this Resolution signed by its Chairman to the City of Clayton, California as good faith evidence of action taken to fully satisfy the 2% election debit obligation of the Agency over the next four (4) fiscal years, and to transmit to the Board for consideration any future action by the City Council of Clayton to call for acceleration of this payment plan due to the City's finding of fiscal plight.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Clayton Redevelopment Agency at a regular public meeting thereof held on the 16<sup>th</sup> day of February 2010 by the following vote:

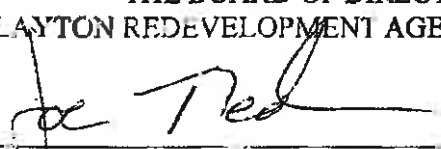
AYES: Chairman Medrano, Vice Chairperson Pierce, Boardmembers Geller, Shuey and Stratford.

NOES: None.

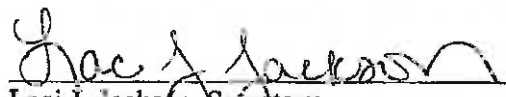
ABSTAIN: None.

ABSENT: None.

THE BOARD OF DIRECTORS  
CLAYTON REDEVELOPMENT AGENCY

  
\_\_\_\_\_  
Joseph A. Medrano, Chairman

ATTEST:

  
\_\_\_\_\_  
Laci J. Jackson, Secretary



Agenda Date: 5-15-12  
Agenda Item: 4e

# STAFF REPORT

Approved:

Gary A. Napper  
City Manager/Executive Director

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: RICK ANGRISANI, CITY ENGINEER**

**DATE: MAY 15, 2012**

**SUBJECT: CONSIDER RESOLUTION ORDERING THE ANNEXATION OF LOTS 1 THROUGH 24, INCLUSIVE, OF SUBDIVISION 8719 INTO THE CITY'S STREET LIGHTING ASSESSMENT DISTRICT**

---

## RECOMMENDATION

Approve the Resolution.

## BACKGROUND

The City normally annexes subdivisions into the City-wide Streetlighting Assessment District upon acceptance of the subdivision improvements. Generally, this occurs prior to any move-ins or transfer of lot ownership. However, it appears there may be ownership transfers in Diablo Pointe prior to acceptance of the subdivision improvements. Therefore, staff recommends annexation of the residential lots in Diablo Pointe now to provide full disclosure to pending and future buyers.

This step will allow us to include the Diablo Pointe lots in the Engineer's Report being considered at this meeting. Since this will be a new assessment on those lots, a Proposition 218 election must be held for the current property owner (Toll Bros.).

## FISCAL IMPACT

None at this time.

## CONCLUSION

This is a routine matter and Staff recommends the City Council approve this Resolution annexing these lots into the City's Street Lighting Assessment District.

Attachments: Resolution

**RESOLUTION NO. - 2012**

**A RESOLUTION ORDERING THE ANNEXATION OF LOTS 1 THROUGH 24,  
INCLUSIVE, OF SUBDIVISIONS 8719 (DIABLO POINTE) INTO THE STREET  
LIGHTING ASSESSMENT DISTRICT**

**THE CITY COUNCIL  
City of Clayton, California**

**WHEREAS**, by Resolution No. 11-79, adopted May 2, 1979, the City of Clayton City Council converted Street Lighting District No. 1 to a benefit assessment district pursuant to the Street Lighting Act of 1919; and

**WHEREAS**, the City Engineer has recommended that Lots 1 through 24, inclusive, of Subdivisions 8719, Diablo Pointe, be annexed into the Street Lighting Assessment District pursuant to the City's Subdivision Ordinance; and

**WHEREAS**, Section 18084 of the Streets and Highways Code authorizes such annexations without notice or hearings.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California does hereby order the annexation of Lots 1 through 24, inclusive of Subdivisions 8719 into the Street Lighting Assessment District.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on 15<sup>th</sup> day of May 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST:

\_\_\_\_\_  
Laci J. Jackson, City Clerk

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at a regular meeting held on May 15, 2012.

\_\_\_\_\_  
Laci J. Jackson, City Clerk

## **Street Lighting Assessment District**

### **NOTICE TO PROPERTY OWNERS FOR LEVY OF ASSESSMENT**

#### **Reason for Assessment**

In accordance with the project's conditions of approval, the City of Clayton City Council ("Council") approved Resolution No. XX-2012 on May 15, 2012, annexing the residential lots (Lots 1 through 24, inclusive) of the Diablo Pointe subdivision (aka Diablo Estates at Clayton) into the City's Street Lighting Assessment District ("District"). The District pays for the operation and maintenance of all streetlights installed on public streets within the City's residential subdivisions. The cost of the streetlights on arterial streets is funded through gas taxes, not assessment levies. Since Diablo Pointe has private streets and lighting, but is served by public streets, the assessment is levied at a rate of ½ of those single family lots on public streets, all as described in the Engineer's Report approved by the Council on May 15, 2012.

Proposition 218, passed in November of 1996, changed a number of procedures used to authorize special assessments. In order to establish an annual assessment, the City must send a ballot to each property owner within the District to vote on an initial or increased assessment. Property owner ballots must be returned to the City Clerk's office by July 17, 2012 or delivered to the City Clerk at the City Council public meeting being held on June 19<sup>th</sup> or at the public hearing being held on July 17<sup>th</sup>. Only ballots returned will be counted. Please pay close attention to this notice, the description of procedures, and the enclosed ballot.

#### **Notice**

This notice informs you, as a property owner within the Diablo Estates at Clayton Benefit Assessment District, that on May 15, 2012, the Clayton City Council adopted Resolution No. XX-2012 approving an Engineer's Report, declaring its intention to levy assessments for fiscal year 2012-13 and setting a public meeting and a public hearing on the issue of the proposed assessments:

|                                          |                                |
|------------------------------------------|--------------------------------|
| <b>PUBLIC MEETING:</b>                   | <b>7:00 p.m. June 19, 2012</b> |
| <b>PUBLIC HEARING:</b>                   | <b>7:00 p.m. July 17, 2012</b> |
| <b>Hoyer Hall (Library Meeting Room)</b> | <b>6125 Clayton Road</b>       |

#### **Assessment Information**

1. Name of District: Street Lighting Assessment District
2. Assessor parcel number(s) (APN): The parcels for which you are casting your ballot are shown on the label attached to the enclosed ballot.
3. Total District Assessment for the fiscal year beginning on July 1, 2012 and ending June 30, 2013: \$125,991.08
4. Proposed use of assessments:

|                     |                              |
|---------------------|------------------------------|
| \$96,500.00         | Electricity from PG&E        |
| 17,659.00           | Streetlight Maintenance      |
| 10,280.00           | City Administrative Costs    |
| 2,905.00            | Legal Costs                  |
| <u>3,667.00</u>     | County Collection Costs      |
| <b>\$131,011.00</b> | <b>Total proposed budget</b> |

5. Proposed assessment per parcel: The assessment proposed for your property is shown on the attached ballot. The assessment for each parcel is proposed to be \$44.36 per year.
6. Duration of assessment: The assessment will be levied annually at the above proposed rate. The assessment may only be increased in the future by again seeking the approval of a majority of the property owners within the District.
7. Reason for the assessment: The assessment funds the operation and maintenance of street lights on public streets within residential subdivisions as described in the Engineer's Report.
8. Calculation of the assessment: All parcels within the City which receive special benefit from the tasks funded by the assessments are assessed in proportion to the special benefit they receive. The assessment is based on a single family parcel being equal to one benefit unit. The total annual assessment cost is divided by the total number of benefit units to determine the cost per benefit unit. For a detailed explanation of the assessment methodology, please refer to the Engineer's report on file in the City Clerk's office.

### **Ballot Procedures**

Accompanying this notice is a ballot along with a pre-addressed envelope. The ballot must be completed by the property owner or authorized representative to indicate support or opposition to the increasing of the assessment. The ballot must be dated and signed. There is only one ballot per assessed parcel.

By State law, ballots are weighted according to the proportional financial obligation of the affected property.

Prior to the public hearing, ballots may be returned by mail in the enclosed envelope or delivered to the City Clerk's office at 6000 Heritage Trail, Clayton, during regular business hours, 9:00 a.m. to 5:00 p.m., Monday through Friday.

Ballots must be received by the City Clerk prior to the close of the public hearing on July 17, 2012. After the public hearing is closed, all ballots received will be tabulated by the City Clerk, and the results immediately presented to the City Council.

### **Questions**

If you have any questions about the assessments, please contact the City Engineer Rick Angrisani, he may be reached at 363-7433. If you have questions about the ballots, please contact City Clerk Laci Jackson at 673-7300.

Laci Jackson  
City Clerk

Notice and ballot mailed May XX, 2012

**OFFICIAL BALLOT**  
**DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT**

**APN: 119-630-001**  
**Toll CA XIX L.P.**  
**27 Seminary Ridge Place**  
**Clayton, CA 94517**

**Proposed:**

The Annual Assessment for this parcel, beginning in 2012-13 fiscal year, shall be: **\$44.36.**

**Instructions For Completing and Delivering This Ballot**

- To express your view on the proposed assessment, check the square before the word "YES" or "NO", then sign and date the ballot.
- After completing your ballot, mail or deliver this entire ballot to the clerk of the City of Clayton at 6000 Heritage Trail, Clayton.
- Ballots may be sent or delivered to the clerk at any time, but **MUST** be received not later than the conclusion of the public hearing on the proposed assessment set for Tuesday, July 17, 2012, at 7:00 p.m., at Hoyer Hall (Clayton Community Library Meeting Room), 6125 Clayton road, Clayton.

PLEASE EXPRESS YOUR VIEW BY MARKING AND SIGNING BELOW

- ☐ **Yes, I approve the proposed assessment described above for the parcel identified in this ballot.**
- ☐ **No, I do not approve the proposed assessment described above for the parcel identified in this ballot.**

I hereby declare under penalty of perjury that I am a record owner of the parcel listed above.

\_\_\_\_\_  
Signature of Record Owner

\_\_\_\_\_  
Date

**JOSHUA HARMON**

**Troop 492**

**Mt. Diablo Silverado Council  
Boy Scouts of America**

**for**

**Preparation and Installation of  
Three (3) Bicycle Racks  
in North Valley Park**

**as his Eagle Scout Project in April 2012**

**Clayton, CA 94517**

**May 15, 2012**

**Agenda Date:** 5-15-12

**Agenda Item:** 5a





Agenda Date: 5-15-12  
Agenda Item: 8a

Approved:   
\_\_\_\_\_  
Gary A. Napper  
City Manager/Executive Director

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: RICK ANGRISANI, CITY ENGINEER**

**DATE: MAY 15, 2012**

**SUBJECT: PUBLIC HEARING ON PROPOSED ASSESSMENTS FOR THE DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT; DETERMINATION OF LACK OF MAJORITY PROTEST, ORDERING IMPROVEMENTS AND CONFIRMING ASSESSMENTS FOR FY 2012-12**

---

## RECOMMENDATION

Open Public Hearing, receive public comments, close the Public Hearing, determine results of ballot election, and, assuming a majority protest does not exist, approve the attached Resolution.

## BACKGROUND

The City Council, by adoption of Resolution No. 04-2012, approved the formation of the Diablo Estates at Clayton Benefit Assessment District ("District") at its February 7, 2012 meeting. The Engineer's Report, including the proposed assessment amounts, was approved at the City Council's March 20<sup>th</sup> meeting by the adoption of Resolution No. 08-2012. The resolution also called for a Proposition 218 ballot election and set May 1<sup>st</sup> and May 15<sup>th</sup> as the dates for the required public meeting and public hearing, respectively.

As required by law, notices and ballots were mailed and a public meeting was held on May 1<sup>st</sup> to receive any comments from the public. None were forthcoming. Tonight, the City Council will hold the required public hearing, again to hear any comments or protests from the assessed property owners. Upon completion of public testimony, the City Council should close the public hearing and direct the City Clerk to count all submitted ballots and determine if a majority protest against the imposition of the proposed assessments exists. If it is determined that a majority protest does exist, the Council may not take any further action regarding the attached resolution. If a majority protest does not exist, the City Council may then consider any public comments received and proceed to act on this Resolution levying assessments on the properties within the District for FY 2012-13.

## FISCAL IMPACT

If the annual assessment is approved, the City will assume responsibility for the maintenance duties specified in the Engineer's Report upon acceptance of the various improvements. The Developer has

**Date: May 15, 2012**

**Page 2 of 2**

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advanced \$25,000 to cover the District's costs until we receive the first installment of the levy in December. This advance is to be repaid, without interest, by the District upon receipt of the assessment funds from the County. Therefore, this action will not impact the City's General Fund.

If this \$72,662.99 annual assessment and Resolution are not approved, there will be no funds available for the maintenance the landscaping, stormwater treatment and other improvements as described in the Engineer's Report.

The City is under no obligation to fund the intended duties of the District and there will be no impact to the City's General Fund. However, the Developer, Toll Bros. Inc., will have to establish a permanent alternative funding source, acceptable to the City, prior to the City accepting the subdivision improvements as complete and/or allowing occupancy of any houses within the development (Subdivision 8719).

### **CONCLUSION**

Assuming a majority protest does not exist, Staff recommends the City Council approve this Resolution confirming the levy of assessments within the Diablo Estates at Clayton Benefit Assessment District FY 2012-13.

Attachments: Resolution confirming Assessments [4 pp.]  
Engineer's Report

**RESOLUTION NO. - 2012**

**A RESOLUTION DETERMINING LACK OF MAJORITY PROTEST AND CONFIRMING ASSESSMENTS FOR THE OPERATION AND MAINTENANCE OF IMPROVEMENTS WITHIN THE DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT FOR FISCAL YEAR 2012-13.**

**THE CITY COUNCIL  
City of Clayton, California**

**WHEREAS**, by adoption of Resolution No. 08-2012, the Clayton City Council approved the Engineer's Report on the proposed assessment levy for maintaining various improvements within the Diablo Estates at Clayton Benefit Assessment District during fiscal year 2012-13, and set a public meeting thereon for May 1, 2012, and a public hearing thereon for May 15, 2012, both to be held at the regular meeting place of the Clayton City Council; and

**WHEREAS**, notice of said meeting and said hearing and the adoption of Resolution No. 08-2012 was duly given as required by Section 54954.6 of the Government Code; and

**WHEREAS**, on May 1, 2012, and May 15, 2012, the City Council held the public meeting and public hearing, respectively, on the proposed assessment for the fiscal year 2012-13 and heard and considered all oral statements and written communications made and filed thereon by interested persons;

**WHEREAS**, at the said public hearing, the City Clerk presented her tabulation of the ballots cast before or at the public hearing, found that a majority protest did not exist, and filed the attached certificate of results certifying compliance with the ballot process specified in Proposition 218;

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of the City of Clayton as follows:

1. The Council hereby finds and determines that a majority protest does not exist, inasmuch as the protests received against the assessments do not represent property owners subject to more than fifty percent (50%) of the total annual assessment proposed for the District.

2. The City Council hereby orders the levy of an assessment in the amount of \$3,027.62 on each lot within the Diablo Estates at Clayton Benefit Assessment District and this Resolution shall constitute the levy and confirmation of such assessment for fiscal year 2012-13.

3. The City Clerk shall immediately file a certified copy of this resolution, together with any required diagrams and a list of lots so assessed, with both the Tax Collector and the Auditor of Contra Costa County, with the Assessment to thereafter be collected in the same manner as the property taxes are collected.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Clayton at a regular public meeting thereof held on May 15, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST:

\_\_\_\_\_  
Laci J. Jackson, City Clerk

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton at a regular public meeting held on May 15, 2012.

\_\_\_\_\_  
Laci J. Jackson, City Clerk



## **CITY OF CLAYTON**

### **DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT FOR LANDSCAPE AND LIGHTING AND BENEFIT ASSESSMENT**

### **ENGINEER'S REPORT FISCAL YEAR 2012-13**

MARCH 2012

PURSUANT TO  
THE LANDSCAPING AND LIGHTING ACT OF 1972,  
THE BENEFIT ASSESSMENT ACT OF 1982, AND  
ARTICLE XIII D OF THE CALIFORNIA CONSTITUTION

ENGINEER OF WORK:  
**SCI Consulting Group**  
4745 MANGELS BOULEVARD  
FAIRFIELD, CALIFORNIA 94534  
PHONE 707.430.4300  
FAX 707.430.4319  
[www.sci-cg.com](http://www.sci-cg.com)

## **CITY OF CLAYTON**

---

### **MAYOR**

Howard Geller

### **CITY COUNCIL**

Joseph A. Medrano

Julie K. Pierce

David T. Shuey

Hank Stratford

### **CITY MANAGER**

Gary Napper

### **CITY ENGINEER**

Rick Angrisani

### **CITY ATTORNEY**

Malathy Subramanian

### **CITY CLERK**

Laci Jackson

### **ENGINEER OF WORK**

SCI Consulting Group

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## INTRODUCTION

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### BACKGROUND

Formation of the "Diablo Estates at Clayton Benefit Assessment District" (the "Assessment District") within the City of Clayton (the "City") is proposed to provide funding for the maintenance, operation and improvement of the landscaping, street lighting, drainage and stormwater treatment facilities to benefit the properties in the Diablo Estates at Clayton subdivision that forms the Assessment District. The Diablo Estates at Clayton subdivision consists of 24 parcels east of Regency Drive and north of Rialto Drive with an approximate area of 19 acres.

This Engineer's Report (the "Report") was prepared to establish the budget for the services and improvements that would be funded by the proposed 2012-13 assessments and to determine the benefits received from the maintenance and improvements by property within the Assessment District and the method of assessment apportionment to lots and parcels. This Report and the proposed assessments have been made pursuant to the Landscaping and Lighting Act of 1972 and the Benefit Assessment Act of 1982 (the "Acts") and Article XIID of the California Constitution (the "Article").

Following submittal of this Report to the City of Clayton City Council (the "City Council") for preliminary approval, the City Council may call for an assessment ballot proceeding and Public Hearing on the proposed establishment of assessments for the improvements.

If it is determined at the public hearing that the assessment ballots submitted in opposition to the proposed assessments do not exceed the assessment ballots submitted in favor of the assessments (weighted by the proportional financial obligation of the property for which ballots are submitted), the City Council may take action to form the Assessment District and approve the levy of the assessments for fiscal year 2012-13. If the assessments are so confirmed and approved, the levies would be submitted to the County Auditor/Controller in August 2012 for inclusion on the property tax roll for Fiscal Year 2012-13.

## LEGISLATIVE ANALYSIS

### PROPOSITION 218

The Right to Vote on Taxes Act was approved by the voters of California on November 6, 1996, and is now Article XIIC and XIID of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property. This Assessment District will be balloted and approved by property owners in accordance with Proposition 218.

### SILICON VALLEY TAXPAYERS ASSOC., INC. V SANTA CLARA COUNTY OPEN SPACE AUTHORITY

In July of 2008, the California Supreme Court issued its ruling on the Silicon Valley Taxpayers Association, Inc. vs. Santa Clara County Open Space Authority (SVTA). This ruling is the most significant court case in further legally clarifying the substantive assessment requirements of Proposition 218. Several of the most important elements of the ruling included further emphasis that:

- Benefit assessments are for special benefits to property, not general benefits.
- The services and/or improvements funded by assessments must be clearly defined.
- Assessment districts must be drawn to contain all parcels that receive a special benefit from a proposed public improvement.
- Assessments paid in the assessment district must be proportional to the special benefit received by each such parcel from the improvements and services funded by the assessment.

This Engineer's Report and the process used to establish these proposed assessments for fiscal year 2012/2013 are consistent with the SVTA decision and with the requirements of Article XIIC and XIID of the California Constitution based on the following factors:

1. The Assessment District is narrowly drawn to include only the properties that receive special benefit from the specific improvements and Services. Thus, zones of benefit are not required and the assessment revenue derived from real property in each Assessment District is extended only on the Services in the Assessment District.
2. The Improvements which are constructed and/or maintained with assessment proceeds in the Assessment District are located in close proximity to the real property subject to the assessment. The Improvements and Services provide illumination to streets and sidewalks

enabling improved access to the owners, residents, and guests of such assessed property. The proximity of the Improvements to the assessed parcels and the improved access and increased safety provided to of the residents of the assessed parcels by the Improvements provides a special benefit to the parcels being assessed pursuant to the factors outlined by the Supreme Court in that decision.

3. Due to their proximity to the assessed parcels, the Improvements and Services financed with assessment revenues in the Assessment District benefit the properties in the Assessment District in a manner different in kind from the benefit that other parcels of real property in the City derive from such Improvements and Services, and the benefits conferred on such property in the Assessment District are more extensive than a general increase in property values.
4. The assessments paid in the Assessment District are proportional to the special benefit that each parcel within that Assessment District receives from the Services because:
  - a. The specific lighting Improvements and maintenance Services and utility costs thereof in the Assessment District and the costs thereof are specified in this Report; and
  - b. The cost of the Services in the Assessment District is allocated among different types of property located within the Assessment District, and equally among those properties which have similar characteristics, such as single-family residential parcels, multi-family residential parcels, commercial parcels, or industrial parcels.

#### DAHMS V. DOWNTOWN POMONA PROPERTY

On June 8, 2009, the 4th Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona. On July 22, 2009, the California Supreme Court denied review. On this date, Dahms became good law and binding precedent for assessments. In Dahms the Court upheld an assessment that was 100% special benefit (i.e. 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

#### BONANDER V. TOWN OF TIBURON

On December 31, 2009, the 1st District Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of

the Town of Tiburon. The Court invalidated the assessments on the grounds that the assessments had been apportioned to assessed property based in part on relative costs within sub-areas of the assessment district instead of proportional special benefits.

#### BEUTZ V. COUNTY OF RIVERSIDE

On May 26, 2010 the 4th District Court of Appeal issued a decision on the Steven Beutz v. County of Riverside ("Beutz") appeal. This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services were not explicitly calculated, quantified and separated from the special benefits.

#### COMPLIANCE WITH CURRENT LAW

This Engineer's Report is consistent with the requirements of Article XIIC and XIID of the California Constitution and with the SVTA decision because the Improvements to be funded are clearly defined; the Improvements are directly available to and will directly benefit property in the Assessment District; and the Improvements and Services provide a direct advantage to property in the Assessment District that would not be received in absence of the Assessments.

This Engineer's Report is consistent with Beutz and Dahms because the Improvements and Services will directly benefit property in the Assessment District and the general benefits have been explicitly calculated and quantified and excluded from the Assessments. The Engineer's Report is consistent with Bonander because the Assessments have been apportioned based on the overall cost of the Improvements and Services and proportional special benefit to each property.

## PLANS & SPECIFICATIONS

---

The work and improvements proposed to be undertaken by the City of Clayton and the Diablo Estates at Clayton Benefit Assessment District (the "Assessment District"), and the costs thereof paid from the levy of the annual assessments, provide special benefit to Assessor Parcels within the Assessment District as defined in the Method of Assessment herein. Consistent with the Landscaping and Lighting Act of 1972 and the Benefit Assessment Act of 1982 (the "Acts"), the work, services and improvements are generally described as follows:

Maintenance and servicing of public improvements, including but not limited to, storm drain system, landscaping and lighting and all necessary appurtenances, and labor, materials, supplies, utilities and equipment, and incidental costs as applicable, for property within the Assessment District that is owned or maintained by the City of Clayton (the "Improvements"). Any plans and specifications for these improvements will be filed with the City Engineer of the City of Clayton and are incorporated herein by reference. More specifically the improvements and associated plans are the storm drain system in the Improvement Plans, Diablo Pointe by David Evans and Associates Inc., the lighting in the Joint Trench Composite Plan, Diablo Pointe by Lighthouse Design Inc., and the shared landscaping, fencing, irrigation and entry monument in the Diablo Estates at Clayton Landscape Improvements plan by Thomas Bank and Associates LLP.

As applied herein, "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation and servicing of any improvement, including repair, removal or replacement of all or any part of any improvement; providing for the life, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury; the removal of trimmings, rubbish, debris, and other solid waste; the cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti; the cleaning and replacement of storm drain pipes, drop inlets, catch basins and manholes.

"Servicing" means the cost of maintaining any facility used to provide any service, the furnishing of electric current, or energy, gas or other illuminating agent for any public lighting facilities or for the lighting or operation of any other improvements; or water for the irrigation of any landscaping, or the maintenance of any other improvements.

The figure shown below displays the improvements, maintenance, replacement costs and services to be provided with the Diablo Estates at Clayton Benefit Assessment District.

**FIGURE 1 – SUMMARY OF ESTIMATED ANNUAL COSTS FOR DIABLO ESTATES AT CLAYTON**

| CITY OF CLAYTON                                                 |                    |
|-----------------------------------------------------------------|--------------------|
| Diablo Estates at Clayton Benefit Assessment District           |                    |
| Summary of Estimated Annual Cost                                |                    |
| Fiscal Year 2012-13                                             |                    |
| <hr/>                                                           |                    |
| Installation, Maintenance & Servicing Costs                     |                    |
| Common Landscaping                                              | \$19,426.99        |
| Weed Abatement (On-lot)                                         | \$11,910.00        |
| Storm Drain System                                              | \$27,966.00        |
| Street Lighting                                                 | \$1,460.00         |
| Subtotal - Installation, Maintenance and Servicing              | \$60,762.99        |
| Incidental Expenses and Administration Costs                    | \$11,900.00        |
| Totals for Installation, Maintenance, Servicing and Incidentals | \$72,662.99        |
| <b>Net Cost of Maintenance, Servicing and Incidentals</b>       | <b>\$72,662.99</b> |
| (Net Amount to be Assessed)                                     |                    |
| <hr/>                                                           |                    |
| Budget Allocation to Property                                   |                    |
| <b>Total Assessment Budget</b>                                  | <b>\$72,662.99</b> |
| Single Family Equivalent Benefit Units                          | 24                 |
| Assessment per Single Family Equivalent Unit                    | \$3,027.62         |
| <hr/>                                                           |                    |

## ESTIMATE OF COST AND BUDGET – FISCAL YEAR 2012-13

### FIGURE 2-- COST ESTIMATE BREAKDOWN FOR DIABLO ESTATES AT CLAYTON

CITY OF CLAYTON  
Diablo Estates at Clayton Benefit Assessment District  
Estimate of Maintenance, Replacement, and Administrative Costs

| Item                             | Units       | Unit Cost    | Service Life (years) | Annual Cost        | Annual Cost per Lot |
|----------------------------------|-------------|--------------|----------------------|--------------------|---------------------|
| <b>Common Landscaping</b>        |             |              |                      |                    |                     |
| Landscape Maintenance            | 24,600 SF   | \$0.30       |                      | \$7,380.00         |                     |
| Landscape Replacement            | 24,600 SF   | \$0.05       |                      | \$1,230.00         |                     |
| Tree Maintenance                 | 33 EA       | \$85.00      |                      | \$3,135.00         |                     |
| Tree Replacement - Materials     | 33 EA       | \$285.00     | 40                   | \$235.13           |                     |
| Water Usage                      | 1,476 100CF | \$2.88       |                      | \$4,221.36         |                     |
| Meter Charges                    | 12 Mo       | \$51.00      |                      | \$612.00           |                     |
| Irrigation Maintenance & Repair  | 24,600 SF   | \$0.03       |                      | \$738.00           |                     |
| Fence Maintenance & Repair       | 1,870 LF    | \$0.65       |                      | \$1,215.50         |                     |
| Entry Monument Maintenance       | 1 EA        | \$500.00     |                      | \$500.00           |                     |
| Entry Monument Repair            | 1 LF        | \$4,000.00   | 25                   | \$160.00           |                     |
|                                  |             |              |                      | \$19,426.99        | \$809.46            |
| <b>Weed Abatement (On-lot)</b>   |             |              |                      |                    |                     |
| Weed Abatement                   | 397,000 SF  | \$0.03       |                      | \$11,910.00        |                     |
|                                  |             |              |                      | \$11,910.00        | \$496.25            |
| <b>Storm Drain System</b>        |             |              |                      |                    |                     |
| Ditch - debris removal & maint   | 1 LS        | \$1,000.00   |                      | \$1,000.00         |                     |
| Ditch Repair                     | 2,038 LF    | \$50.00      | 25                   | \$4,076.00         |                     |
| Vorsentry Maintenance            | 1 LS        | \$1,500.00   |                      | \$1,500.00         |                     |
| Vorsentry Replacement            | 1 LS        | \$100,000.00 | 100                  | \$1,000.00         |                     |
| Bio-Retention Basin Maintenance* | 48 EA       | \$ -         |                      | \$0.00             |                     |
| Bio-Retention Basin Replacement  | 48 EA       | \$2,000.00   | 10                   | \$9,600.00         |                     |
| Stormwater Reporting Fee         | 1 LS        | \$5,000.00   |                      | \$5,000.00         |                     |
| Annual City Report Fee           | 1 LS        | \$2,000.00   |                      | \$2,000.00         |                     |
| Catch Basin/Manhole Cleaning     | 15 EA       | \$200.00     |                      | \$3,000.00         |                     |
| CB/MH/pipe repair                | 1 LS        | \$79,000.00  | 100                  | \$790.00           |                     |
|                                  |             |              |                      | \$27,986.00        | \$1,165.25          |
| <b>Street Lighting</b>           |             |              |                      |                    |                     |
| Maintenance and Repair           | 1 LS        | \$500.00     |                      | \$500.00           |                     |
| Electricity                      | 4 EA        | \$240.00     |                      | \$960.00           |                     |
|                                  |             |              |                      | \$1,460.00         | \$60.83             |
| <b>Annual Administration</b>     |             |              |                      |                    |                     |
| Property Manager                 | 12 Mo       | \$600.00     |                      | \$7,200.00         |                     |
| Annual City Engineer Services    | 1 LS        | \$2,500.00   |                      | \$2,500.00         |                     |
| Legal Notices/Mailing            | 1 LS        | \$100.00     |                      | \$100.00           |                     |
| County Collection                | 1 LS        | \$100.00     |                      | \$100.00           |                     |
| General Reserve                  | 1 LS        | \$2,000.00   |                      | \$2,000.00         |                     |
|                                  |             |              |                      | \$11,900.00        | \$495.83            |
| <b>Total</b>                     |             |              |                      | <b>\$72,662.99</b> | <b>\$3,027.62</b>   |
| Number of Lots:                  |             |              |                      | <b>24</b>          |                     |
| Cost per Lot:                    |             |              |                      | <b>\$3,027.62</b>  |                     |

\* homeowner responsibility

\*\*assumes covenant with Toll Brothers, Inc. for 5 year maintenance period

Unit costs per direction of City of Clayton City Engineer

## **METHOD OF APPORTIONMENT**

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### **METHOD OF APPORTIONMENT**

This section of the Engineer's Report includes an explanation of the benefits to be derived from the installation, maintenance and servicing of improvements and the methodology used to apportion the total assessment to properties within the Assessment District.

The Diablo Estates at Clayton Benefit Assessment District consists of all Assessor Parcels within the boundaries as defined by the Assessment Diagram included within this Report and the Assessor Parcel Numbers listed within the included Assessment Roll. The method used for apportioning the assessments is based upon the proportional special benefits to be derived by the properties in the Diablo Estates at Clayton Benefit Assessment District over and above general benefits conferred on real property or to the public at large. The apportionment of special benefit is a two step process: the first step is to identify the types of special benefit arising from the Improvements, and the second step is to allocate the assessments to property based on the estimated relative special benefit for each type of property.

### **DISCUSSION OF BENEFIT**

In summary, the assessments can only be levied based on the special benefit to property. This benefit is received by property over and above any general benefits. Moreover, such benefit is not based on any one property owner's use of the District's storm drain system, streets and sidewalks, corridor landscaping, lighting, or a property owner's specific demographic status. With reference to the requirements for assessments, Section 22573 of the Landscaping and Lighting Act of 1972 states:

*"The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the Improvements."*

The Benefit Assessment Act of 1982 states in Government Code Section 54711:



*"The amount of the assessment imposed on any parcel of property shall be related to the benefit to the parcel which will be derived from the provision of service"*

Proposition 218, as codified in Article XIID of the California Constitution, has confirmed that assessments must be based on the special benefit to property:

*"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."*

The following benefit categories summarize the types of special benefit to residential, commercial, industrial and other lots and parcels resulting from the installation, maintenance and servicing of the Improvements to be provided with the assessment proceeds. These categories of special benefit are derived in part from the statutes passed by the California Legislature and other studies which describe the types of special benefit received by property from the installation, maintenance and servicing of improvements such as those proposed by the City of Clayton and the Diablo Estates at Clayton Benefit Assessment District. These types of special benefit are summarized as follows:

- Creation of individual lots for residential use that, in absence of the services and improvements to be funded by the assessments, would not be created.
- Improved utility and usability of property
- Improved safety and security lighting for property
- Enhanced visual experience, and desirability of the area.
- Protection of views, scenery and other resources values and environmental benefits enjoyed by residents and guests and preservation of public assets maintained by the City
- Moderation of temperatures, dust control, and other environmental benefits.

These benefit factors, when applied to property in the Assessment District, specifically increase the utility of the property within the Assessment District. For example, the assessments will provide funding to maintain lighting that improves safety and access to the property after dark and landscaping that provides visual and environmental benefits to the properties within the Assessment District. Such improved and well-maintained public facilities enhance the overall usability, quality, desirability and safety of the properties. Moreover, funding for the maintenance and servicing of such public facilities is a condition of development of Diablo Estates at Clayton that is needed to mitigate the negative impacts of this development on the City. Without the Assessment District, this condition of development would not be satisfied, which could affect the approval of new homes on the property. This is another special benefit to the properties in the Assessment District.

## **GENERAL VERSUS SPECIAL BENEFIT**

The proceeds from the Diablo Estates at Clayton Benefit Assessment District would be used to fund improvements and increased levels of maintenance to the public facilities that serve and benefit the properties in the Assessment District. In absence of the Diablo Estates at Clayton Benefit Assessment District, such Improvements would not be properly maintained. Therefore, the Assessment District is specifically proposed to ensure that the necessary and beneficial public facilities for property in the Assessment District are properly maintained and repaired over time. The assessments will ensure that landscaping and street lighting within and adjacent to the Assessment District are functional, well maintained, clean and safe. These public resources directly benefit the property in the Assessment District and will confer distinct and special benefits to the properties within the Assessment District.

In absence of the assessments, a condition of development would not be met and future home construction in the Assessment District could be denied. The creation of residential lots and the approval for the construction of homes in Diablo Estates at Clayton is the overriding clear and distinct special benefit conferred on exclusively on property in the Assessment District and not enjoyed by other properties outside the Assessment District. Moreover, benefits to the public at large, if any, will be offset by benefits residents within the Assessment District receive from the use of other similar public facilities not funded by the Assessment District. Therefore, the assessments solely provide special benefit to property in the Assessment District (100% special benefit) over and above the general benefits conferred to the public at large or properties outside the Assessment District.

## **METHOD OF ASSESSMENT**

This process of apportioning assessments for each property involves determining the relative benefit received by each property in relation to a single family home, or, in other words, on the basis of Single Family Equivalent dwelling units (SFE). This SFE methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments. For the purposes of this Engineer's Report, all properties are designated an SFE value, which is each property's relative benefit in relation to a single family home on one parcel. In this case, the "benchmark" property is the single family detached dwelling which is one Single Family Equivalent unit or one SFE.

## **ASSESSMENT APPORTIONMENT**

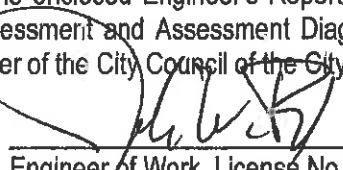
The proposed assessments for the Diablo Estates at Clayton Benefit Assessment District would provide direct and special benefit to properties in the Assessment District. Diablo Estates at Clayton is a residential single family development project consisting of a total of 24 single family homes, each on a separate parcel. As such, each residential property receives similar benefit from the proposed Improvements. Therefore, the Engineer has determined that the appropriate method of apportionment of the benefits derived by all parcels is on a dwelling unit or single family residence basis. All improved properties or properties proposed for development are assigned an SFE factor equal to the number of dwelling units developed or planned for the property. In other words, developed parcels and vacant parcels with proposed development will be assessed 1 SFE. The assessments are listed on the Assessment Roll in Appendix A.

## **APPEALS AND INTERPRETATION**

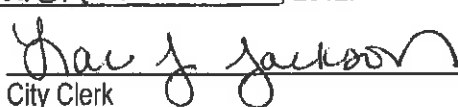
Any property owner who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the City of Clayton City Engineer or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City of Clayton City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City of Clayton City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City of Clayton City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any property owner who disagrees with the decision of the City of Clayton City Engineer or her or his designee may refer their appeal to the City Council of the City of Clayton and the decision of the City Council of the City of Clayton shall be final.

**CERTIFICATES****DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT**

1. The undersigned respectfully submits the enclosed Engineer's Report and does hereby certify that this Engineer's Report, and the Assessment and Assessment Diagram herein, have been prepared by me in accordance with the order of the City Council of the City of Clayton.

  
 \_\_\_\_\_  
 Engineer of Work, License No. C052091

2. I, the City Clerk, City of Clayton, County of Contra Costa, California, hereby certify that the enclosed Engineer's Report, together with the Assessment and Assessment Diagram thereto attached, was filed and recorded with me on March 14, 2012.

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

3. I, the City Clerk, City of Clayton, County of Contra Costa, California, hereby certify that the Assessment in this Engineer's Report was approved and confirmed by the City Council on \_\_\_\_\_, 2012, by Resolution No. \_\_\_\_\_.

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

4. I, the City Clerk of the City of Clayton, County of Contra Costa, California, hereby certify that a copy of the Assessment and Assessment Diagram was filed in the office of the County Auditor of the County of Contra Costa, California, on \_\_\_\_\_, 2012.

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

5. I, the County Auditor of the County of Contra Costa, California, hereby certify that a copy of the Assessment Roll and Assessment Diagram for fiscal year 2012-13 was filed with me on \_\_\_\_\_, 2012.

\_\_\_\_\_  
 County Auditor, County of Contra Costa

And I do hereby assess and apportion said net amount of the cost and expenses of said Improvements, including the costs and expenses incident thereto, upon the parcels and lots of land within said Diablo Estates at Clayton Benefit Assessment District in accordance with the special benefits to be received by each parcel or lot from the Improvements, and more particularly set forth in the Cost Estimate and Method of Assessment hereto attached and by reference made a part hereof.

The assessments are made upon the parcels or lots of land within the Diablo Estates at Clayton Benefit Assessment District in proportion to the special benefits to be received by the parcels or lots of land, from said Improvements.

The assessments are subject to an annual adjustment tied to the Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area as of April of each succeeding year, with the maximum annual adjustment not to exceed 4%. In the event that the annual change in the CPI exceeds 4%, any percentage change in excess of 4% can be cumulatively reserved and can be added to the annual change in the CPI for years in which the CPI change is less than 4%.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Contra Costa for the fiscal year 2012-13. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of said County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Rolls, the amount of the assessment for the fiscal year 2012-13 for each parcel or lot of land within the said Diablo Estates at Clayton Benefit Assessment District.

Dated: March 6, 2012



Engineer of Work

By [Signature]  
John W. Bliss, License No. C052091

## ASSESSMENT

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WHEREAS, the undersigned Engineer of Work has prepared and filed a report presenting an estimate of costs, a diagram for the assessment districts and an assessment of the estimated costs of the Improvements upon all assessable parcels within the assessment district;

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under said Acts and the order of the City Council of the City of Clayton, hereby make the following assessment to cover the portion of the estimated cost of said Improvements, and the costs and expenses incidental thereto to be paid by the assessment district.

The amounts to be paid for said Improvements and the expense incidental thereto, to be paid by the Diablo Estates at Clayton Benefit Assessment District for the fiscal year 2012-13, are generally as follows:

### FIGURE 3 -- SUMMARY COST ESTIMATES -- FISCAL YEAR 2012-13

#### CITY OF CLAYTON Diablo Estates at Clayton Benefit Assessment District Summary Cost Estimate FY 2012-13

|                                             |                 |
|---------------------------------------------|-----------------|
| Installation, Maintenance & Servicing Costs | \$60,763        |
| Incidental Costs                            | \$11,900        |
| Total Budget                                | <u>\$72,663</u> |

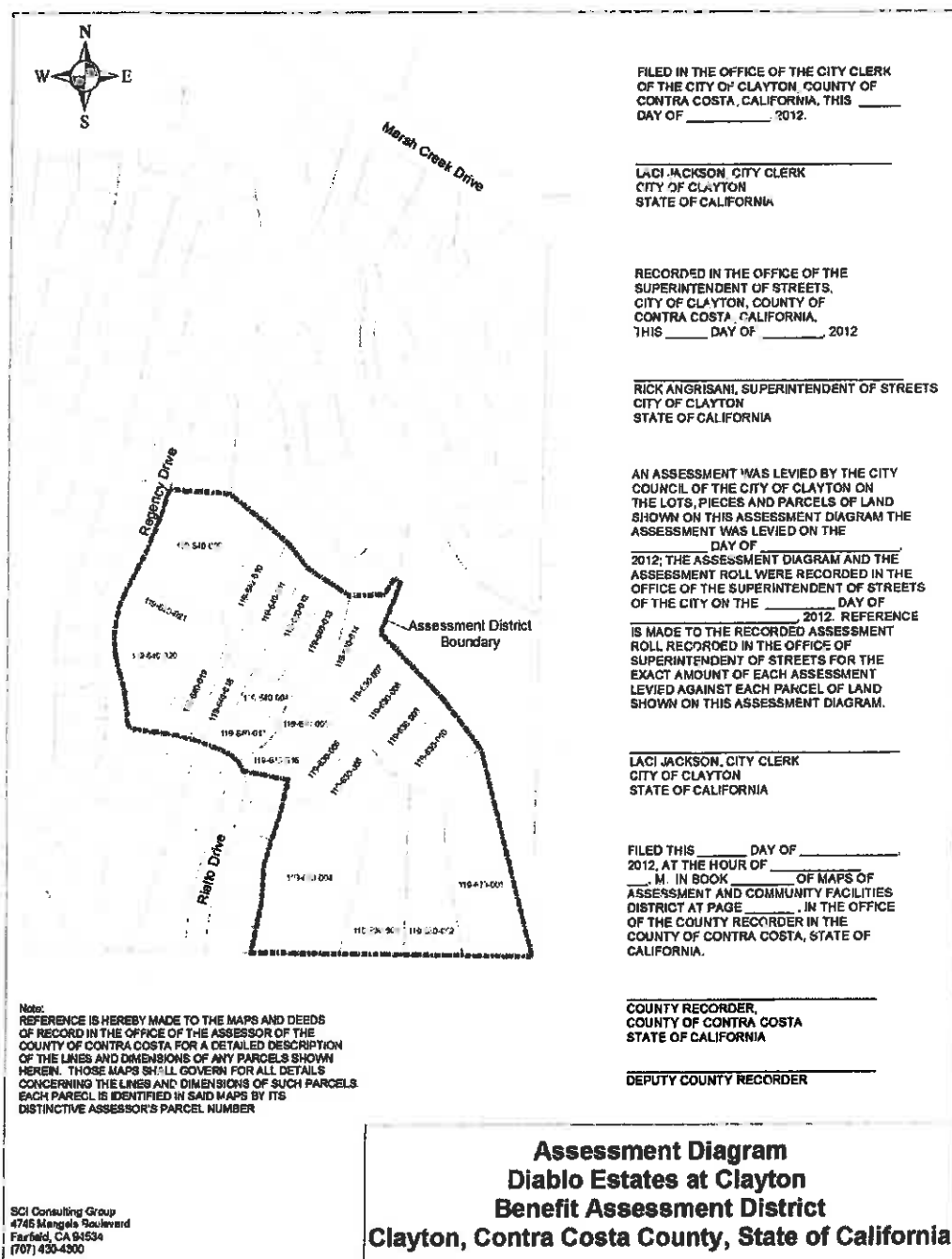
#### **Budget to Assessment**

|                   |                   |
|-------------------|-------------------|
| Total Budget      | \$72,663          |
| Total SFE Units   | <u>24</u>         |
| Rate per SFE Unit | <u>\$3,027.62</u> |

As required by the Acts, an Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of said Diablo Estates at Clayton Benefit Assessment District. The distinctive number of each parcel or lot of land in said Diablo Estates at Clayton Benefit Assessment District is its Assessor Parcel Number appearing on the Assessment Roll.

## ASSESSMENT DIAGRAM

The boundaries of the Diablo Estates at Clayton Benefit Assessment District are displayed on the following Assessment Diagram.



## APPENDICES

### APPENDIX A – ASSESSMENT ROLL, FISCAL YEAR 2012-13

An Assessment Roll (a listing of all parcels assessed within the Assessment District and the amount of the assessment) will be filed with the City Clerk and is, by reference, made part of this Report and is available for public inspection during normal office hours.

Each lot or parcel listed on the Assessment Roll is shown and illustrated on the latest County Assessor records and these records are, by reference made part of this Report. These records shall govern for all details concerning the description of the lots or parcels.

**FIGURE 4 – ASSESSMENT ROLL**

**CITY OF CLAYTON  
Diablo Estates at Clayton Assessment District  
Assessment Roll**

| PARCEL NUMBER | OWNER           | SITUS                                 | SFE Units | ASSESSMENT         |
|---------------|-----------------|---------------------------------------|-----------|--------------------|
| 119-630-001   | TOLL CA XIX L P | 27 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-002   | TOLL CA XIX L P | 26 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-003   | TOLL CA XIX L P | 22 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-004   | TOLL CA XIX L P | 18 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-005   | TOLL CA XIX L P | 14 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-006   | TOLL CA XIX L P | 10 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-007   | TOLL CA XIX L P | 9 SEMINARY RIDGE PL CLAYTON CA 94517  | 1         | \$3,027.62         |
| 119-630-008   | TOLL CA XIX L P | 15 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-009   | TOLL CA XIX L P | 19 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-630-010   | TOLL CA XIX L P | 23 SEMINARY RIDGE PL CLAYTON CA 94517 | 1         | \$3,027.62         |
| 119-640-001   | TOLL CA XIX L P | 6 SEMINARY RIDGE PL CLAYTON CA 94517  | 1         | \$3,027.62         |
| 119-640-004   | TOLL CA XIX L P | 7 PROMONTORY PL CLAYTON CA 94517      | 1         | \$3,027.62         |
| 119-640-010   | TOLL CA XIX L P | 16 PROMONTORY PL CLAYTON CA 94517     | 1         | \$3,027.62         |
| 119-640-011   | TOLL CA XIX L P | 12 PROMONTORY PL CLAYTON CA 94517     | 1         | \$3,027.62         |
| 119-640-012   | TOLL CA XIX L P | 8 PROMONTORY PL CLAYTON CA 94517      | 1         | \$3,027.62         |
| 119-640-013   | TOLL CA XIX L P | 4 PROMONTORY PL CLAYTON CA 94517      | 1         | \$3,027.62         |
| 119-640-014   | TOLL CA XIX L P | 5 SEMINARY RIDGE PL CLAYTON CA 94517  | 1         | \$3,027.62         |
| 119-640-016   | TOLL CA XIX L P | 2 SEMINARY RIDGE PL CLAYTON CA 94517  | 1         | \$3,027.62         |
| 119-640-017   | TOLL CA XIX L P | 3 SEMINARY RIDGE PL CLAYTON CA 94517  | 1         | \$3,027.62         |
| 119-640-018   | TOLL CA XIX L P | 11 PROMONTORY PL CLAYTON CA 94517     | 1         | \$3,027.62         |
| 119-640-019   | TOLL CA XIX L P | 17 PROMONTORY PL CLAYTON CA 94517     | 1         | \$3,027.62         |
| 119-640-020   | TOLL CA XIX L P | 21 PROMONTORY PL CLAYTON CA 94517     | 1         | \$3,027.62         |
| 119-640-021   | TOLL CA XIX L P | 24 PROMONTORY PL CLAYTON CA 94517     | 1         | \$3,027.62         |
| 119-640-022   | TOLL CA XIX L P | 20 PROMONTORY PL CLAYTON CA 94517     | 1         | \$3,027.62         |
|               |                 |                                       | <b>24</b> | <b>\$72,662.88</b> |





Agenda Date: 5-15-12

Agenda Item: 9a

Approved:

Gary A. Napper, City Manager

# AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: DAVID WOLTERING, COMMUNITY DEVELOPMENT DIRECTOR

DATE: MAY 15, 2012

SUBJECT: CONSIDERATION OF ORDINANCE NO. 441 ADDING CHAPTER 15.90 TO THE CLAYTON MUNICIPAL CODE REGARDING REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES (ZOA 01-12)

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## RECOMMENDATION

It is recommended that the City Council approve Second Reading and Adoption of Ordinance No. 441 (See **Attachment**), adding Chapter 15.90 to the *Clayton Municipal Code* establishing a process for individuals with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City's land use, zoning or building standards, regulations, policies, and procedures.

## BACKGROUND AND ANALYSIS

At its May 1, 2012 meeting, the City Council approved Introduction and First Reading of Ordinance No. 441. The Council directed as part of its action this Ordinance include language in section 15.90.090 that requires a property owner or occupant to notify the City if the individual with the disability for which a reasonable accommodation was granted no longer resides at the premises. This language has been added and is highlighted in the attached copy of the Ordinance.

Proposed Ordinance No. 441 relates to implementation of the City of Clayton Housing Element. On April 20, 2010, the City Council approved the Clayton 2009-2014 General Plan Housing Element. Subsequently, on July 15, 2010, the State Department of Housing and Community Development (HCD) conditionally certified this Housing Element. This certification is based on the City of Clayton making a good faith effort toward enacting over 30 categories of implementation measures that are described in the Housing Element. One of the Housing Element implementation measures, Implementation Measure IV.3.1, states the following:

"The City will adopt a written reasonable accommodations ordinance to provide exception in

zoning and land use for housing for persons with disabilities. This procedure will be a ministerial process, with minimal or no processing fee, subject to approval of the Community Development Director applying the following decision-making criteria:

- The request for reasonable accommodation will be used by an individual with a disability protected under fair housing laws;
- The requested accommodation is necessary to make housing available to an individual with a disability protected under fair housing laws;
- The requested accommodation would not impose an undue financial or administrative burden on the City;
- The requested accommodation would not require a fundamental alteration in the nature of the City's land use and zoning program." (Pages 123 and 124, Clayton 2009-2014 Housing Element).

Staff, with the assistance of the City Attorney's office, prepared Ordinance No. 441 to address the requirements of Implementation Measure IV.3.1. As directed in this implementation measure, this proposed Ordinance provides for a formalized procedure to consider reasonable accommodations requests and clear decision-making criteria. The review and approval process is proposed to be administrative (i.e., staff-level), subject to appeal to the Planning Commission.

#### **FISCAL IMPACT**

Implementation Measure IV.3.1 states there be minimal or no processing fee for the reasonable accommodations requests. Staff anticipates recommending the fee for these requests be approximately \$154, the same fee currently charged for administratively approved Home Occupation Permits, Temporary Use Permits, and Noise Permits. It is expected that reasonable accommodations requests would be more involved, and require research, findings, and notice. It is likely these applications would require, typically, at least a 100% subsidy from a cost recovery standpoint, given the \$154 fee estimate.

Should Ordinance No. 441 be adopted, staff will subsequently process an amendment to the City's Master Fee Schedule to incorporate a fee for this application by City Council Resolution.

Attachment: Ordinance No. 441

## **ORDINANCE NO. 441**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON, CALIFORNIA, ADDING CHAPTER 15.90 TO THE CLAYTON MUNICIPAL CODE REGARDING REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES (ZOA 01-12)**

**WHEREAS**, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (“fair housing laws”) prohibit discrimination in housing against individuals with disabilities and require that cities take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities;

**WHEREAS**, fair housing laws require that cities provide individuals with disabilities (or their representatives, or developers of housing for people with disabilities) flexibility in the application of land use and zoning regulations;

**WHEREAS**, cities are required to identify constraints to providing housing for individuals with disabilities and develop strategies for removing those constraints, and to have a program that removes constraints on, or provides reasonable accommodation for, such housing;

**WHEREAS**, among other things, the following provisions of the City of Clayton 2009-2014 General Plan Housing Element reflect the City’s intention to encourage housing for those individuals with disabilities and to simplify the City’s related review process:

- “On April 1, 2008, the City Council of the City of Clayton approved the Americans with Disabilities Act (ADA) Transition Plan. The plan includes an evaluation of current barriers for persons with disabilities and includes steps to remove such barriers. Included in the plan is a process to request accommodations for persons with disabilities. Accommodations are reviewed and approved by the ADA Coordinator on a case-by-case basis. The plan meets ADA compliance procedures and does not constrain the development of housing for persons with disabilities.” (Page 46).
- “Reasonable accommodation requests are processed on a case-by-case basis in Clayton. Information is provided to interested persons on an ad hoc basis. All ADA retrofit requirements are processed in the same manner as other types of improvements requiring building and/or planning permits. The City will incorporate a more formalized reasonable accommodations procedure through the development of the 2009-2014 Housing Element Implementation IV.3.1” (Page 46).
- Implementation Measure IV.3.1 states the following: “The City will adopt a written reasonable accommodation ordinance to provide exception in zoning and land use for housing for persons with disabilities. This procedure will be a ministerial process, with minimal or no processing fee, subject to approval of the Community Development Director applying the following decision-making criteria:
  - The request for reasonable accommodation will be used by an individual with a disability protected under fair housing laws.
  - The requested accommodation is necessary to make housing available to an individual with a disability protected under fair housing laws.
  - The requested accommodation would not impose an undue financial or administrative burden on the city.
  - The requested accommodation would not require a fundamental alteration in the nature of the City’s land-use and zoning program.” (Pages 123 and 124)

**WHEREAS**, Government Code section 65583 requires that the Housing Element address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for individuals with disabilities. This Ordinance, as described in the implementation measure above, will remove constraints to, and provide reasonable accommodations in housing for individuals with disabilities;

**WHEREAS**, this ordinance is exempt from the California Environmental Quality Act (“CEQA”) under Public Resources Code section 15061(b)(3) because it does not have the potential for causing a significant adverse effect on the environment;

**WHEREAS**, the Planning Commission held a duly-noticed public hearing on the proposed ordinance on April 10, 2012 and gave due consideration to all testimony, comments, and documents received regarding the Ordinance;

**WHEREAS**, based on its consideration of the information it received and its deliberation and discussion of the Ordinance, the Planning Commission adopted Resolution No. 02-12 on April 10, 2012, recommending that the City Council adopt the proposed Ordinance;

**WHEREAS**, on May 1, 2012 and \_\_\_\_\_, 2012 the City Council held a duly-noticed public hearings and gave due consideration to all testimony, comments and documents received regarding the Ordinance; and

**WHEREAS**, the City Council finds that the proposed ordinance is in general conformance with the General Plan and that the public necessity, convenience, health, safety, and general welfare require the adoption of the proposed Ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The above Recitals are true and correct and hereby incorporated in this Ordinance as if restated in full.

**SECTION 2.** Chapter 15.90 entitled “Reasonable Accommodations” is hereby added to the Clayton Municipal Code to read as follows:

## “Chapter 15.90

### REASONABLE ACCOMMODATIONS

#### Sections:

- 15.90.010 Purpose.
- 15.90.020 Applicability.
- 15.90.030 Definitions.
- 15.90.040 Application process.
- 15.90.050 Review authority.
- 15.90.060 Review procedure.
- 15.90.070 Findings and decision.
- 15.90.080 Appeals.
- 15.90.090 Expiration, revocation, termination.

#### **15.90.010 Purpose.**

The purpose of this Chapter is to establish a process for individuals with disabilities seeking equal access to housing to request reasonable accommodations in the application of the City’s land use, zoning, or building standards, regulations, policies, and procedures and to establish relevant criteria for the City to use when considering such requests.

#### **15.90.020 Applicability.**

Any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, may seek relief from any land use, zoning, or building standard, regulation, policy, or procedure found in Title 15 or Title 17 of this Code to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities by requesting a reasonable accommodation in the manner prescribed in Section 15.90.040.

#### **15.90.030 Definitions.**

For the purposes of this Chapter, the following definitions apply:

- A. “Applicant” means an individual who files an application for a reasonable accommodation under this Chapter.
- B. “Department” means the Clayton Community Development Department.
- C. “Director” means the Community Development Director or the Director’s designee.
- D. “Fair housing laws” means the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sect. 3601 *et seq.*), the California Fair Employment and Housing Act (Government Code Sect. 12900 *et seq.*), and Civil Code Sect. 54, together with published judicial decisions interpreting such laws.
- E. “Individual with a disability” means an individual with a qualifying disability as defined by the fair housing laws, and generally includes any individual who has, or is regarded as having, any mental or physical impairment, disorder, or condition, which substantially limits one or more major life activities, including physical, mental, and social activities and working. “Disabled or individual with a disability” does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

- F. “Reasonable accommodation” means a modification or exception to the standards, regulations, policies, and procedures contained in Title 15 or Title 17 of this Code for the siting, development, and use of housing or housing-related facilities, that would eliminate regulatory barriers and provide an individual with a disability equal opportunity for the use and enjoyment of housing of their choice, and that does not impose undue financial or administrative burdens on the City or require a fundamental alteration of the City’s planning and zoning program.

**15.90.040 Application process.**

- A. Application. Requests for a reasonable accommodation must be submitted on an application form provided by the Department, or in the form of a letter addressed to the Director, and must contain the following information:
1. The name, address, and telephone number of the applicant.
  2. The name, address, and telephone number of the individual with the disability for which the reasonable accommodation is being requested.
  3. The name, address, and telephone number of the owner of the property for which the reasonable accommodation request is being made.
  4. The address and current use of the property for which the reasonable accommodation is being made.
  5. If the applicant is someone other than the property owner, a letter of agency or authorization signed by the property owner consenting to the application being made.
  6. The basis for the claim that the individual to be reasonably accommodated is disabled within the meaning of the fair housing laws.
  7. A description of the reasonable accommodation request and the land use, zoning, or building standard, regulation, policy, or procedure to be modified or waived.
  8. A statement of the reason why the requested accommodation is necessary for the individual with a disability to use and enjoy the dwelling.
  9. An indication of the timing and anticipated duration for needing the reasonable accommodation.
- B. Other Discretionary Permits. If the project for which the request for a reasonable accommodation is made requires another discretionary permit or approval, then the applicant may file the request for reasonable accommodation together with the application for the discretionary permit or approval. The processing procedures applicable to the discretionary permit will govern the joint processing of both the reasonable accommodation and the discretionary permit.
- C. If an individual needs assistance in making a request for a reasonable accommodation, the City will provide assistance to ensure that the process is accessible.
- D. A request for a reasonable accommodation may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual’s obligations to comply with all other applicable regulations that are not being modified in response to the requested accommodation.

**15.90.050 Review authority.**

- A. The Director may approve, conditionally approve, or deny an application for a reasonable accommodation for an existing use or a proposed new use that only requires a ministerial permit or approval.
- B. If the project for which the request for a reasonable accommodation is made requires a discretionary permit or approval, then the application for a reasonable accommodation will be heard at the same time as the other discretionary permit or approval.

**15.90.060 Review procedure.**

- A. Director Review. The Director will issue a written determination to approve, conditionally approve, or deny a request for a reasonable accommodation within thirty (30) days of acceptance of a complete application. The written determination must explain in detail the basis of the decision, including the Director's findings required by Section 15.90.070. The Director must mail written notice of the determination to the applicant, and, as part of such notice, advise the applicant of the right to appeal the determination.
- B. Review By Planning Commission or City Council. If the application for a reasonable accommodation is heard simultaneously with the application for another discretionary approval, the decision to approve, conditionally approve, or deny a request for a reasonable accommodation will be made by the authority taking action on the other discretionary approval. The Planning Commission or City Council must make their decision in accordance with Section 15.90.070.

**15.90.070 Findings and decision.**

- A. Findings. The written decision to approve, conditionally approve, or deny a request for a reasonable accommodation must be based on the following findings, all of which are required for approval:
  - 1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the fair housing laws.
  - 2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
  - 3. The requested accommodation will not impose an undue financial or administrative burden on the City, as defined in the fair housing laws.
  - 4. The requested accommodation will not result in a fundamental alteration in the nature of the City's Zoning Code, as defined in the fair housing laws.
  - 5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.
- B. Conditions of Approval. In granting a request for a reasonable accommodation, the Director, Planning Commission, or City Council may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection A above.

**15.90.080 Appeals.**

- A. Director Decision. Any person who is dissatisfied by the decision made by the Director on an application for a reasonable accommodation may appeal the Director's decision to the Planning Commission. The appeal must be filed within ten days of the mailing of the Director's decision. Upon the filing of a notice of appeal, the Director will set the matter for a hearing before the Planning Commission to occur not later than forty-five (45) days from the date of filing. Notice of the appeal hearing will be given to the applicant by mail at least ten days prior to the hearing. The appeal hearing will be conducted in accordance with the application procedures of Section 17.68.010 of this Code. Any person who is dissatisfied by the decision of the Planning Commission may make a further appeal to the City Council in accordance with applicable procedures of Sections 17.68.020 and 17.68.030 of this code. The Planning Commission's decision will be final absent an appeal timely filed with the City Council.

- B. **Planning Commission Decision.** A decision of the Planning Commission on an application for a reasonable accommodation considered concurrently with another application for a discretionary approval is subject to the same appeal rights and procedures that apply to the other discretionary approval.

**15.90.090 Expiration, revocation, termination.**

- A. **Expiration.** Any reasonable accommodation approved under this Chapter will expire within twelve (12) months from the effective date of approval or at such alternative time specified as a condition of approval unless:
1. A building permit has been issued and construction has commenced;
  2. A certificate of occupancy has been issued;
  3. The use is established; or
  4. A time extension has been granted.
- B. **Revocation.** Any reasonable accommodation approved under this Chapter may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or City ordinance is violated in connection with the reasonable accommodation. The revocation procedures in Section 17.64.050 *et seq.* of this Code will be followed to revoke a reasonable accommodation.
- C. **Termination.** If the individual with a disability who initially occupied the applicable dwelling ceases to reside at the premises, the property owner and/or occupant shall notify the City and the reasonable accommodation will automatically terminate, and the property owner or occupant shall be responsible for modifying the applicable premises so that it conforms to Code as directed by the City, unless the Director determines that: (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the Code, or (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. A deed restriction shall be recorded against the property requiring the property owner to notify a buyer of the City's requirements pursuant to chapter 15.90. The Director may shall request require that any successor-in-interest to the property provide documentation that subsequent occupants are individuals with disabilities who also require the previously-established reasonable accommodation. Failure to provide such documentation within ten days of the date of a request by the Director will result in the termination of a previously-approved reasonable accommodation and the property owner or occupant shall be responsible for modifying the applicable premises so that it conforms to Code as directed by the City.”

**SECTION 3.** If any provision of this Ordinance, or the application thereof to any person or circumstance, is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provision or clause of the Ordinance or application thereof which can be implemented without the invalid provision(s), clause, or application, and to this end each provision and clause of the Ordinance is declared to be severable.

**SECTION 4.** This Ordinance shall become effective thirty (30) days after it is adopted by the City Council. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause it to be posted in the three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.



The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton on May 1, 2012, and passed, adopted and ordered posted at a regular meeting of the City Council of the City of Clayton on \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST

\_\_\_\_\_  
Laci J. Jackson, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

\_\_\_\_\_  
Malathy Subramanian  
City Attorney

\_\_\_\_\_  
Gary A. Napper  
City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on May 1, 2012, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Laci J. Jackson, City Clerk



Agenda Date: 5-15-12

Agenda Item: 9b

Approved:

Gary A. Napper  
City Manager

# AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: CITY ATTORNEY

DATE: May 1, 2012

SUBJECT: "PAY FIRST" ORDINANCE – SECOND READING AND ADOPTION

## RECOMMENDATION

By motion, authorize the City Clerk to read Ordinance No. 442 by title and number only and following that reading, by separate motion approve Ordinance 442 for adoption.

## BACKGROUND

The City has established various taxes, assessments and fees that provide failure to timely pay will result in interest or penalties being charged to the person owing the debt.

Article XIII, Section 32 of the California Constitution establishes what is known as the "pay first" rule, which requires a taxpayer wishing to challenge the assessment of a *State* tax to first pay the disputed charge, plus any interest and/or penalties that may be due, and then sue for a refund. In other words, payment of the tax is a condition to filing the lawsuit. The rule is based on the theory that revenue collection should continue during litigation so that the government can continue to operate.

However, in late 2009 in the case of *City of Anaheim v. Superior Court (Priceline.com)* (November 24, 2009),<sup>1</sup> the California Court of Appeal held that that several on-line travel companies such as Priceline.com, Travelocity.com and Orbitz.com were not required to pay the City of Anaheim more than \$21 million in allegedly deficient transient occupancy taxes (commonly referred to as "hotel bed taxes"), before filing lawsuits challenging the City's tax, because the City's municipal code did not include a "pay first, litigate later" provision.

<sup>1</sup> *City of Anaheim v. Superior Court (Priceline.com)* (2009) 179 Cal.App.4th 825; review denied, *City of Anaheim v. Superior Court (Priceline.com)*, 2010 Cal. LEXIS 2241 (March 24, 2010).

Prior to the *City of Anaheim* case, it was considered well-settled law the "pay first" rule applied to cities, for a variety of reasons, including based on the sound public policy behind requiring a tax payer to pay a tax and then sue for a refund. (*Chodos v. City of Los Angeles* (2011) 195 Cal. App. 4th 675, 680.) However, the *City of Anaheim* case upset this assumption.

In *Chodos v. City of Los Angeles*, the Court of Appeal upheld the application of the City's pay first ordinance. The City prevailed based on its argument that the challenger failed to allege that he paid the tax and was challenging the tax by way of a refund action.

In order to be constitutional, a local "pay first" requirement must provide the taxpayer with a meaningful opportunity to contest the legality of the tax. This most often takes the form of a refund procedure provided for in the applicable statute.

## **DISCUSSION**

The purpose of adding the provisions to the CMC provided for in the ordinance is to explicitly include the "pay first, litigate later" language suggested in the *City of Anaheim* case. This will ensure full collection of back taxes, assessments and fees, plus any interest and/or penalties that may be due on amounts owing, prior to and as a condition to the debtor seeking judicial review of liability.

By adding this provision broadly as Chapter 1.26, "Claims Against the City of Clayton," the intent is that this provision will apply broadly to any taxes, assessments and fees charged by the City, including those charged by agencies, districts and entities governed by or formed by the City. It is not limited to a single type of tax like in *Anaheim*. This will ensure that essential public services dependent on these funds are not unnecessarily interrupted.

The proposed ordinance will also add provisions to those subchapters of the municipal code governing local taxes that already exist (i.e., real property transfer tax, transient occupancy tax and sales and use tax) to clarify the procedure for seeking a refund of these taxes.

We recommend that you adopt the proposed ordinance to place this requirement in the Clayton Municipal Code in order to protect local tax revenue.

## **FISCAL IMPACT**

None.

Attachments: Ordinance No. 442.

**ORDINANCE NO. 442**

**AN ORDINANCE ADDING CHAPTER 1.26, SECTION 3.24.160 AND SECTION 3.28.160(E) TO THE CLAYTON MUNICIPAL CODE, AND AMENDING CLAYTON MUNICIPAL CODE SECTION 3.20.100, RELATING TO CLAIMS FOR REFUNDS OF TAXES AND ACTIONS CHALLENGING TAXES, ASSESSMENTS AND FEES**

**THE CITY COUNCIL  
City of Clayton, California**

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.**      **Amendment.** Chapter 1.26, entitled "Claims Against the City of Clayton," is hereby added to Title 1 of the Clayton Municipal Code, entitled "General Provisions," to read as follows:

**"Chapter 1.26**

**CLAIMS AGAINST THE CITY OF CLAYTON**

**Sections:**

- 1.26.010      Payment/Collection of Taxes, Assessments or Fees as Condition Precedent to Seeking Judicial Review
- 1.26.020      Prohibition of Class Actions Challenging Taxes, Assessments and Fees

**1.26.010**      **Payment/Collection of Taxes, Assessments or Fees as Condition Precedent to Seeking Judicial Review.** Notwithstanding any other provision of this Code, no injunction, writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City of Clayton or an officer thereof, to prevent or enjoin the collection of taxes, assessments or fees (whether established by ordinance, resolution or other action of the City Council), which are sought to be collected from any person/claimant, or are otherwise due and owing from any person/claimant to the City of Clayton pursuant to this Code or otherwise, and payment of all said taxes, assessments, fees, plus any interest and penalties shall be required as a condition precedent to seeking judicial review of any tax, assessment or fee liability. For purposes of this section, the term "City of Clayton" shall include, but not be limited to, any agency, district or entity formed or governed by the City of Clayton.

**1.26.020**      **Prohibition of Class Actions Challenging Taxes, Assessments and Fees.** No provision in this Code shall be deemed to permit the filing by or on behalf of a class or group, of a claim for refund of taxes, assessments or fees (whether established by ordinance, resolution or other action of the City Council), which have been paid to or collected by the City of Clayton. For purposes of this section, the term "City of Clayton" shall include, but not be limited to, any agency, district or entity formed or governed by the City of Clayton."

**Section 2.**      **Amendment.** Section 3.20.100 of the Clayton Municipal Code, entitled "Claims for Refund," of Chapter 3.20 of the Clayton Municipal Code, entitled "Real Property Transfer Tax," is hereby amended to read as follows:

**3.20.100**      **Claims for Refund.** Claims for refund of taxes imposed pursuant to this ordinance shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of

the Revenue and Taxation Code of the State of California, and shall be subject to the claim requirement set forth in Section 1.26.010 of this Code."

**Section 3.**      **Amendment.** Section 3.24.160, entitled "Claims for Refund," is hereby added to Chapter 3.24 of the Clayton Municipal Code, entitled "Transient Occupancy Tax," to read as follows:

**"3.24.160**      **Claims for Refund.** Claims for refund of taxes imposed pursuant to this ordinance shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the State of California, and shall be subject to the claim requirement set forth in Section 1.26.010 of this Code."

**Section 4.**      **Amendment.** Subsection 3.28.160(E) is hereby added to Section 3.28.160 of the Clayton Municipal Code, entitled "Claims for Refund," of Chapter 3.28 of the Clayton Municipal Code, entitled "Sales and Use Tax," to read as follows:

**"(E)**      Claims for refund of taxes imposed pursuant to this ordinance shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the State of California, and shall be subject to the claim requirement set forth in Section 1.26.010 of this Code."

**Section 5.**      **Action to Challenge This Ordinance.** Any action or proceeding to attack, review, set aside, void or annul this ordinance must be commenced and the service made on the City no later than ninety (90) days after the effective date of this ordinance.

**Section 6.**      **Severability.** Each of the provisions of this Ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

**Section 7.**      **Conflicting Ordinances Repealed.** Any ordinance or part thereof, or regulations in conflict with the provisions of this ordinance, are hereby repealed. The provisions of this ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this ordinance.

**Section 8.**      **CEQA.** The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

**Section 9.**      **Notice of Exemption.** The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this ordinance.

**Section 10.**      **Effective Date and Publication.** This ordinance shall become effective thirty (30) days after it is adopted by the City Council. Within fifteen (15) days after the passage of the ordinance, the City Clerk shall cause a copy of the ordinance, including the names of the City Council members voting for and against it, to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of Clayton, California held on the 1st day of May, 2012, and

**PASSED, ADOPTED AND ORDERED** posted by the City Council of Clayton, California at a regular public meeting thereof on \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST:

\_\_\_\_\_  
Laci J. Jackson, City Clerk

APPROVED AS TO FORM:

APPROVED BY ADMINISTRATION:

\_\_\_\_\_  
Malathy Subramanian, City Attorney

\_\_\_\_\_  
Gary A. Napper, City Manager

Attachments:

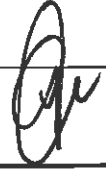
1. Cited Amendments to Municipal Code Sections

\_\_\_\_\_  
I hereby certify that the foregoing Ordinance was duly introduced at a regular public meeting of the City Council of Clayton, California held on \_\_\_\_\_, 2012 and was duly adopted, passed and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Laci J. Jackson, City Clerk



Agenda Date: 5-15-12  
Agenda Item: 9c

Approved:   
\_\_\_\_\_  
Gary A. Napper  
City Manager/Executive Director

# STAFF REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: RICK ANGRISANI, CITY ENGINEER**

**DATE: MAY 15, 2012**

**SUBJECT: DIRECTION FOR THE SCOPE OF WORK IN THE 2012 NEIGHBORHOOD STREET PAVEMENT REHABILITATION PROJECT (CIP PROJECT NO. 10411)**

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## RECOMMENDATION

Provide direction to Staff regarding the scope of work in the 2012 Neighborhood Street Pavement Rehabilitation Project and its Additive Bid Projects.

## BACKGROUND

The current Capital Improvement Program (FY 2011/12 – 2015/16) includes a 2012 Neighborhood Street Pavement Rehabilitation Project (CIP Project No. 10411).

The proposed funding sources and amounts for the project (combined with unused allocated funding from FY 2011) are as follows:

| Source       | FY 2011          | FY 2012          | Totals           |
|--------------|------------------|------------------|------------------|
| Gas Tax*     | \$184,144        | \$135,975        | \$320,119        |
| Measure J*   | \$151,173        | \$226,200        | \$377,373        |
| LS&RS*       |                  | \$285,438        | \$285,438        |
| <b>Total</b> | <b>\$335,317</b> | <b>\$647,613</b> | <b>\$982,930</b> |

\*actual or anticipated funding amounts as of 5/1/12

The Local Streets & Roads Shortfall ("LS&RS") Program funds are reserved for pavement rehabilitation and preventative maintenance projects located on the Federal-Aid System. For Clayton, the Federal-Aid system includes arterial and collector streets. However, being a

Date: May 15, 2012

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federal grant, the application and project approval process is lengthy and cumbersome. In addition, the grant distribution is based upon the federal fiscal year which begins on October 1<sup>st</sup>. Therefore, it is doubtful that we would receive project approval and funding allocation before January of 2013.

Also, since we are close to the beginning of the City's FY 2012-13 Budget, staff recommends combining the available City funding (\$697,492 - Gas Tax and Measure J) for both projects into a single project for this calendar year. Staff further recommends that the LS&RS funds be separated into a single project to be constructed in calendar year 2013.

### **DISCUSSION OF CANDIDATE STREETS**

Assuming the City Council agrees with staff's recommendations for combining the available funding and splitting off the federal funding into a separate project, staff has prepared the attached spreadsheet showing the pavement condition index ("PCI") for all streets with a ranking of 70 or below (after updating the ratings for the rehabilitation work completed with the 2010 Pavement Rehabilitation Project). The streets highlighted in brown are located in the Oakhurst Development and those highlighted in blue are eligible for the LS&RS funds.

After setting aside approximately \$30,000 for the repair of some severe dips and humps on Clayton Road and \$40,000 for design, bidding, construction inspection and contract administration, there will be \$627,500 remaining for construction. While the Clayton Road repairs would be eligible for LS&RS funding, staff does not recommend waiting another year to undertake the repairs. Based upon the bid prices for the 2010 pavement project, staff anticipates a unit price cost of approximately \$1.00 to \$1.05 per square foot for a 1-1/2" overlay with paving fabric (increased to a 2" thickness in cul-de-sac bulbs). Staff has prepared several options for the Council's consideration.

#### **Option 1**

Using the available construction funding of \$627,500 and starting at the bottom of the PCI rankings as we have in past years, we will be able to overlay 17 streets including the entire length of Regency Drive.

#### **Option 2 – Delay Regency Drive Rehabilitation**

As noted on the spreadsheet, the portion of Regency Drive between Marsh Creek Road and El Molino Drive is eligible for LS&RS funding. The overlay of the portion of Regency Drive from El Molino Drive to its westerly terminus is estimated at \$76,000.

This option proposes reserving \$76,000 from the available construction funding for this work and adding it to the LS&RS funding to permit the overlay of the entire length of Regency Drive when the LS&RS funds are made available to the City. This would reduce the available funding for this project to \$551,500. This reduced amount will still allow us to overlay 17 streets.



Date: May 15, 2012

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Since the LS&RS funding requires a local match of 11.47% (\$33,000), reserving the funding for the remainder of Regency Drive will satisfy that requirement.

**Option 3A – Addition of GHAD Funding**

The GHAD received funds from the settlement of the Presley lawsuit intended for the repair of streets damaged by the ongoing land movement in the Oakhurst development. There is approximately \$119,000 remaining from the settlement proceeds. Since Windmill Canyon Drive (street #11 - \$110,000) is located within the Oakhurst Development, this option proposes adding \$100,000 from the settlement proceeds to the original funding, increasing the available funding to \$727,500.

This increase in funding would allow the rehabilitation of 22 streets, including the entire length of Regency Drive.

**Option 3B – Addition of GHAD Funding + Delay of Regency Drive**

Similar to Option 2, this option would reserve \$76,000 from the current funding, including the addition of GHAD funds, and delay the work on Regency Drive until the LS&RS funding is available. This would reduce the available construction funding to \$651,500.

This change would also allow for the rehabilitation of 21 neighborhood streets.

Again, the reservation of \$76,000 would satisfy the local match requirement for the LS&RS funding.

**INCLUSION OF OTHER BID ITEMS**

In order to hopefully take advantage of lower unit prices, there are several pavement rehabilitation projects that staff would like to include as bid items (subject, of course, to funding availability):

- 1) Repair and overlay of Library parking lot (estimated cost of \$50,000);
- 2) Overlay of Heritage Trails and City Hall parking areas (estimated cost of \$26,000)
- 3) Overlay of Lydia Lane Park parking area (estimated cost of \$10,000)
- 4) Trail Grinding & Repaving – Mt. Diablo Creek trail from Center St. to Grenache Circle (estimated cost of \$38,000)

To try to avoid a similar situation as recently encountered with the Clayton Road Median Project, where the low bidder proposed higher prices for the additive bid items than the other bidders, staff is proposing to include the above items in the base bid while reserving the right to deduct them from the final contract without affecting the other bid prices. If successful, we will hopefully receive truly competitive prices for all of the work. If we are not satisfied with the bids received, we can still reject all of the bids and re-advertise the work.

Date: May 15, 2012

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Of the four bid items above, only the Trail Grinding & Repaving has had funds allocated for the work (Landscape Maintenance District). Assuming the Council agrees that the parking lots should be addressed at this time, staff will present recommendations for the funding sources when the construction contract is presented to the Council for award.

### **FISCAL IMPACT**

All of the neighborhood pavement rehabilitation options and the trail reconstruction work presented for the Council's consideration utilize funding which has already allocated and cannot be used for anything other than pavement rehabilitation and maintenance. There will be no impact to the City's General Fund regardless of the option chosen by the Council.

The parking lot repair items do not currently have a funding source and may have an impact on the City's General Fund should the Council decide to undertake the work.

### **CONCLUSION**

In conclusion, staff recommends the Council consider the options presented and direct staff to prepare construction plans and specifications and advertise for bids for the chosen option.

By this action staff expects the Project can go to competitive bid on 6/4/12, Council award of contract on 7/3/12, initiation of the Neighborhood Street Rehabilitation Project by 7/30/12 and completion by 9/15/12.

Attachments:

- 1) PCI Ratings by PCI – lowest to highest
- 2) List of Streets
- 3) Option 1 Exhibit
- 4) Option 2 Exhibit
- 5) Option 3A Exhibit
- 6) Option 3B Exhibit

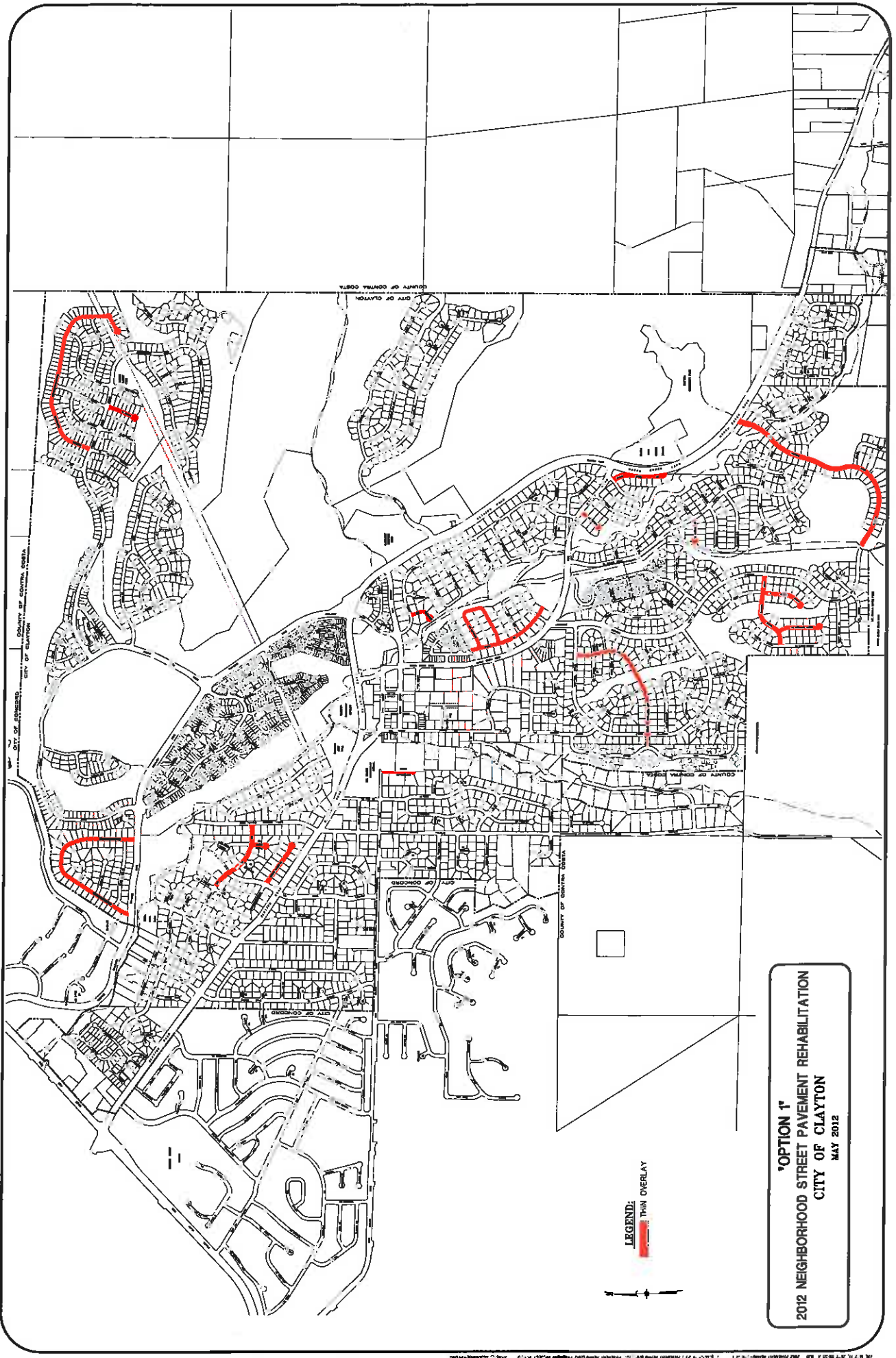
### STREETS TO BE OVERLAID

| <u>Option 1</u>                     | <u>Option 2</u>       | <u>Option 3A</u>                    | <u>Option 3B</u>      |
|-------------------------------------|-----------------------|-------------------------------------|-----------------------|
| Mt. Washington Way                  | Mt. Washington Way    | Mt. Washington Way                  | Mt. Washington Way    |
| W. Myrick Court                     | W. Myrick Court       | W. Myrick Court                     | W. Myrick Court       |
| Blackpoint Court                    | Blackpoint Court      | Blackpoint Court                    | Blackpoint Court      |
| Marsh Creek Circle                  | Marsh Creek Circle    | Marsh Creek Circle                  | Marsh Creek Circle    |
| Cabernet Court                      | Cabernet Court        | Cabernet Court                      | Cabernet Court        |
| Mt. Davidson Court                  | Mt. Davidson Court    | Mt. Davidson Court                  | Mt. Davidson Court    |
| Jeffry Ranch Place                  | Jeffry Ranch Place    | Jeffry Ranch Place                  | Jeffry Ranch Place    |
| Windmill Canyon Drive               | Windmill Canyon Drive | Windmill Canyon Drive               | Windmill Canyon Drive |
| Caulfield Drive                     | Caulfield Drive       | Caulfield Drive                     | Caulfield Drive       |
| Southbrook Drive                    | Southbrook Drive      | Southbrook Drive                    | Southbrook Drive      |
| Gamay Drive                         | Gamay Drive           | Gamay Drive                         | Gamay Drive           |
| Pine Hollow Court                   | Pine Hollow Court     | Pine Hollow Court                   | Pine Hollow Court     |
| Mt. Sequoia Place                   | Mt. Sequoia Place     | Mt. Sequoia Place                   | Mt. Sequoia Place     |
| Mt. Duncan Drive                    | Mt. Duncan Drive      | Mt. Duncan Drive                    | Mt. Duncan Drive      |
| Samuel Court                        | Samuel Court          | Samuel Court                        | Samuel Court          |
| Yolanda Circle                      | Yolanda Circle        | Yolanda Circle                      | Yolanda Circle        |
| Raven Place                         | Raven Place           | Raven Place                         | Raven Place           |
| Regency Drive<br>(To El Molino)     |                       | Regency Drive<br>(To El Molino)     |                       |
| Regency Drive<br>(El Molino to End) |                       | Regency Drive<br>(El Molino to End) |                       |
|                                     | Semillon Circle       | Semillon Circle                     | Semillon Circle       |
|                                     |                       | Mt. Sierra Place                    | Mt. Sierra Place      |
|                                     |                       | Mt. Whitney Court                   | Mt. Whitney Court     |
|                                     |                       | Ahwanee Lane                        | Ahwanee Lane          |
|                                     |                       |                                     | Mt. Everest Court     |
|                                     |                       |                                     | Jeffry Ranch Court    |

Eligible for LS&RS funding  
Oakhurst streets

| #  | Street Name           | Begin Location             | End Location                 | Length | Width | Area   | Year Inspected | PCI |
|----|-----------------------|----------------------------|------------------------------|--------|-------|--------|----------------|-----|
| 1  | PINE HOLLOW COURT     | PINE HOLLOW ROAD           | CUL-DE-SAC                   | 460    | 20    | 9200   | 2010           | 40  |
| 2  | MT. WASHINGTON WAY    | MT. ETNA DRIVE             | MOUNTAIRE CIRCLE             | 1915   | 33    | 63195  | 2010           | 46  |
| 3  | W. MYRICK COURT       | EL MOLINO DRIVE            | CUL-DE-SAC                   | 277    | 30    | 8310   | 2010           | 46  |
| 4  | BLACKPOINT COURT      | CAULFIELD DRIVE            | CUL-DE-SAC                   | 190    | 30    | 5700   | 2010           | 47  |
| 5  | MARSH CREEK CIRCLE    | Bigelow Street             | End of Street                | 775    | 29    | 22475  | 2010           | 47  |
| 6  | CABERNET COURT        | EASLEY COURT               | CUL-DE-SAC                   | 315    | 30    | 9450   | 2010           | 48  |
| 7  | MT. DAVIDSON COURT    | MT. DUNCAN                 | CUL-DE-SAC                   | 590    | 30    | 17700  | 2010           | 48  |
| 8  | JEFFRY RANCH PLACE    | N. ATCHINSON STAGE ROAD    | CUL-DE-SAC                   | 666    | 30    | 19980  | 2010           | 49  |
| 9  | WINDMILL CANYON DRIVE | Keller Ridge Drive         | Cul de sac                   | 2982   | 35    | 104370 | 2010           | 49  |
| 10 | CAULFIELD DRIVE       | N. ATCHINSON STAGE ROAD    | N. MITCHELL CANYON RD.       | 831    | 34    | 28254  | 2010           | 50  |
| 11 | SOUTHBROOK DRIVE      | DIABLO CREEK COURT         | N. ATCHINSON STAGE ROAD      | 317    | 34    | 10778  | 2010           | 50  |
| 12 | GAMAY DRIVE           | 100' N/SEMILLON CIRCLE     | 100' S/ ZINFANDEL CIRCLE     | 1244   | 34    | 42296  | 2010           | 50  |
| 12 | MT. SEQUOIA PLACE     | MT. DUNCAN ROAD            | CUL-DE-SAC                   | 610    | 30    | 18300  | 2010           | 50  |
| 13 | MT. DUNCAN DRIVE      | MOUNTAIRE PARKWAY          | MT. OLIVET COURT             | 1121   | 34    | 38114  | 2010           | 51  |
| 14 | SAMUEL COURT          | MARSH CREEK ROAD           | CUL-DE-SAC                   | 320    | 30    | 9600   | 2010           | 51  |
| 15 | YOLANDA CIRCLE        | CONCORD BLVD @ CTY LIMIT   | CONCORD BLVD 1200' N CTY LMT | 2628   | 32    | 84096  | 2010           | 52  |
| 16 | RAVEN PLACE           | Keller Ridge Drive         | Cul de sac                   | 461    | 37    | 17057  | 2010           | 53  |
| 17 | REGENCY DRIVE         | MARSH CREEK ROAD           | EL MOLINO DRIVE              | 1186   | 35    | 41510  | 2010           | 53  |
| 18 | REGENCY DRIVE         | EL MOLINO DRIVE            | MOUNTAIRE PARKWAY            | 2070   | 35    | 72450  | 2010           | 53  |
| 19 | SEMILLON CIRCLE       | GAMAY DR. N                | GAMAY DR. S                  | 1334   | 34    | 45356  | 2010           | 53  |
| 20 | MT. SIERRA PLACE      | MOUNTAIRE PLACE            | CUL-DE-SAC                   | 723    | 30    | 21690  | 2010           | 54  |
| 21 | MT. WHITNEY COURT     | MT. WHITNEY WAY            | CUL-DE-SAC                   | 185    | 30    | 5550   | 2010           | 54  |
| 22 | AHWANEE LANE          | Miwok Way                  | Cul de sac                   | 840    | 37    | 31080  | 2010           | 55  |
| 23 | MT. EVEREST COURT     | MOUNTAIRE PARKWAY          | CUL-DE-SAC                   | 627    | 30    | 18810  | 2010           | 55  |
| 24 | JEFFRY RANCH COURT    | N. ATCHINSON STAGE ROAD    | CUL-DE-SAC                   | 510    | 30    | 15300  | 2010           | 56  |
| 25 | DEL TRIGO LANE        | MITCHELL CANYON ROAD       | CITY LIMITS                  | 630    | 30    | 18900  | 2010           | 57  |
| 26 | WAWONA LANE           | Ahawnee                    | Cul-de-sac                   | 1040   | 37    | 38480  | 2010           | 58  |
| 27 | BLACK POINT PLACE     | CAULFIELD DRIVE            | CUL-DE-SAC                   | 563    | 30    | 16890  | 2010           | 60  |
| 28 | ZINFANDEL CIRCLE      | GAMAY DR. N.               | GAMAY DR. S.                 | 1342   | 34    | 45628  | 2010           | 61  |
| 29 | KELLER RIDGE DRIVE    | Falcon Place               | Miwok Way                    | 4467   | 37    | 165279 | 2010           | 62  |
| 30 | MT. OLIVET PLACE      | DUNCAN DRIVE               | CUL-DE-SAC                   | 590    | 30    | 17700  | 2010           | 64  |
| 31 | EL TORO COURT         | EL PUEBLO PLACE            | CUL-DE-SAC                   | 75     | 30    | 2250   | 2010           | 65  |
| 32 | MICHIGAN BLVD         | CITY LIMITS                | EL CAMINO DRIVE              | 204    | 32    | 6528   | 2010           | 66  |
| 33 | MT. OLIVET COURT      | MT. DUNCAN DRIVE           | CUL-DE-SAC                   | 691    | 30    | 20730  | 2010           | 66  |
| 34 | LA ENCINAL COURT      | El Pueblo Place            | Cul de sac                   | 733    | 29    | 21257  | 2010           | 67  |
| 35 | XAVIER PLACE          | MARQUETTE COURT            | CUL-DE-SAC                   | 128    | 32    | 4096   | 2010           | 67  |
| 36 | EL PORTAL DRIVE       | REGENCY DR                 | EL PUEBLO PL                 | 1310   | 26    | 34060  | 2010           | 68  |
| 37 | REDONDO COURT         | EL CAMINO DRIVE            | CUL-DE-SAC                   | 113    | 30    | 3390   | 2010           | 68  |
| 38 | WALLACE DRIVE         | N. MITCHELL CANYON ROAD    | CARDINET DRIVE               | 1200   | 30    | 36000  | 2010           | 68  |
| 39 | CARDINET DRIVE        | North Mitchell Canyon Road | Wallace Drive                | 1400   | 34    | 47600  | 2010           | 69  |
| 40 | TARA COURT            | NORTH END CUL-DE-SAC       | SOUTH END CUL-DE-SAC         | 282    | 22    | 6204   | 2010           | 69  |
| 41 | BLUE OAK LANE         | Wawona Lane                | Cul de sac                   | 1706   | 37    | 63122  | 2010           | 70  |
| 42 | KELLER RIDGE DRIVE    | Eagle Peak Avenue          | Falcon Place                 | 2978   | 40    | 119130 | 2010           | 70  |
| 43 | MT. WILSON WAY        | MARSH CREEK ROAD           | CLARK CREEK CIRCLE           | 1928   | 34    | 65552  | 2010           | 70  |
| 44 | OBSIDIAN WAY          | Wawona                     | Obsidian Court               | 1056   | 37    | 39072  | 2010           | 70  |

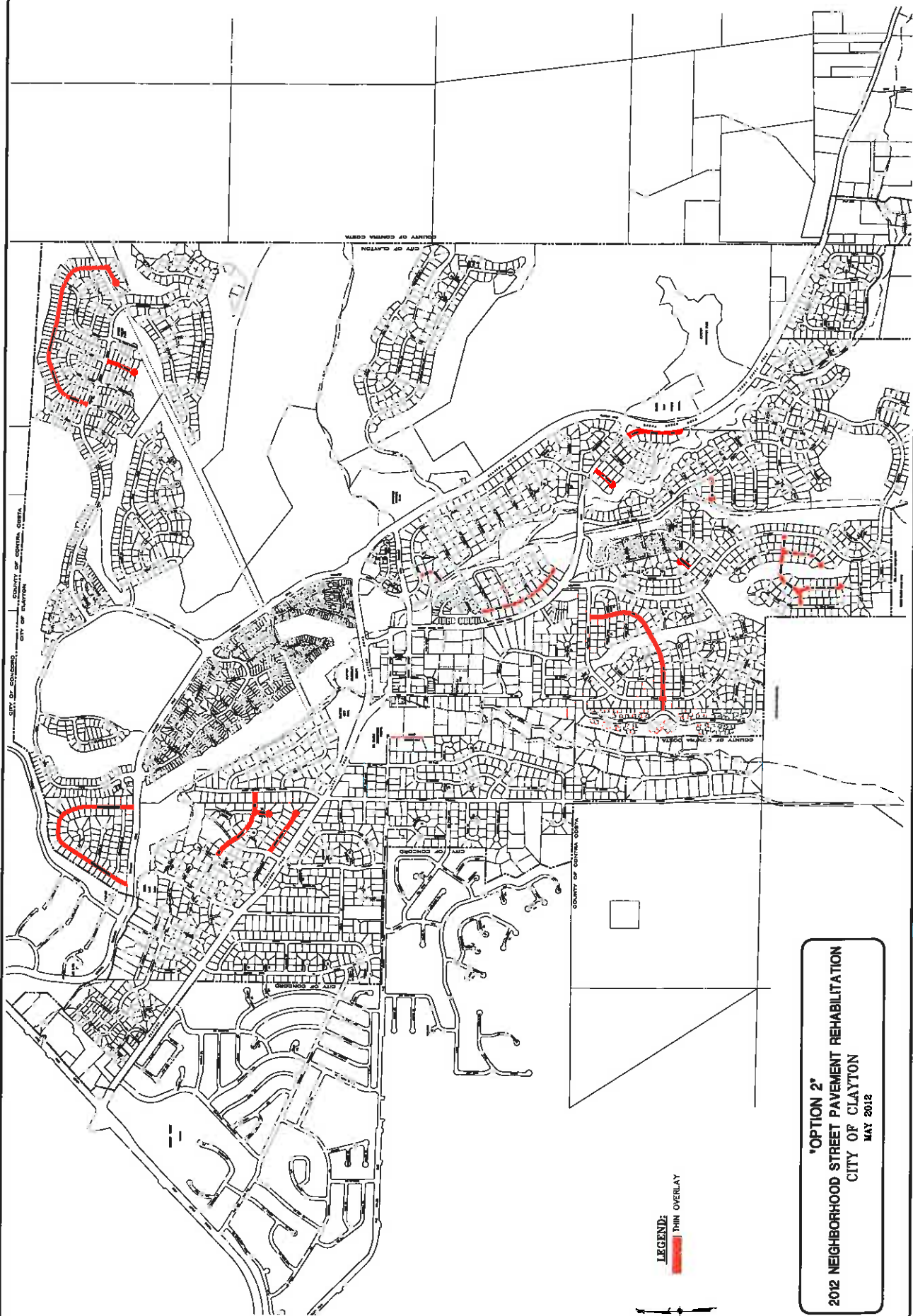
| Option 1               |                   | Option 2                          |                   | Option 3A                          |                   | Option 3B                          |                   |
|------------------------|-------------------|-----------------------------------|-------------------|------------------------------------|-------------------|------------------------------------|-------------------|
| Avail. \$627,500       |                   | Delay Regency<br>Avail. \$551,500 |                   | Add GHAD funds<br>Avail. \$727,500 |                   | Add GHAD/Delay<br>Avail. \$651,500 |                   |
| Overlay<br>@ \$1.05/sf | Overlay<br>Accum. | Overlay<br>@ \$1.05/sf            | Overlay<br>Accum. | Overlay<br>@ \$1.05/sf             | Overlay<br>Accum. | Overlay<br>@ \$1.05/sf             | Overlay<br>Accum. |
| \$ 9,660.00            | \$ 9,660.00       | \$ 9,660.00                       | \$ 9,660.00       | \$ 9,660.00                        | \$ 9,660.00       | \$ 9,660.00                        | \$ 9,660.00       |
| \$ 66,354.75           | \$ 76,014.75      | \$ 66,354.75                      | \$ 76,014.75      | \$ 66,354.75                       | \$ 76,014.75      | \$ 66,354.75                       | \$ 76,014.75      |
| \$ 8,725.50            | \$ 84,740.25      | \$ 8,725.50                       | \$ 84,740.25      | \$ 8,725.50                        | \$ 84,740.25      | \$ 8,725.50                        | \$ 84,740.25      |
| \$ 5,985.00            | \$ 90,725.25      | \$ 5,985.00                       | \$ 90,725.25      | \$ 5,985.00                        | \$ 90,725.25      | \$ 5,985.00                        | \$ 90,725.25      |
| \$ 23,598.75           | \$ 114,324.00     | \$ 23,598.75                      | \$ 114,324.00     | \$ 23,598.75                       | \$ 114,324.00     | \$ 23,598.75                       | \$ 114,324.00     |
| \$ 9,922.50            | \$ 124,246.50     | \$ 9,922.50                       | \$ 124,246.50     | \$ 9,922.50                        | \$ 124,246.50     | \$ 9,922.50                        | \$ 124,246.50     |
| \$ 18,585.00           | \$ 142,831.50     | \$ 18,585.00                      | \$ 142,831.50     | \$ 18,585.00                       | \$ 142,831.50     | \$ 18,585.00                       | \$ 142,831.50     |
| \$ 20,979.00           | \$ 163,810.50     | \$ 20,979.00                      | \$ 163,810.50     | \$ 20,979.00                       | \$ 163,810.50     | \$ 20,979.00                       | \$ 163,810.50     |
| \$ 109,588.50          | \$ 273,399.00     | \$ 109,588.50                     | \$ 273,399.00     | \$ 109,588.50                      | \$ 273,399.00     | \$ 109,588.50                      | \$ 273,399.00     |
| \$ 29,666.70           | \$ 193,477.20     | \$ 29,666.70                      | \$ 193,477.20     | \$ 29,666.70                       | \$ 193,477.20     | \$ 29,666.70                       | \$ 193,477.20     |
| \$ 11,316.90           | \$ 284,715.90     | \$ 11,316.90                      | \$ 284,715.90     | \$ 11,316.90                       | \$ 284,715.90     | \$ 11,316.90                       | \$ 284,715.90     |
| \$ 44,410.80           | \$ 329,126.70     | \$ 44,410.80                      | \$ 329,126.70     | \$ 44,410.80                       | \$ 329,126.70     | \$ 44,410.80                       | \$ 329,126.70     |
| \$ 19,215.00           | \$ 348,341.70     | \$ 19,215.00                      | \$ 348,341.70     | \$ 19,215.00                       | \$ 348,341.70     | \$ 19,215.00                       | \$ 348,341.70     |
| \$ 40,019.70           | \$ 388,361.40     | \$ 40,019.70                      | \$ 388,361.40     | \$ 40,019.70                       | \$ 388,361.40     | \$ 40,019.70                       | \$ 388,361.40     |
| \$ 10,080.00           | \$ 398,441.40     | \$ 10,080.00                      | \$ 398,441.40     | \$ 10,080.00                       | \$ 398,441.40     | \$ 10,080.00                       | \$ 398,441.40     |
| \$ 88,300.80           | \$ 486,742.20     | \$ 88,300.80                      | \$ 486,742.20     | \$ 88,300.80                       | \$ 486,742.20     | \$ 88,300.80                       | \$ 486,742.20     |
| \$ 17,909.85           | \$ 504,652.05     | \$ 17,909.85                      | \$ 504,652.05     | \$ 17,909.85                       | \$ 504,652.05     | \$ 17,909.85                       | \$ 504,652.05     |
| \$ 43,588.50           | \$ 548,237.55     | \$ -                              | \$ 504,652.05     | \$ 43,588.50                       | \$ 548,237.55     | \$ -                               | \$ 504,652.05     |
| \$ 76,072.50           | \$ 624,310.05     | \$ -                              | \$ 504,652.05     | \$ 76,072.50                       | \$ 624,310.05     | \$ -                               | \$ 504,652.05     |
|                        |                   | \$ 47,623.80                      | \$ 552,275.85     | \$ 47,623.80                       | \$ 671,933.85     | \$ 47,623.80                       | \$ 552,275.85     |
|                        |                   |                                   |                   | \$ 22,774.50                       | \$ 694,708.35     | \$ 22,774.50                       | \$ 575,050.35     |
|                        |                   |                                   |                   | \$ 5,827.50                        | \$ 700,535.85     | \$ 5,827.50                        | \$ 580,877.85     |
|                        |                   |                                   |                   | \$ 32,634.00                       | \$ 733,169.85     | \$ 32,634.00                       | \$ 613,511.85     |
|                        |                   |                                   |                   |                                    |                   | \$ 19,750.50                       | \$ 633,262.35     |
|                        |                   |                                   |                   |                                    |                   | \$ 16,065.00                       | \$ 649,327.35     |



**OPTION 1\***  
**2012 NEIGHBORHOOD STREET PAVEMENT REHABILITATION**  
**CITY OF CLAYTON**  
**MAY 2012**

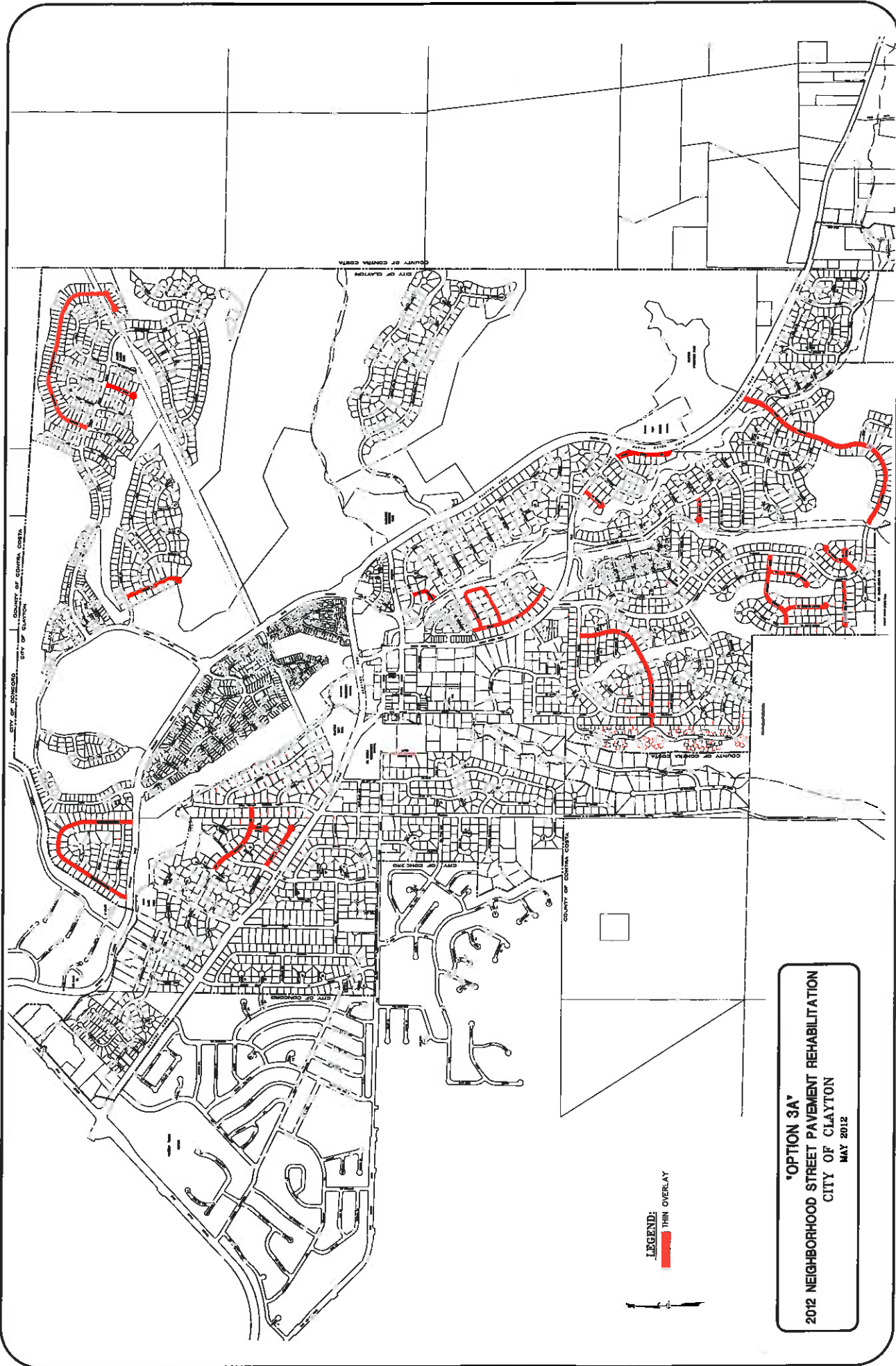
**LEGEND:**  
**THIN OVERLAY**

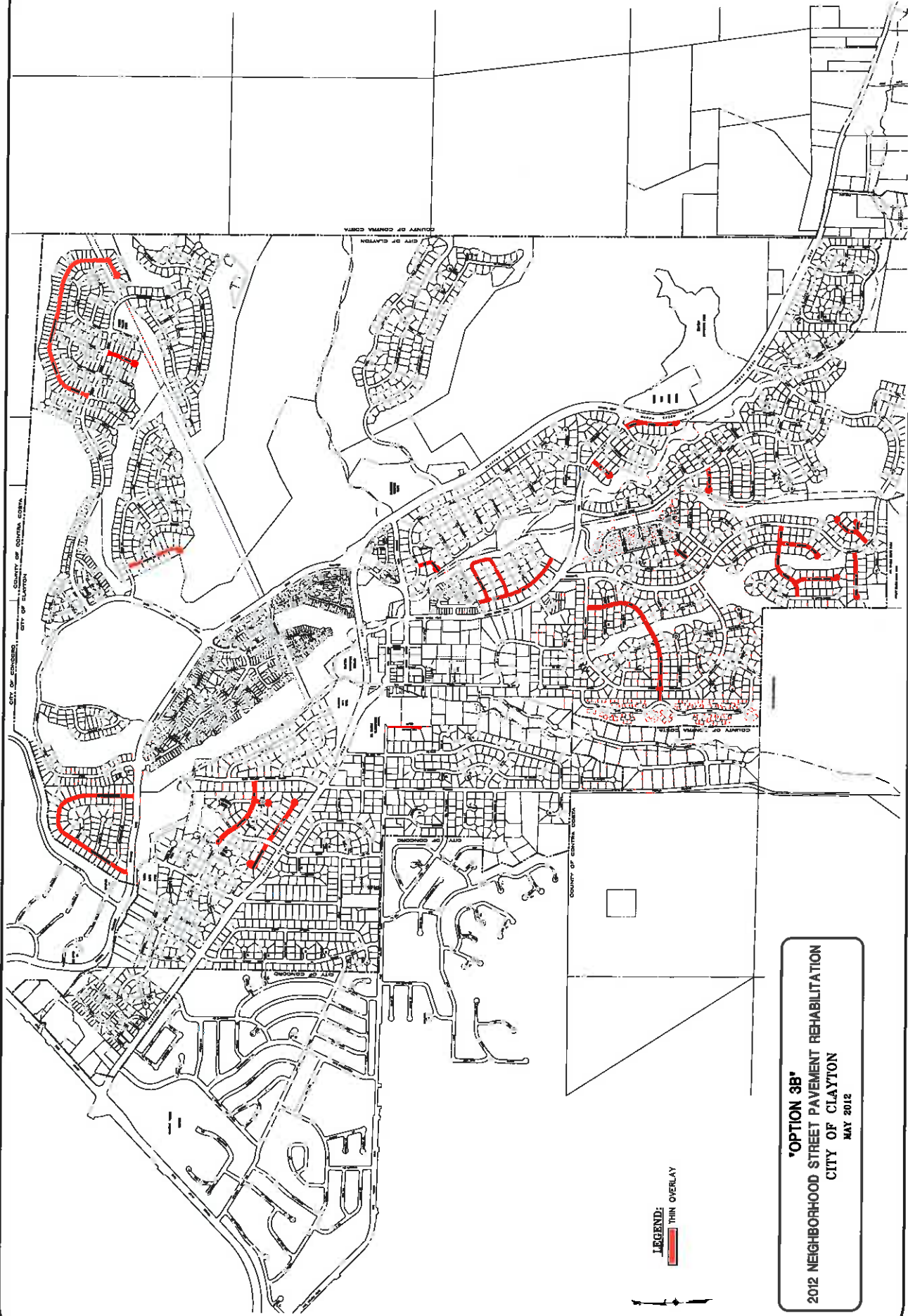




**\*OPTION 2\***  
**2012 NEIGHBORHOOD STREET PAVEMENT REHABILITATION**  
**CITY OF CLAYTON**  
**MAY 2012**

**LEGEND:**  
**THIN OVERLAY**





LEGEND:  
THIN OVERLAY

OPTION 3B'  
2012 NEIGHBORHOOD STREET PAVEMENT REHABILITATION  
CITY OF CLAYTON  
MAY 2012





Agenda Date: 5-15-12

Agenda Item: 9d

Approved:

Gary A. Napper  
City Manager

# AGENDA REPORT

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS, acting as the Successor Agency to the former Redevelopment Agency of the City of Clayton

**FROM:** CITY MANAGER

**DATE:** 15 MAY 2012

**SUBJECT:** APPROVE AGREEMENT WITH THE CITY OF CLAYTON  
REENTER REIMBURSEMENT OF PRIOR RDA LOANS TO CITY

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## **RECOMMENDATION**

It is recommended the City Council, acting in its capacity as the Successor Agency to the former Redevelopment Agency of the City of Clayton adopt a Resolution (attached) approving an Agreement with the City of Clayton reentering into reimbursement of two previous City loans to the former Clayton Redevelopment Agency (RDA).

## **BACKGROUND**

In June 1999, the City Council and the RDA Board approved an agreement selling title to unimproved City real property (approximately 1.18 acres) generally located at the southeast corner of Clayton Road and what is now Center Street. The RDA approved and executed a Promissory Note to the City in the principal amount of \$475,000.00 for the land with an annual interest rate of 6.5% until the principle loan was paid in full to the City on or before 01 January 2023. In turn, the RDA gifted the vacant parcel to the Central Contra Costa County Consolidated Fire District (now known as the Contra Costa County Fire Protection District) for its eventual construction of the existing Fire Station No. 11 on Center Street.

In calendar year 2009 while researching other matters on the RDA, it was discovered the City had never received payment for its "2% election" monies (approved by City Resolution No. 31-87 on 01 July 1987) when the RDA was initially created and established. The City's 2% election payments should have been transmitted directly from the County Auditor-Controller but were never made. Instead, the City's 2% election monies were mistakenly disbursed to the RDA. Through contacts with the County, the County Auditor-Controller's Office researched, acknowledged its error, and then calculated the amount due the City to be a total of \$501,898.64 for the 21-year oversight. By action on 16 February 2010 (RDA Resolution No. 02-2010), the RDA Board of Directors agreed to repay this full amount over a 4-year repayment schedule (without accrued interest) in an effort to honor the obligation owed the City yet not repay in one lump sum so as not to decimate the RDA's programs that

were already suffering under heavy-handed mandated State Budget diversions of local tax revenues (i.e., SERAF payment of \$1.966 million).

The four-year RDA payment scheduled called for an annual repayment of \$125,474.66 to the City starting in FY 2010-11. After this discovery, the City's annual 2% election payments have been transmitted directly to the City starting in FY 2010-11 and each year thereafter as long as the RDA (and the Successor Agency) remained in existence. The City is still due its full repayment of \$501,898.64 as of this date.

Combined, the two unpaid RDA loans owed the City amount to a total just shy of \$1 million (\$976,898.64).

### **DISSOLUTION OF THE RDA**

The infamous state legislation ABx1 26 (the "Dissolution Act"), enacted in July 2011 and confirmed in December 2011 as constitutional by the California Supreme Court, terminated all redevelopment agency activities in the state and dissolved each agency as of 01 February 2012. Among its more nefarious provisions is that, generally, loan agreements between a city and its redevelopment agency as described above are not Enforceable Obligations that will be honored, and the California Department of Finance (DOF) is universally vetoing any local actions to obligate such inter-agency repayments thru approval of one's Recognized Obligation Payment Schedules (ROPS). The Clayton Successor Agency did include these repayments for approval by the DOF and certification by the County Auditor-Controller. In related fact, remedial state legislation has passed the State Assembly (AB 1585) which would clarify the public policy to honor these lawful and contractual obligations. In dismay, the DOF is steadfastly rejecting all such local submittals throughout the state.

### **AUTHORIZATION TO REENTER LOAN AGREEMENTS**

The former RDA's and the current Successor Agency's special legal counsel (Karen Tiedemann, Esq.) has carefully reviewed the Dissolution Act and has advised her clients that Section 34178(a) of the California Health and Safety Code does allow and authorize a successor agency and its local governing body [i.e., city council] to reenter into said loan agreements provided the action receives Oversight Board approval. At its initial meeting held on 26 April 2012, Ms. Tiedemann advised the Oversight Board of this option and the Oversight Board swiftly and unanimously took action to approve such an agreement. It was the Oversight Board's clear expression and sentiment that these two (2) loan agreements were legally enacted during the lawful existence of the former Clayton Redevelopment Agency, that said loans not only benefited the City of Clayton but also its RDA, the Clayton community, and in particular the Contra Costa County Fire Protection District (a separate public taxing entity), and that it was not right for the state to deny the repayments.

Consequently, pursuant to Oversight Board action and recommendation, an Agreement has been prepared for both the City and the Successor Agency to approve, thereby reentering

into the original two (2) loan agreements and restoring the legal and ethical obligations owed the City of Clayton in this regard.

### **FISCAL IMPACT**

The City of Clayton is owed almost \$1 million from the former Clayton Redevelopment Agency, which repayment thereof has been thwarted and blocked by the State of California in shameful act and intent. ABx1 26 provisions (Section 34178(a)) allow the City and the Successor Agency to reenter into agreement to honorably repay the amounts committed to the City of Clayton during the wind down of Successor Agency affairs and payment of Enforceable Obligations. The \$976,898.64 owed the City would be General Fund monies that will greatly aid the City's continued capability to provide local services to its community.

Attachments:    1. Successor Agency Resolution [3 pp.]  
                      A. Agreement Reentering into Reimbursement of Prior Loan Agreements [13 pp.]

**RESOLUTION NO. - 2012**

**A RESOLUTION AUTHORIZING AND APPROVING AN  
AGREEMENT REENTERING INTO REIMBURSEMENT OF  
TWO PREVIOUS LOAN AGREEMENTS BY AND BETWEEN THE  
CITY OF CLAYTON AND THE SUCCESSOR AGENCY TO THE  
FORMER REDEVELOPMENT AGENCY OF THE CITY OF CLAYTON**

**THE SUCCESSOR AGENCY  
OF THE FORMER CLAYTON REDEVELOPMENT AGENCY  
City of Clayton, California**

**WHEREAS**, on June 15, 1999 at a public meeting thereof the former Redevelopment Agency of the City of Clayton (the "Agency") took action approving an Agreement with the City of Clayton (the "City") for its purchase of a real property (approximately 1.18 acres) from the City for a future fire station site to be constructed by the Central Contra Costa County Consolidated Fire District; and

**WHEREAS**, the Board of Directors of the former Redevelopment Agency of the City of Clayton, by adoption of Resolution No. 99-6, did approve and execute a Promissory Note to the City of Clayton for the sum of \$475,000.00 for said City land, which principle and interest amount was to fully be repaid on or before January 1, 2023; and

**WHEREAS**, on February 16, 2010 at a public meeting thereof the former Redevelopment Agency of the City of Clayton took action acknowledging and approving a four (4) year repayment plan (without interest incurred) to the City of Clayton in recognition of unpaid "2% Election" monetary payments due the City since inception of the Agency in 1987, which debt obligation of the Agency totaled a principle amount of \$501,898.64; and

**WHEREAS**, by legislative action of the State of California in the form of ABx1 26 (the "Dissolution Act"), every redevelopment agency in the state was terminated and dissolved effective February 1, 2012, including the former Redevelopment Agency of the City of Clayton; and

**WHEREAS**, the draconian nature of the Agency's demise caused its expiration before the Agency could fulfill its lawful intent and contractual agreement to repay the City the full monetary amounts due the City that were tendered in its support of the Agency's projects, programs and activities within the Redevelopment Project Area; and

**WHEREAS**, the Dissolution Act generally provides that such loan agreements described above between the former Agency and the City are not Enforceable Obligations yet the Dissolution Act does authorize the Successor Agency and the City, with Oversight Board approval, to reenter into said loan agreements pursuant to Section 34178(a) of the California Health and Safety Code; and

**WHEREAS**, at its duly-noticed public meeting held on April 26, 2012, the Oversight Board for the Successor Agency to the former Redevelopment Agency of the City of Clayton took action by unanimous vote authorizing the Successor Agency to reenter into the loan agreements described in the above Recitals; and

**WHEREAS**, upon the recommendation of staff and legal counsel the City Council, acting as the Successor Agency to the former Redevelopment Agency of the City of Clayton, has determined that reentering into the loan agreements noted above is in the best interests and welfare of the Successor Agency such that the City is fully repaid its monetary loans which benefited the Agency and the Clayton community alike.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California, acting as the Successor Agency to the former Redevelopment Agency of the City of Clayton, does hereby find and determine the following:

Section 1. The above Recitals are true and correct facts pertaining to this matter and combined with the presentations and recommendations by staff and legal counsel at this meeting coupled with its own determinations do constitute the basis for the City Council's action herein acting as the Successor Agency.

Section 2. That an Agreement Reentering into Reimbursement of Two Previous Loan Agreements by and between the City of Clayton and the Successor Agency to the Former Redevelopment Agency of the City of Clayton, a copy of said Agreement attached hereto as "Attachment A" and incorporated herein as if fully set forth, is hereby authorized and approved.

Section 3. The Mayor of the City of Clayton is herewith authorized to sign and execute said Agreement ("Attachment A") for and in behalf of the City Council of Clayton acting in behalf of the Successor Agency to the former Redevelopment Agency of the City of Clayton.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California, acting as the Successor Agency to the former Redevelopment Agency, at a regular public meeting thereof held on the 15<sup>th</sup> day of May 2012 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CALIFORNIA  
acting as the Successor Agency to the former Clayton Redevelopment Agency

---

Howard Geller, Mayor

ATTEST:

---

Laci J. Jackson, City Clerk

# # # # #

**AN AGREEMENT REENTERING INTO REIMBURSEMENT OF TWO  
PREVIOUS LOAN AGREEMENTS BY AND BETWEEN THE CITY OF  
CLAYTON AND THE SUCCESSOR AGENCY TO THE FORMER  
REDEVELOPMENT AGENCY OF THE CITY OF CLAYTON**

This Agreement Reentering into Reimbursement Agreement ("Agreement") is entered into this 15<sup>th</sup> day of May 2012 by and between the City of Clayton, a California municipal corporation ("City") and the City of Clayton acting as the Successor Agency to the former Redevelopment Agency of the City of Clayton ("Successor Agency").

**WHEREAS**, the City and the Redevelopment Agency of the City of Clayton ("Redevelopment Agency") entered into two (2) certain Loan Agreements, one dated 17 June 1999 attached hereto as Exhibit A and the second dated 16 February 2010 attached hereto as Exhibit B (collectively "Loan Agreements") whereby the City agreed to loan the former Redevelopment Agency funds to be used for purposes of completing projects and activities benefitting the Redevelopment Project Area and the community, of which the former Redevelopment Agency lawfully agreed to repay the City over time from available tax increment revenues; and

**WHEREAS**, on February 1, 2012, pursuant to ABx1 26 (the "Dissolution Act") the former Redevelopment Agency, along with all redevelopment agencies in the State of California, was dissolved, and all assets and obligations of the former Redevelopment Agency were transferred by operation of law to the Successor Agency and by affirmative action of the Clayton City Council at a regular public meeting thereof held on 17 January 2012 (ref. City Resolution No. 03-2012); and

**WHEREAS**, the Dissolution Act creates an oversight board for each redevelopment agency to oversee the wind down of the former Redevelopment Agency ("Oversight Board"); and

**WHEREAS**, the Dissolution Act requires that the Successor Agency prepare and the Oversight Board approve a Recognized Obligation Payment Schedule (ROPS) setting forth all Enforceable Obligations (as defined in the Dissolution Act) of the former Redevelopment Agency. The Dissolution Act generally provides that such Loan Agreements between the former Redevelopment Agency and the City are not Enforceable Obligations yet the Dissolution Act does authorize the Successor Agency and the City, with Oversight Board approval, to reenter into such loan agreements (ref. Section 34178(a) of the California Health and Safety Code); and

**WHEREAS**, at its 26 April 2012 duly noticed public meeting the Oversight Board for the Successor Agency by unanimous vote authorized the Successor Agency to reenter into the Loan Agreements noted and referenced above and attached hereto as Exhibits A and B; and

**WHEREAS**, the City and the Successor Agency have determined that reentering into the Loan Agreements is in the best interests of the City and the Successor Agency.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. The Successor Agency and the City hereby agree to reenter into the two Loan Agreements, attached hereto as Exhibits A and Exhibit B incorporated herein by reference, under the terms and conditions set forth in the Loan Agreements, provided, however, all references in the Loan Agreements to the Redevelopment Agency of the City of Clayton or Agency shall be deemed to refer to the Successor Agency. The City and the Successor Agency agree that notwithstanding anything set forth in the Loan Agreements, with approval of the Oversight Board the Successor Agency can prepay the full amount owed under the Loan Agreements at any time without penalty.
2. In executing this Agreement and reentering into the Loan Agreements, the City is acting in its capacity as a municipal corporation, while the Successor Agency is acting in its capacity as the successor to the former Redevelopment Agency; and both the City and the Successor Agency are acting pursuant to the specific authority granted by the Oversight Board and by Health & Safety Code Sections 34178(a) and 34180(h) authorizing agreements between the City and the Successor Agency. In consequence, the parties to this Agreement and the Loan Agreements are not merged.
3. Nothing in this Agreement shall be deemed to invalidate or amend the terms of the Loan Agreements, except as specifically amended by the provisions of this Agreement (the "Amendments"). The Loan Agreements shall remain in full force and effect according to its original terms, as modified by the Amendments, notwithstanding those provisions of the Dissolution Act regarding Enforceable Obligations.
4. Nothing in this Agreement shall abrogate, waive, impair or in any other manner affect the right or ability of the City to initiate and prosecute any litigation with respect to any agreement or other arrangement between the City and the former Redevelopment Agency, including, without limitation, any litigation contesting the purported invalidity of such agreement or arrangement pursuant to the Dissolution Act.
5. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.
6. Except as amended by the foregoing provisions of this Agreement, the Loan Agreements shall remain in full force and effect.
7. This Agreement shall take effect from and after the date of execution of this Agreement by both parties.



IN WITNESS WHEREOF, this Agreement has been executed by the parties hereof as of the date first written above.

**CITY OF CLAYTON, CALIFORNIA,  
a California municipal corporation**

---

Howard Geller, Mayor

Approved as to Form:

---

Mala Subramanian, City Attorney

Attest:

---

Laci J. Jackson, City Clerk

**CITY OF CLAYTON, CALIFORNIA,  
a California municipal corporation  
acting as the Successor Agency  
to the former Redevelopment Agency  
of the City of Clayton**

---

Howard Geller, Mayor

Approved as to Form:

---

Karen M. Tiedemann, Special Legal Counsel

Attest:

---

Laci J. Jackson, City Clerk

## STRAIGHT NOTE

\$475,000.00

Clayton, California

June 17, 1999

On or before January 1, 2023, for value received, the Clayton Redevelopment Agency promises to pay to the City of Clayton, or order, at 6000 Heritage Trail, Clayton, California, the sum of FOUR HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$475,000.00), with interest from July 1, 1999, until paid at the rate of six and one-half percent (6.5%) per annum, interest payable quarterly, commencing October 1, 1999.

Principal and interest payable in lawful money of the United States of America. Should default be made in payment of interest when due, the whole sum of principal and interest shall become immediately due at the option of the holder of this note and after said breach, said obligation shall continue to accrue interest at the rate of 6.5% per annum. This note is unsecured.

REDEVELOPMENT AGENCY OF THE  
CITY OF CLAYTON

By: Phyllis L. Peterson  
Chairperson

By: Robert Hill  
Executive Director

*This is an  
original  
document -  
Keep*

DO NOT DESTROY

**RESOLUTION NO. 99-6**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF CLAYTON AUTHORIZING EXECUTION OF AGREEMENT WITH THE CITY OF CLAYTON FOR PURCHASE OF FUTURE FIRE STATION SITE**

**WHEREAS**, the Redevelopment Agency of the City of Clayton proposes to purchase from the City of Clayton approximately 1.18 acres of unimproved land at the southeast corner of Clayton Road and the future extension of Oakhurst Drive in Clayton (herein the "Property"); and

**WHEREAS**, the Property is proposed as a site for the construction of a new fire station of the Central Contra Costa Consolidated Fire District (herein "Fire District"); and

**WHEREAS**, the City has been in negotiations with the Fire District concerning the construction and funding of a new fire station on such site; and

**WHEREAS**, as part of the plan for achieving the new fire station, the City shall sell the Property to the Agency who shall ultimately convey the same to the Fire District pursuant to an Agreement to be reached with the Fire District; and

**WHEREAS**, based upon information set forth in the staff report presented to the Agency in connection with its consideration of this Resolution, the Agency finds:

(a) The proposed buildings, facilities, structures and other improvements are of benefit to the Project Area or its immediate neighborhood; and

(b) No other reasonable means of financing the buildings, facilities, structures and other improvements are available to the community; and

(c) The payment of funds for the acquisition of land or the cost of improvements will assist in the elimination of one or more blighting conditions inside the Project Area is consistent with the Agency's implementation plan adopted pursuant to Section 33490 of the California Health and Safety Code; and

(d) The sale will assist in the elimination of blight; and

(e) The consideration to be paid for the Property is not less than the fair market value at its highest and best use in accordance with the Redevelopment Plan.

**WHEREAS**, an Agreement setting forth the terms for the purchase by the Agency from the City has been prepared by the City Attorney, and recommended for approval by the Executive Director, a true and correct copy of which is attached hereto.

**WHEREAS**, notice of a public hearing on the proposed expenditure of Agency funds as aforesaid and the ultimate conveyance of the Property to the Fire District for a new fire station

site has been given in accordance with Sections 33679 and 33433 of the California Health and Safety Code and a public hearing held before the Redevelopment Agency at its regular meeting of June 15, 1999.

**NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency of the City of Clayton that the Chairperson and Executive Director are hereby authorized to execute for and on behalf of the Agency, the Purchase and Sale Agreement for Future Fire Station Site in the form as set forth in Exhibit "A" and the Chairperson and Executive Director are authorized to take all appropriate steps to conclude the purchase of the Property from the City by the Agency as required by the Purchase and Sale Agreement.

Adopted by the Redevelopment Agency Board of Directors of the City of Clayton at a regular meeting of said Agency held on June 15, 1999, by the following vote:

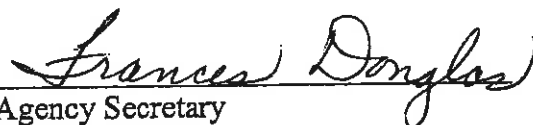
AYES: Agency Members Laurence, Littorno, Pierce, Vice Chair Manning,  
Chair Peterson

NOES: None

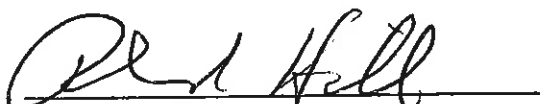
ABSENT: None

  
Chairperson

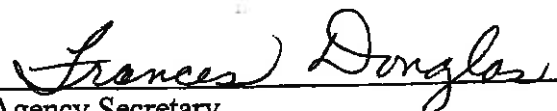
ATTEST:

  
Agency Secretary

APPROVED BY ADMINISTRATION:

  
Executive Director

I hereby certify that the foregoing resolution was duly and regularly passed by the Redevelopment Agency of the City of Clayton at a duly noticed regular meeting held on June 15, 1999.

  
Agency Secretary

## **PURCHASE AND SALE AGREEMENT**

### **FUTURE FIRE STATION SITE SOUTHEAST CORNER OF CLAYTON ROAD AND FUTURE EXTENSION OF OAKHURST DRIVE**

#### **1. PARTIES.**

This Agreement is made on June 17, 1999, between the CITY OF CLAYTON, a municipal corporation (herein referred to as "CITY") and the REDEVELOPMENT AGENCY OF THE CITY OF CLAYTON (herein referred to as "AGENCY").

#### **2. AGREEMENT TO SELL AND TO PURCHASE: DESCRIPTION OF PROPERTY.**

CITY agrees to sell, and AGENCY agrees to purchase, the 1.1 acre parcel more or less situated at the southeast corner of Clayton Road and the future extension of Oakhurst Drive in the City of Clayton, County of Contra Costa, California, more particularly described in Exhibit "A-1" attached hereto and made a part hereof including any subsequent adjustments to said parcel by lot line adjustment between the CITY and Presley Homes.

#### **3. PURCHASE PRICE.**

The purchase price for the property is FOUR HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$475,000.00), payable as follows:

By promissory note from AGENCY to CITY in the amount of the full purchase price, bearing interest at the rate of six and one half percent (6 1/2%) per annum, interest payable quarterly, the principal balance payable in full on or before January 1, 2023. Said note to be an obligation of the AGENCY and its assets but otherwise unsecured by the property.

#### **4. CLOSE OF TRANSACTION.**

The subject transaction shall close by recording of a Grant Deed from CITY to AGENCY in exchange for receipt of the aforementioned promissory note from AGENCY to CITY, all to be handled by CITY staff. AGENCY may elect to require title insurance in the amount of the purchase price at AGENCY'S cost, in which event AGENCY shall make the appropriate arrangements to obtain such insurance. Both CITY and AGENCY shall adopt resolutions approving this Agreement. Each parties obligation thereunder is subject to compliance with all applicable laws, rules or regulations covering sale by CITY and purchase by AGENCY of the property. Recordation shall occur when

both parties are prepared to conclude this purchase and AGENCY adopts a resolution accepting the Grant Deed for recordation.

**5. NO ASSIGNMENT OF AGREEMENT BY AGENCY.**

AGENCY may not assign this Agreement without CITY's prior written consent.

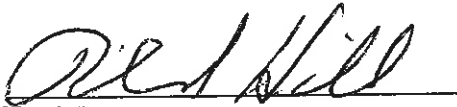
**6. NO REAL ESTATE AGENTS INVOLVED.**

The parties acknowledge that neither of them has been represented by any real estate agents in this transaction and there are no commissions or other obligations owing by either party to realtors or other sales agents.

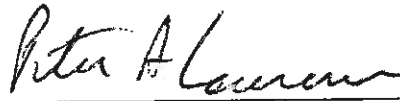
Executed in duplicate this 17<sup>th</sup> day of June, 1999.

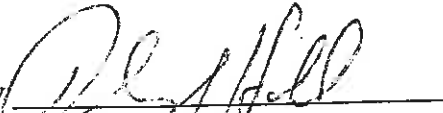
CITY OF CLAYTON

REDEVELOPMENT AGENCY OF  
THE CITY OF CLAYTON

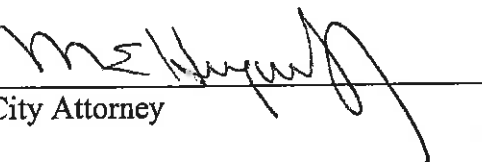
By   
City Manager

By   
Chairperson

By   
Mayor

By   
Executive Director

APPROVED AS TO FORM:

  
City Attorney

MEH:pcb/ph  
PurchaseandSaleAgrmt990609 (rev)

## **EXHIBIT A-1**

All that certain real property situated in the City of Clayton, Contra Costa County, California, being a portion of Parcel 1 as said parcel is shown on that certain Parcel Map entitled Parcel Map "MS 419-90" recorded August 19, 1993 in Book 163 of Parcel Maps at Page 1, Official Contra Costa County Records, more particularly described as follows:

Beginning at the most easterly terminus of that certain line annotated "T-7" on sheet 4 of 4 of said Parcel Map (163 PM 1); thence south  $14^{\circ} 06' 43''$  west 64.65 feet to a point on a tangent curve, concave to the northwest having a radius of 417.36 feet; thence southerly along the arc of said curve, an arc distance of 138.14 feet, through a central angle of  $18^{\circ} 57' 51''$  to a point from which the center bears north  $56^{\circ} 55' 25''$  west; thence south  $49^{\circ} 58' 59''$  east 84.94; thence south  $55^{\circ} 49' 19''$  east 34.65 feet; thence south  $75^{\circ} 18' 58''$  east 54.71 feet; thence north  $73^{\circ} 57' 13''$  east 58.91 feet; thence north  $17^{\circ} 26' 09''$  east 223.00 feet to the northerly line of said Parcel 1, said point being on a curve concave to the south, having a radius of 950.00 feet, whose center bears south  $26^{\circ} 48' 27''$  west; thence westerly along the arc of said curve as arc distance of 186.30 feet, through a central angle of  $11^{\circ} 14' 09''$  to a point from which the center bears south  $15^{\circ} 34' 17''$  west; thence continuing along the boundary of said parcel 1 south  $52^{\circ} 48' 31''$  west 32.43 feet to the point of beginning.

Containing 1.18 acres, more or less.

## Plat Map





**RDA RESOLUTION NO. 02- 2010****A RESOLUTION ACKNOWLEDGING AN UNPAID 2% ELECTION  
PAYMENT DUE THE CITY OF CLAYTON SINCE INCEPTION OF  
THE CLAYTON REDEVELOPMENT AGENCY AND ESTABLISHING  
A 4-YEAR PLAN FOR PAYMENT OF SAID DEBIT OBLIGATION****THE BOARD OF DIRECTORS  
Clayton Redevelopment Agency**

**WHEREAS**, the Clayton Redevelopment Agency ("Agency") was formed in July 1987 in accordance with *California Redevelopment Law* for a 50-year life to expire in July 2037; and

**WHEREAS**, during its formation the City Council of the City of Clayton, California did adopt Resolution No. 31-87 on 01 July 1987 ordering "2% election" payments to the City each year by the Agency, as authorized by Section 33676 of the *California Health and Safety Code*, in connection with the Clayton Redevelopment Project; and

**WHEREAS**, said 2% election payments to the City were to commence after the tax year in which the ordinance adopting the Clayton Redevelopment Plan became effective, namely Fiscal Year 1988-89; and

**WHEREAS**, during examination of the Agency's remaining fiscal status and condition during calendar year 2009, it was discovered by Agency staff and its consultant, Seifel Consulting, Inc., that these 2% election payments had never been made to the City of Clayton; and

**WHEREAS**, subsequent verification by Contra Costa County's Auditor-Controller of this payment omission resulted in the County's calculation that the Agency owes the City of Clayton a total of \$501,898.64 in unpaid 2% election payments from Fiscal Year 1988-89 through Fiscal Year 2008-09; and

**WHEREAS**, 2% election payments originate from the gross tax increment revenue collected each year for the Agency prior to the extraction of other public taxing entities' pass-through payments and Agency debt service; and

**WHEREAS**, due to the failure in allocating the 2% election payments to the City of Clayton during the last twenty one (21) fiscal years, the Agency now incurs a debit obligation to the City for the principal amount owed of \$501,898.64; and

**WHEREAS**, lump sum payment of the Agency's debit obligation could negatively impact the financial status of the Agency to perform its 5-Year Implementation Plan, achieve its mission to cure blight, and seriously disable the reserves of the Agency in the wake of a \$1.966 million illegal SERAF shift by the State of California this fiscal year.

**NOW, THEREFORE BE IT RESOLVED** by the Board of Directors of the Clayton Redevelopment Agency that:

1. The above Recitals are true and correct facts pertaining to the omission of the Agency making 2% election payments to the City of Clayton, California since Fiscal Year 1988-89 through Fiscal Year 2008-09, in accord with Section 33676 of the *California Health and Safety Code*.
2. The Board of Directors herein acknowledges and accepts the fact the Agency does owe the City of Clayton its past 2% election payments in the principal amount of \$501,898.64, and hereby wishes to correct this oversight and fulfill its monetary obligation in this regard.
3. In order to pay the debit obligation of \$501,898.64 without decimation of the Agency's existing reserves and future tax increment revenue allocations, the Board of Directors does herewith adopt and order the following 4-year payment plan to satisfy its fiscal obligation:

| <u>Fiscal Year</u> | <u>Non-Housing</u>   | <u>Affordable Housing</u> | <u>Total Funds</u>   |
|--------------------|----------------------|---------------------------|----------------------|
| 2010-11            | \$ 100,379.73        | \$ 25,094.93              | \$ 125,474.66        |
| 2011-12            | \$ 100,379.73        | \$ 25,094.93              | \$ 125,474.66        |
| 2012-13            | \$ 100,379.73        | \$ 25,094.93              | \$ 125,474.66        |
| 2013-14            | <u>\$ 100,379.73</u> | <u>\$ 25,094.93</u>       | <u>\$ 125,474.66</u> |
| <b>Totals:</b>     | <b>\$ 401,518.92</b> | <b>\$ 100,379.72</b>      | <b>\$ 501,898.64</b> |

4. The Board of Directors does hereby instruct its Executive Director to notify and provide a copy of this Resolution signed by its Chairman to the City of Clayton, California as good faith evidence of action taken to fully satisfy the 2% election debit obligation of the Agency over the next four (4) fiscal years, and to transmit to the Board for consideration any future action by the City Council of Clayton to call for acceleration of this payment plan due to the City's finding of fiscal plight.

**PASSED, APPROVED AND ADOPTED** by the Board of Directors of the Clayton Redevelopment Agency at a regular public meeting thereof held on the 16<sup>th</sup> day of February 2010 by the following vote:

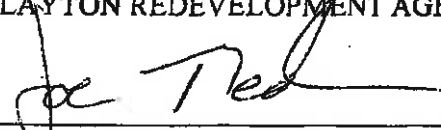
**AYES:** Chairman Medrano, Vice Chairperson Pierce, Boardmembers Geller, Shuey and Stratford.

**NOES:** None.

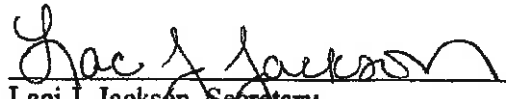
**ABSTAIN:** None.

**ABSENT:** None.

THE BOARD OF DIRECTORS  
CLAYTON REDEVELOPMENT AGENCY

  
\_\_\_\_\_  
Joseph A. Medrano, Chairman

ATTEST:

  
\_\_\_\_\_  
Laci J. Jackson, Secretary