



AGENDA

REGULAR JOINT MEETINGS

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CLAYTON CITY COUNCIL and OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (GHAD)

TUESDAY, July 17, 2012

6:15 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
- 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 AND GHAD***

July 17, 2012

6:15 P.M.

1. **CALL TO ORDER THE CITY COUNCIL** – Mayor Geller.
CALL TO ORDER THE GHAD BOARD OF DIRECTORS – Chairman Stratford.

2. **JOINT CLOSED SESSION** – by Mayor Geller and by Chairman Stratford.
 - (a) Conference with Legal Counsel
Government Code Section 54956.9 (a)
Pending Litigation: *Katzman, et al. v. City of Clayton, et al.* Coordinated Cases
Master/C07-01461/C07-00707, Superior Court, Contra Costa Co.

Reports Out from Closed Session: 1. Mayor Geller; and 2. Chairman Stratford.

3. **RECESS THE GHAD BOARD OF DIRECTORS MEETING** – Chairman Stratford.
(Until after the completion of the City Council's regular meeting)

7:00 P.M. CITY COUNCIL

4. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.
5. **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 July 3, 2012. ([View Here](#))
 - (b) Approve the Financial Demands and Obligations of the City. ([View Here](#))
 - (c) Adopt a Resolution ordering the annual levy of a Special Tax within the High Street Permanent Road Division (Fund 217) for FY 2012-2013. ([View Here](#))
 - (d) Adopt a Resolution ordering the annual levy of a Special Tax within the Oak Street Permanent Road Division (Fund 218) for FY 2012-2013. ([View Here](#))

- (e) Adopt a Resolution authorizing the levy of annual assessments for the Lydia Lane Sewer Assessment District in FY 2012-2013. ([View Here](#))
- (f) Adopt a Resolution authorizing the levy of annual assessments for the Oak Street Sewer Assessment District in FY 2012-2013. ([View Here](#))
- (g) Adopt two Resolutions accepting an Access Easement Deed and a Deed of Development Rights over portions of Lots 1 through 25, inclusive, in Subdivision 8719, Diablo Pointe (aka Diablo Estates at Clayton; off Rialto Drive). ([View Here](#))

6. RECOGNITIONS AND PRESENTATIONS

- (a) Proclamation declaring August 11th and 12th as “Relay for Life: Fight back against Cancer Days” in Clayton. ([View Here](#))

7. REPORTS

- (a) Planning Commission – Commissioner Sandra Johnson.
- (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

8. 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.

9. **PUBLIC HEARINGS**

- a) Public Hearing on the proposed levy of annual assessments on real properties in the Street Lighting Assessment District for FY 2012-2013, pursuant to Streets and Highways Code 18070 and CA Government Code 54954.6, and result of the Proposition 218 ballot for initial assessment of the 24 residential lots in Subdivision 8719 (Diablo Pointe/Estates). ([View Here](#))
(City Engineer)

Staff recommendations: **1)** Receive the staff report; **2)** Open the Public Hearing and receive public testimony; **3)** Close the Public Hearing; **4)** Have the City Clerk tabulate the votes on the Diablo Pointe ballot election for its real properties' assessment in the Street Lighting Assessment District and declare the vote thereof; and **5)** Adopt the Resolution declaring the lack of majority protest and setting the annual street lighting real property assessments for FY 2012-2013.

10. **ACTION ITEMS**

- (a) Consideration of a Resolution approving the two (2) Settlement Agreements resolving the Oakhurst Country Club Development construction defects and hillside movement-related various litigation:

1. Settlement Agreement and Partial Release of All Claims (between the City of Clayton, the Oakhurst Geological Hazard Abatement District, The Presley Companies, Presley Homes and William Lyon Homes, Inc.); and
2. Settlement Agreement, Release, and Covenant Not to Sue (between various named Plaintiffs and various named Defendants, including the City of Clayton). ([View Here](#))

(City Attorney)

Staff recommendation: Following staff report and public comment, that Council adopt the prepared Resolution.

- (b) Consider a Resolution establishing new fees and adjusting existing fees in the City Master Fee Schedule for certain user-benefit City services and rental of City facilities and parks in FY 2012-13. ([View Here](#))
(Asst. to the City Manager)

Staff recommendation: Following the Staff report and public comments, adopt the Resolution setting City fee rates for FY 2012-13.

- (c) Action Item of City serving as Successor Agency to the former Clayton RDA
Consideration of a Resolution of the City, acting as the Successor Agency, to approve and adopt its 3rd Recognized Obligation Payment Schedule (ROPS) covering the time period from January 2013 through June 2013, pursuant to California Redevelopment Law (ABx1 26 and AB 1484). ([View Here](#))
(Finance Manager)

Staff recommendation: Following staff report and public comment, that Council adopt the Resolution approving the ROPS III.

11. **COUNCIL ITEMS** – limited to requests and directives for future meetings.
12. **ADJOURNMENT**– the City Council meeting of August 7, 2012 has been cancelled; therefore, the next regularly scheduled City Council meeting is August 21, 2012.

#

*** OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT ***

July 17, 2012

1. RECONVENE AND CALL TO ORDER THE MEETING – Chairman Stratford.

2. PUBLIC COMMENTS

Citizens may address the Oakhurst Geological Hazard Abatement District (GHAD) Board on items within the Board's jurisdiction, (which are not on the agenda) by completing a speaker card and forwarding it to the Secretary. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Chairperson's discretion. When one's name is called by the Chair, the speaker shall advance to 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. Board Members may respond to statements made or questions asked, or may 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 Board.

3. CONSENT CALENDAR

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

(a) Information Only

1. Proposed GHAD News Release notifying Oakhurst Development property owners of the Kelok Way Dewatering Well Project. ([View Here](#))

(b) Approve the Oakhurst Geological Hazard Abatement District Board minutes for its regular meeting of March 6, 2012. ([View Here](#))

(c) Adopt a Resolution approving the two (2) Settlement Agreements resolving the Oakhurst Country Club Development construction defects and hillside movement-related various litigation:

1. Settlement Agreement and Partial Release of All Claims (between the City of Clayton, the Oakhurst Geological Hazard Abatement District, The Presley Companies, Presley Homes and William Lyon Homes, Inc.); and

2. Settlement Agreement, Release, and Covenant Not to Sue (between various named Plaintiffs and various named Defendants, including the Oakhurst Geological Hazard Abatement District). ([View Here](#))

(d) Adopt a Resolution awarding contract in the amount of \$648,873.00 to Engineered Soil Repairs, Inc. for construction of the Kelok Way Dewatering Well Project. ([View Here](#))

(e) Adopt a Resolution awarding contract in the amount of \$30,000.00 to Stevens, Ferrone & Bailey Engineering Company, Inc. for field inspection services related to the Kelok Way Dewatering Well Project. ([View Here](#))

4. PUBLIC HEARINGS

- (a) Public Hearing on the Geological Hazard Abatement District (GHAD) proposed real property assessments for Fiscal Year 2012-2013. ([View Here](#))
(District Manager)

Staff recommendations: **1)** Receive the District Manager's report; **2)** Open the Public Hearing and receive public comments; **3)** Close the Public Hearing; and **4)** Adopt the Resolution approving the District's levy of real property assessments for FY 2012-2013.

5. ACTION ITEMS – None.

6. BOARD ITEMS – limited to requests and directives for future meetings.

7. ADJOURNMENT – the next meeting of the GHAD Board of Directors will be scheduled as needed.

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**MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL
TUESDAY, July 3, 2012**

Agenda Date: 7/17/12

Agenda Item: 5 (a)

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:02 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, and Stratford. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Engineer Rick Angrisani, and City Clerk Laci Jackson.
2. **CLOSED SESSION** – None.
3. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.
4. **CONSENT CALENDAR**- It was moved by Councilmember Pierce, seconded by Councilmember Stratford, to approve the Consent Calendar as submitted (Passed; 5-0 vote).
 - (a) Information Only (no action)
 1. Planning Commission position paper on Solar Access Rights (CDD 01-12).
 - (b) Approved the minutes of the regular meeting of June 19, 2012.
 - (c) Approved the Financial Demands and Obligations of the City.
 - (d) Approved award of contract to Downtown Ford Sales in the amount of \$26,057.93 for the purchase of one new 2011 Ford Crown Victoria "Police Interceptor" as the FY 2012-13 replacement patrol vehicle for the Clayton Police Department.
 - (e) Authorized a flat fee donation in the amount of \$172 from the Clayton Woman's Club for use of the Clayton Library Meeting Room (Hoyer Hall) for its Annual Craft Sale on November 17th and 18th, 2012.
 - (f) Adopted Resolution 31-2012 authorizing the levy of annual tax assessments for Community Facility District No. 2007-1 (Landscape Maintenance District; Fund No. 210) in FY 2012-2013.
 - (g) Adopted Resolution 32-2012 authorizing the levy of annual tax assessments for Community Facility District No. 2006-1 (Downtown Park O & M; Fund No. 211) in FY 2012-2013.
 - (h) Adopted Resolution 33-2012 approving the one (1) year Addendum No. 4 to the 2006 base Memorandum of Agreement with the Clayton Undesignated Miscellaneous City Employees Group effective the Fiscal Year 2012-13.
 - (i) Adopted Resolution 34-2012 authorizing the levy of annual tax assessments for the Clayton Station Community Facility District No. 1990-2R; Fund No. 421) in the 2012-2013 Tax Year.

- (j) Approved an Agreement authorizing a three (3) month time extension (Addendum No. 4) to the 2008 base Memorandum of Understanding (MOU) and Addenda Nos. 1-3 with the Clayton Police Officers Association through September 30, 2012.
- (k) Adopted Resolution 35-2012 authorizing the levy of annual tax assessments for the Diablo View Middle School and Clayton Community Park Community Facility District No. 1990-1R (2007) for the Fiscal Year 2012-13.

5. RECOGNITIONS AND PRESENTATIONS

- (a) Mayor Geller recognized Bob Armstrong for his 6 years of civic service on the Clayton Planning Commission from July 2006 through June 2012 including its Chairman during 2009-2010. Mr. Armstrong thanked the Council for letting him serve and stated it was an honor.

6. REPORTS

- (a) Planning Commission – Commissioner Dan Richardson reported that at their last meeting the Commission approved a Home Occupation Permit for a beauty parlor in a home. The Commission also finalized a position paper for solar rights and appointed Dan Richardson as the new appointment to TRANSPAC (replacing Bob Armstrong).
- (b) Trails and Landscaping Committee – No meeting held.
- (c) The City Manager reported the State has approved its budget. The democrats approved the budget by the new 51% vote, and so far there are not a lot of impacts to cities, although the redevelopment trailer bills (e.g. AB 1484) could have a negative impact on the Successor Agency's low/moderate agency fund.
- (d) City Council

Councilmember Pierce attended the Sand Creek ground breaking on Route 4, a San Francisco Estuary boat cruise, a Contra Costa Council Transportation task force meeting, and a meeting with MTC.

Mayor Geller attended annual Meals on Wheels appreciation lunch, and a Central County Mayors' meeting. Lastly, he remind everyone about the Clayton 4th of July Parade and volunteers still needed.
- (e) Other – None.

7. PUBLIC COMMENTS – None.

8. PUBLIC HEARINGS- None.

9. ACTION ITEMS

- (a) Consideration of staff recommendation to reject the two (2) public works competitive bids received for the advertised 2012 Neighborhood Street Repaving Project (CIP No. 10411) due to both bids exceeding the Engineer's Estimate of \$675,000, and discussion with staff on rebidding the Project.

The City Engineer stated staff prepared a plan for a repaving project of selected residential streets, three public parking lots, and a trail segment. At the bid opening on June 26, 2012 only two bids were received and both were for more than \$1 million. He

stated staff was disappointed with the lack of interest in the project. He also stated the current bid is 40% over previous prices, 15% higher in material prices, and the unit prices received seemed high. He stated many of the companies who would have normally bid were busy with other projects and stated Caltrans has put out many projects which are keeping contracts busy. He stated staff believes we should reject these bids, try to generate more interest, and not re-bid until November in order to have a spring project.

Councilmember Pierce asked if area City Managers have talked about collectively putting together their street bids. The City Manager responded not in public works projects though cities have discussed working together to provide softer services such as IT support services.

Councilmember Pierce asked what the actual cost is for going out to bid again? The City Engineer responded it would cost about \$1,000.

Councilmember Shuey asked if every city does their paving projects every year or if they do larger projects every few years. The City Manager stated both but the reason Clayton typically does a project annually is to prevent more wear on the worst streets. He stated that is why our pavement condition index is always in the Top 6 in the county.

Councilmember Shuey asked if we decide to hold off for now are the funds at risk? The City Manager stated the funding comes from Gas Tax and from the Contra Costa Transportation Authority and the city's estimates on those funds is fairly conservative. He stated the project could be done next calendar year and Regency Drive would be done in the spring after Federal Funding is received.

Councilmember Shuey asked if these could all go out as one large project in the spring. The City Engineer responded once federal dollars come in there are environmental reviews and requirements to follow and they are federal guidelines not the state guidelines. Commingling projects is not the best when dealing with federal monies.

Vice Mayor Medrano stated he agreed to wait. He also suggested staff garner interest in the project before bidding. The City Engineer stated the biggest problem was not enough competition and this has never been a problem in the past.

Councilmember Shuey asked how many different companies have done the pavement work for the City in the past. The City Engineer stated three different companies recently but they are all booked through the season. He stated he spoke with several contractors and they would be available for an early spring 2013 project.

Vice Mayor Medrano asked how much more impact to street there would be if the project was postponed. The City Engineer stated there would be little impact.

Councilmember Shuey asked if we want to do two years' worth of projects at the same time and front the money for the project based on projected revenue from Gas Tax and CCTA in FY 2013-14? The City Engineer stated this project as proposed now will take care of the most serious problems and the project for next year would be more slurry seals. He also stated an updated pavement condition index is being prepared soon and could be used for preparing the bid in November.

The City Manager stated if the Council waits until spring, the City could bridge the funding but with the understanding there would not be another repaving project until 2014.

It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to adopt the Resolution rejecting each of the two (2) competitive bids received for the 2012 Neighborhood Street Repaving Project due to both bids exceeding the Engineer's Estimate, and rebid the project at a later date (Passed; 5-0 vote).

10. **COUNCIL ITEMS**

Vice Mayor Medrano inquired, with the current Chief of Police's pending retirement, if the Council should have a sub-committee or role in selecting the new Chief? The City Manager responded under this City's form of government, the Council-Manager, it is the City Manager's sole authority to hire and appoint department heads, including the Chief of Police. However, he stated he is willing to listen to any desired qualifications and experiences by the Council for the next Chief of Police.

11. **ADJOURNMENT**– On call by Mayor Geller the meeting adjourned at 7:50 p.m.

Respectfully submitted,

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

Howard Geller, Mayor



Agenda Date: 7/17/12

Agenda Item: 5b

Approved:

Gary A. Napper
City Manager/Executive Director

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MERRY PELLETIER, FINANCE MANAGER 

DATE: July 17, 2012

SUBJECT: INVOICE SUMMARY

RECOMMENDATION

Approve the following Invoices.

7/13/12	Cash Requirements Report	\$2,123,412.71
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TOTAL REQUEST

\$2,123,412.71

Attachments:

Cash Requirements Report dated 7/13/12 (6 pages)

City of Clayton

Cash Requirements Report

City Council Meeting 7/17/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount Expires On	Net Amount Due
Access One							
Access One	7/17/2012	7/2/2012	1273788	Long Distance	\$48.81	\$0.00	\$48.81
				Totals for Access One:	\$48.81	\$0.00	\$48.81
All-Guard Systems, Inc.							
All-Guard Systems, Inc.	7/17/2012	7/1/2012	A522474	Annual Fire and Burglary Monitoring	\$696.00	\$0.00	\$696.00
				Totals for All-Guard Systems, Inc.:	\$696.00	\$0.00	\$696.00
American Fidelity Assurance Company							
American Fidelity Assurance Company	7/17/2012	7/3/2012	777794-A	Employee billing benefit account	\$975.59	\$0.00	\$975.59
American Fidelity Assurance Company	7/17/2012	7/1/2012	A846542	employee optional benefits	\$256.82	\$0.00	\$256.82
				Totals for American Fidelity Assurance Company:	\$1,232.41	\$0.00	\$1,232.41
Arlene H. Kikkawa-Nielsen							
Arlene H. Kikkawa-Nielsen	7/17/2012	7/1/2012	July 2012	Library Volunteer Coordinator Fee July 2012	\$900.00	\$0.00	\$900.00
				Totals for Arlene H. Kikkawa-Nielsen:	\$900.00	\$0.00	\$900.00
AT&T Yellow Pages							
AT&T Yellow Pages	7/17/2012	6/23/2012	925-673-7300	6 months advertising	\$1,542.00	\$0.00	\$1,542.00
				Totals for AT&T Yellow Pages:	\$1,542.00	\$0.00	\$1,542.00
AT&T/ CalNet 2							
AT&T/ CalNet 2	7/17/2012	7/3/2012	7/3/12	June Phone Svcs	\$375.49	\$0.00	\$375.49
				Totals for AT&T/ CalNet 2:	\$375.49	\$0.00	\$375.49
Blackbaud							
Blackbaud	7/17/2012	5/16/2012	90443143	Maintenance Plan 12/13	\$2,594.34	\$0.00	\$2,594.34
				Totals for Blackbaud:	\$2,594.34	\$0.00	\$2,594.34
CalPERS Health							
CalPERS Health	7/3/2012	6/19/2012	707	July Health Premium	\$28,701.49	\$0.00	\$28,701.49
				Totals for CalPERS Health:	\$28,701.49	\$0.00	\$28,701.49
CalPERS Retirement							
CalPERS Retirement	7/17/2012	7/1/2012	7/1/12	City Council Retirement June 2012	\$446.60	\$0.00	\$446.60
CalPERS Retirement	7/17/2012	7/6/2012	PPE 6/24/12	PPE 6/24/12	\$21,105.87	\$0.00	\$21,105.87
CalPERS Retirement	7/17/2012	7/8/2012	7/8	PPE 7/8/12	\$23,753.71	\$0.00	\$23,753.71
				Totals for CalPERS Retirement:	\$45,306.18	\$0.00	\$45,306.18
CCC Animal Svcs Dept							
CCC Animal Svcs Dept	7/17/2012	6/19/2012	ASD M5609	Q1 Animal Control Svcs 7/1/12-9/30/12	\$14,525.50	\$0.00	\$14,525.50
				Totals for CCC Animal Svcs Dept:	\$14,525.50	\$0.00	\$14,525.50
CCC Auditor-Controller (Booking)							
CCC Auditor-Controller (Booking)	7/17/2012	7/12/2012	212183	Vincente Villacorta City of Clayton Demand	\$1,547,505.09	\$0.00	\$1,547,505.09

City of Clayton

Cash Requirements Report

City Council Meeting 7/17/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
CCC Office of the Sheriff, Forensic Services Division								
CCC Office of the Sheriff, Forensic Se	7/17/2012	7/3/2012	CLPD-212	Totals for CCC Auditor-Controller (Booking):	\$1,547,505.09	\$0.00		\$1,547,505.09
				blood withdrawal services April-June 2012	\$882.00	\$0.00		\$882.00
				Totals for CCC Office of the Sheriff, Forensic Services Division:	\$882.00	\$0.00		\$882.00
CCC Sheriff-Coroner (CLETS)								
CCC Sheriff-Coroner (CLETS)	7/17/2012	6/20/2012	12/13	12/13 Cal-ID	\$11,125.00	\$0.00		\$11,125.00
				Totals for CCC Sheriff-Coroner (CLETS):	\$11,125.00	\$0.00		\$11,125.00
City National Bank								
City National Bank	7/17/2012	7/15/2012	99-131	Loan Pmt. District # 1190-2	\$111,127.50	\$0.00		\$111,127.50
				Totals for City National Bank:	\$111,127.50	\$0.00		\$111,127.50
City of Concord								
City of Concord	7/17/2012	6/15/2012	28794	Live Scan Services	\$192.00	\$0.00		\$192.00
City of Concord	7/17/2012	7/6/2012	29082	Dispatch services	\$13,285.00	\$0.00		\$13,285.00
				Totals for City of Concord:	\$13,477.00	\$0.00		\$13,477.00
Clayton Valley/Concord Sunrise								
Clayton Valley/Concord Sunrise	7/17/2012	7/5/2012	7/5/12	refund deposit EH	\$397.00	\$0.00		\$397.00
				Totals for Clayton Valley/Concord Sunrise:	\$397.00	\$0.00		\$397.00
Clean Street								
Clean Street	7/17/2012	6/30/2012	67739	monthly sweep fee	\$3,500.00	\$0.00		\$3,500.00
				Totals for Clean Street:	\$3,500.00	\$0.00		\$3,500.00
Comcast								
Comcast	7/17/2012	7/5/2012	7/5	high speed internet	\$392.48	\$0.00		\$392.48
				Totals for Comcast:	\$392.48	\$0.00		\$392.48
Contra Costa Health Svc								
Contra Costa Health Svc	7/17/2012	7/3/2012	0512	SART Exam billing for May 2012	\$1,000.00	\$0.00		\$1,000.00
				Totals for Contra Costa Health Svc:	\$1,000.00	\$0.00		\$1,000.00
Contra Costa Water Dist.								
Contra Costa Water Dist.	7/17/2012	7/9/2012	A Series	Through 6/30/12	\$35,625.02	\$0.00		\$35,625.02
				Totals for Contra Costa Water Dist.:	\$35,625.02	\$0.00		\$35,625.02
Cropper Accountancy Corp								
Cropper Accountancy Corp	7/17/2012	6/30/2012	633	Audit - Financial Edge	\$750.00	\$0.00		\$750.00
				Totals for Cropper Accountancy Corp:	\$750.00	\$0.00		\$750.00
CSAC Excess Insurance Authority								
CSAC Excess Insurance Authority	7/17/2012	7/1/2012	1340072-IN	July-September 2012 EAP	\$312.00	\$0.00		\$312.00

City of Clayton

Cash Requirements Report

City Council Meeting 7/17/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
De Lage Landen Financial Services, Inc.				<i>Totals for CSAC Excess Insurance Authority:</i>				
De Lage Landen Financial Services, Inc.	7/17/2012	7/7/2012	14312896	Konica contract	\$312.00	\$0.00		\$312.00
Downtown Ford Sales				<i>Totals for De Lage Landen Financial Services, Inc.:</i>				
Downtown Ford Sales	7/17/2012	7/3/2012	219506	2011 Crown Vic 2FABP7BV6BX182691	\$431.68	\$0.00		\$431.68
Federal Express Corp.				<i>Totals for Downtown Ford Sales:</i>				
Federal Express Corp.	7/17/2012	6/29/2012	7-937-60105	shipping services	\$431.68	\$0.00		\$431.68
Globalstar LLC				<i>Totals for Federal Express Corp.:</i>				
Globalstar LLC	7/17/2012	6/16/2012	100000003957469	contract# 50132684	\$21.47	\$0.00		\$21.47
HdL Software, LLC				<i>Totals for Globalstar LLC:</i>				
HdL Software, LLC	7/17/2012	6/11/2012	0008723-IN	Business License Software Annual Maint FY 1	\$43.68	\$0.00		\$43.68
Health Care Dental Trust				<i>Totals for HdL Software, LLC:</i>				
Health Care Dental Trust	7/17/2012	7/10/2012	August 2012	Dental for August 2012	\$2,932.81	\$0.00		\$2,932.81
HUB Inter of CA Ins Svc				<i>Totals for Health Care Dental Trust:</i>				
HUB Inter of CA Ins Svc	7/17/2012	7/9/2012	7/9/12	Koll & Slaughter	\$2,822.49	\$0.00		\$2,822.49
Jarvis Fay Doporito & Gibson, LLP				<i>Totals for HUB Inter of CA Ins Svc:</i>				
Jarvis Fay Doporito & Gibson, LLP	7/17/2012	6/19/2012	4965	Chevron Property Tax Refund Dispute	\$479.19	\$0.00		\$479.19
Jarvis Fay Doporito & Gibson, LLP	7/17/2012	7/11/2012	7/11	June - Chevron Property Tax Refund Dispute	\$479.19	\$0.00		\$479.19
LarryLogic Productions				<i>Totals for Jarvis Fay Doporito & Gibson, LLP:</i>				
LarryLogic Productions	7/17/2012	7/5/2012	1260	City Council Meeting 7/3/12	\$127.55	\$0.00		\$127.55
Legal Defense Fund				<i>Totals for LarryLogic Productions:</i>				
Legal Defense Fund	7/17/2012	6/7/2012	43971	PORAC LDF Dues April-June 2012	\$164.48	\$0.00		\$164.48
Leo Daniel Construction Co				<i>Totals for Legal Defense Fund:</i>				
Leo Daniel Construction Co	7/17/2012	7/5/2012	0032	deposit refund	\$292.03	\$0.00		\$292.03
					\$275.00	\$0.00		\$275.00
					\$15.00	\$0.00		\$15.00
					\$500.00	\$0.00		\$500.00

City of Clayton

Cash Requirements Report

City Council Meeting 7/17/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount Expires On	Discount Expires On	Net Amount Due
Linda Slaughter				<i>Totals for Leo Daniel Construction Co:</i>	\$500.00	\$0.00		\$500.00
Linda Slaughter	7/17/2012	7/5/2012	025548	deposit refund EH	\$500.00	\$0.00		\$500.00
Lisa and Jon Van Brusselen				<i>Totals for Linda Slaughter:</i>	\$500.00	\$0.00		\$500.00
Lisa and Jon Van Brusselen	7/17/2012	7/5/2012	0010	deposit refund	\$1,331.85	\$0.00		\$1,331.85
Marty Koll				<i>Totals for Lisa and Jon Van Brusselen:</i>	\$1,331.85	\$0.00		\$1,331.85
Marty Koll	7/17/2012	7/5/2012	024934	deposit refund EH	\$500.00	\$0.00		\$500.00
Municipal Pooling Authority				<i>Totals for Marty Koll:</i>	\$500.00	\$0.00		\$500.00
Municipal Pooling Authority	7/17/2012	7/12/2012	7/12/12	Vehicle Damage policy Premium 12/13	\$1,830.00	\$0.00		\$1,830.00
Municipal Pooling Authority	7/17/2012	7/12/2012	July 2012	July Premiums	\$1,254.18	\$0.00		\$1,254.18
NBS Govt. Finance Group				<i>Totals for Municipal Pooling Authority:</i>	\$3,084.18	\$0.00		\$3,084.18
NBS Govt. Finance Group	7/17/2012	6/20/2012	61200094	Quarterly admin fees	\$4,884.50	\$0.00		\$4,884.50
Neopost Leasing (Mail Finance)				<i>Totals for NBS Govt. Finance Group:</i>	\$4,884.50	\$0.00		\$4,884.50
Neopost Leasing (Mail Finance)	7/17/2012	6/24/2012	N3364842	lease July/Aug	\$222.02	\$0.00		\$222.02
Pacific Telemanagement Svc				<i>Totals for Neopost Leasing (Mail Finance):</i>	\$222.02	\$0.00		\$222.02
Pacific Telemanagement Svc	7/17/2012	6/27/2012	410667	pay phone	\$73.00	\$0.00		\$73.00
Peace Officers Research Assoc of CA				<i>Totals for Pacific Telemanagement Svc:</i>	\$73.00	\$0.00		\$73.00
Peace Officers Research Assoc of CA	7/17/2012	6/15/2012	39412	PORAC PRA Dues	\$10.00	\$0.00		\$10.00
PERMCO, Inc.				<i>Totals for Peace Officers Research Assoc of CA:</i>	\$10.00	\$0.00		\$10.00
PERMCO, Inc.	7/17/2012	7/9/2012	9777	Retainer General Services	\$2,496.25	\$0.00		\$2,496.25
PERMCO, Inc.	7/17/2012	7/9/2012	9785	OH GHAD	\$175.13	\$0.00		\$175.13
PERMCO, Inc.	7/17/2012	7/9/2012	9786	OH GHAD	\$583.75	\$0.00		\$583.75
PERMCO, Inc.	7/17/2012	7/9/2012	9781	CTP #10411 Pavement rehab	\$971.80	\$0.00		\$971.80
PERMCO, Inc.	7/17/2012	7/9/2012	9782	Clayton Road Median Landscape	\$488.00	\$0.00		\$488.00
PERMCO, Inc.	7/17/2012	7/9/2012	9783	Street Light AD 11-12	\$122.00	\$0.00		\$122.00
PERMCO, Inc.	7/17/2012	7/9/2012	9784	Diablo Estates BAD	\$122.00	\$0.00		\$122.00
PERMCO, Inc.	7/17/2012	7/9/2012	9778	Diablo Pointe Plan Check	\$1,176.25	\$0.00		\$1,176.25
PERMCO, Inc.	7/17/2012	7/9/2012	9779	Diablo Pointe Construction Inspection	\$2,932.00	\$0.00		\$2,932.00

City of Clayton

Cash Requirements Report

City Council Meeting 7/17/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
PERMCO, Inc.	7/17/2012	7/9/2012	9780	Non-utility Construction activity permit inspe	\$41.50	\$0.00		\$41.50
				Totals for PERMCO, Inc.:	\$9,108.68	\$0.00		\$9,108.68
pmsigns								
pmsigns	7/17/2012	6/25/2012	17963	4th of July parade signs	\$103.92	\$0.00		\$103.92
				Totals for pmsigns:	\$103.92	\$0.00		\$103.92
Rita Howe								
Rita Howe	7/17/2012	6/29/2012	6/29	Petty Cash	\$107.47	\$0.00		\$107.47
				Totals for Rita Howe:	\$107.47	\$0.00		\$107.47
Sprint Comm (PD)								
Sprint Comm (PD)	7/17/2012	6/29/2012	703335311--127	Nextel	\$297.87	\$0.00		\$297.87
				Totals for Sprint Comm (PD):	\$297.87	\$0.00		\$297.87
Stockbridge General Contracting, Inc								
Stockbridge General Contracting, Inc	7/17/2012	5/31/2012	1	Project SGC12-017	\$54,482.03	\$0.00		\$54,482.03
Stockbridge General Contracting, Inc	7/17/2012	6/30/2012	2	Project SGC12-017	\$168,287.65	\$0.00		\$168,287.65
				Totals for Stockbridge General Contracting, Inc:	\$222,769.68	\$0.00		\$222,769.68
US Bank (CM 9690)								
US Bank (CM 9690)	7/17/2012	6/25/2012	3157568	Fiscal Agent Fees FY 12/13	\$2,200.00	\$0.00		\$2,200.00
				Totals for US Bank (CM 9690):	\$2,200.00	\$0.00		\$2,200.00
US Bank Corp Pymt System (Cal Card)								
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Supplies	\$486.62	\$0.00		\$486.62
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Geo Consultants	\$1,546.50	\$0.00		\$1,546.50
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	RIBBON	\$8.66	\$0.00		\$8.66
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	concert supplies	\$112.55	\$0.00		\$112.55
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	concert supplies	\$57.98	\$0.00		\$57.98
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Grove Park Supplies	\$818.86	\$0.00		\$818.86
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Supplies	\$817.22	\$0.00		\$817.22
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Trail supplies	\$1,063.11	\$0.00		\$1,063.11
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Vehicle Gas	\$766.94	\$0.00		\$766.94
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	supplies	\$516.91	\$0.00		\$516.91
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	landscape fuel	\$1,037.75	\$0.00		\$1,037.75
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	street lamps	\$62.23	\$0.00		\$62.23
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	park supplies	\$33.48	\$0.00		\$33.48
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Arrow board for new truck	\$2,884.17	\$0.00		\$2,884.17
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	supplies	\$703.80	\$0.00		\$703.80
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	postage	\$5.75	\$0.00		\$5.75
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Fuel	\$2,659.67	\$0.00		\$2,659.67
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	repair PAS	\$309.95	\$0.00		\$309.95
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	AED	\$6,000.00	\$0.00		\$6,000.00
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Supplies	\$106.56	\$0.00		\$106.56

City of Clayton

Cash Requirements Report

City Council Meeting 7/17/12

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	UPS fee	\$20.64	\$0.00		\$20.64
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	Training lunches	\$73.74	\$0.00		\$73.74
US Bank Corp Pymt System (Cal Card)	7/17/2012	5/22/2012	5/22/12	services	\$583.25	\$0.00		\$583.25
				Totals for US Bank Corp Pymt System (Cal Card):	\$20,676.34	\$0.00		\$20,676.34
US Bank Ops Ctr ATTN: TFM (RDA 96, 99)								
US Bank Ops Ctr ATTN: TFM (RDA 9	7/17/2012	6/25/2012	3154753	Admin Fees FY12/13	\$2,625.00	\$0.00		\$2,625.00
				Totals for US Bank Ops Ctr ATTN: TFM (RDA 96, 99):	\$2,625.00	\$0.00		\$2,625.00
Western Exterminator								
Western Exterminator	7/17/2012	6/30/2012	646481	June Services	\$334.50	\$0.00		\$334.50
				Totals for Western Exterminator:	\$334.50	\$0.00		\$334.50
				GRAND TOTALS:	\$2,123,412.71	\$0.00		\$2,123,412.71



Agenda Date: 7/17/12
Agenda Item: 5(c)

STAFF REPORT

Approved:

Gary A. Napper
City Manager/Executive Director

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION ORDERING THE LEVY OF A SPECIAL TAX WITHIN THE HIGH STREET PERMANENT ROAD DIVISION FOR FY 2012-13

RECOMMENDATION

Approve the attached Resolution.

BACKGROUND

The High Street Permanent Road Division was formed in 1999 to provide a mechanism for the included property owners to repay the City for funds advanced for the reconstruction of the High Street Bridge over Mitchell Creek. In addition, a portion of the annual levy is set aside to provide funds for the maintenance of the bridge.

The City agreed to fund half the cost of the bridge and the remainder was to be paid by the property within the Division. The Successor Agency funded the reconstruction of the bridge and repayment was spread over 30 years with a 6% interest rate. In addition, the annual levy includes an amount of \$60 per parcel dedicated to future bridge maintenance. The City has absorbed all of the administrative costs. Through the end of FY 2011-12 (eleven years), we have collected \$52,910 towards the construction costs (including interest) and \$3,900.00 for future maintenance.

In the Resolution it is noted there are several different levies. These amounts were based on a formula negotiated with the property owners when the Division was formed.

The first assessment for the repayment of the bridge construction costs was levied in FY 1999/00 and the final assessment for construction costs will be levied in FY 2028/29. It should be noted that the portion of the assessment for maintenance will continue thereafter.

FISCAL IMPACT

The annual assessment will produce \$4,370.00 in FY 2012-13. If this Resolution is not approved, money owed to the Successor Agency by the property owners will not be repaid and funds will not be available for future bridge maintenance.

CONCLUSION

Based upon the above, staff recommends the City Council approve this Resolution levying a special tax on the parcels located within the High Street Permanent Road Division.

Attachments: Resolution levying a Special Tax [2 pp.]

RESOLUTION NO.

**A RESOLUTION ORDERING THE LEVYING OF A SPECIAL TAX FOR FY 2012-13
WITHIN THE HIGH STREET PERMANENT ROAD DIVISION FOR THE
REPAYMENT OF FUNDS ADVANCED FOR THE RECONSTRUCTION OF THE
BRIDGE AND FUTURE MAINTENANCE PURSUANT TO THE STREETS AND
HIGHWAY CODE, ARTICLE 3, SECTION 1173, et. seq.**

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

WHEREAS, by passage of Resolution 34-98, the City Council ordered the formation of the High Street Permanent Road Division for the purpose of reconstructing and maintaining the High Street Bridge over Mitchell Creek; and

WHEREAS, the City Council received petitions, signed by a majority of the property owners within the Division, requesting construction of a new bridge over Mitchell Creek and the levy of a special tax to pay for the construction and for the future maintenance of the bridge; and

WHEREAS, the City Council called for an election on February 26, 1999 to approve the levying of a special tax; and

WHEREAS, the City Clerk and City Engineer then certified that ballots approving the special tax were received from more than two-thirds of the property owners in both number and valuation; and

WHEREAS, said special tax approved must be re-levied each fiscal year;

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

1. The City Council hereby orders the levy of special taxes for FY 2012-13 on those parcels within the High Street Permanent Road Division for the reconstruction and maintenance of the bridge over Mitchell Creek.
2. The annual tax rates for each parcel for the reconstruction and maintenance shall be as follows:

APN	Current Owner	Reconstruction	Maintenance	Total
119-050-036	Frank	\$545.00	\$60.00	\$605.00
119-050-008	City of Clayton	\$2,071.00	\$60.00	\$2,131.00
119-040-023	Morgan	\$545.00	\$60.00	\$605.00
119-040-024	Davis	\$364.00	\$60.00	\$424.00
119-040-021	Utlely	\$545.00	\$60.00	\$605.00

3. Said special taxes shall be levied and collected by the County of Contra Costa along with the regular property taxes.

PASSED, APPROVED and ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 17th day of July 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 July 17, 2012.

Laci J. Jackson, City Clerk



Agenda Date: 7/17/12
Agenda Item: 5(d)

STAFF REPORT

Approved:

Gary A. Napper
City Manager/Executive Director

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION ORDERING THE LEVY OF A SPECIAL TAX WITHIN THE OAK STREET PERMANENT ROAD DIVISION FOR FY 2012-13

RECOMMENDATION

Approve the attached Resolution.

BACKGROUND

The Oak Street Permanent Road Division was formed in 2000 to provide a mechanism for the included property owners to repay the City for funds advanced for the reconstruction of the Oak Street Bridge over Mitchell Creek. In addition, a portion of the annual levy is set aside to provide funds for the maintenance of the private portion of Oak Street.

The Redevelopment Agency funded the reconstruction of the bridge and repayment was spread over 20 years with a 7% interest rate. In addition, the annual levy has included an amount of \$350 per parcel dedicated to future road maintenance and \$92.01 per parcel for City administrative fees (10% of the levy for bridge construction and maintenance). Through the end of FY 2011-12, we have collected \$56,074.80 (\$51,311.80 in annual assessments plus \$4,763.00 from Reuben Gonzalez in 2005/06 to pay off his bridge assessment) for construction repayment, \$18,400 for maintenance (deposited in a separate fund), and \$6,971.00 for administration (deposited in City General Fund).

Due to the repaving of Oak Street after construction of the sewer line, we revised the maintenance schedule to provide for slurry seal treatments at 10 and 20 years after formation (2010 and 2020, respectively), along with an overlay at 30 years (2030). This revised schedule reduced the required maintenance levy to \$200.00 per parcel per year. Since we had been collecting \$350.00 per parcel per year, we suspended the maintenance

Date: July 17, 2012

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assessment for five years (ending with the 2010-11 assessment). This year we are again including an annual assessment of \$200.00 per parcel for road maintenance. Since recent pavement rehabilitation projects have not included any slurry seal work, we are delaying the scheduled slurry seal treatment of Oak Street until we have other slurry seal work being bid.

In the Resolution, it is noted that six parcels have a levy of \$847.14, one parcel has a levy of \$220.00, and two have levies of \$423.58. The original Division included 8 parcels, all levied equally. Since that time, one parcel was subsequently subdivided (Caspar) and that levy was reapportioned equally between the two lots. In addition, Mr. Gonzalez paid off his bridge assessment in FY 2005/06 and is now being assessed only for the maintenance of the road.

The first assessment for the repayment of the bridge construction costs was levied in FY 2000/01 and the final assessment for construction costs will be levied in FY 2019/20. It should be noted that the portion of the assessment for maintenance and City administration will continue thereafter.

FISCAL IMPACT

If this Resolution is not approved, money owed the Successor Agency for construction of the bridge by the property owners will not be repaid. The annual assessment for this fiscal year will produce a total of \$6,150.00.

CONCLUSION

Based upon the above, staff recommends the City Council approve this Resolution levying a special tax on the parcels located within the Oak Street Permanent Road Division.

Attachments: Resolution levying a Special Tax [2 pp.]

RESOLUTION NO.

A RESOLUTION ORDERING THE LEVYING OF A SPECIAL TAX FOR FY 2012-13 WITHIN THE OAK STREET PERMANENT ROAD DIVISION FOR THE REPAYMENT OF FUNDS ADVANCED FOR THE RECONSTRUCTION OF THE BRIDGE AND FUTURE MAINTENANCE PURSUANT TO THE STREETS AND HIGHWAY CODE, ARTICLE 3, SECTION 1173, et. seq.

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

WHEREAS, by passage of Resolution 66-99, the City Council ordered the formation of the Oak Street Permanent Road Division for the purpose of reconstructing and maintaining the Oak Street Bridge over Mitchell Creek and maintaining the private portion of Oak Street; and

WHEREAS, the City Council received petitions, signed by a majority of the property owners within the Division, requesting construction of a new bridge over Mitchell Creek and the levy of a special tax to pay for the construction and for the future maintenance of the bridge and road; and

WHEREAS, the City Council called for an election on May 1, 2000, to approve the levying of a special tax; and

WHEREAS, the City Clerk and City Engineer then certified that ballots approving the special tax were received from more than two-thirds of the property owners in both number and valuation; and

WHEREAS, the special tax approved must be re-levied each fiscal year;

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

1. The Council hereby orders the levy of special taxes for FY 2012-13 on those parcels within the Oak Street Permanent Road Division for the reconstruction and maintenance of the bridge over Mitchell Creek and the maintenance of the private portion of Oak Street.

2. The annual tax rates for each parcel for the reconstruction and maintenance shall be as follows:

APN	Owner	Construction	Maintenance	City Admin.	Total
119-040-027	Law	\$570.13	\$200.00	\$77.01	\$847.14
119-040-028	Schwitters	\$570.13	\$200.00	\$77.01	\$847.14
119-040-029	Gonzalez	\$0.00	\$200.00	\$20.00	\$220.00
119-040-030	Ludlow	\$570.13	\$200.00	\$77.01	\$847.14
119-040-031	Mrozowski	\$570.13	\$200.00	\$77.01	\$847.14
119-040-032	Hemstalk	\$570.13	\$200.00	\$77.01	\$847.14
119-040-033	Webb	\$570.13	\$200.00	\$77.01	\$847.14
119-040-036	Caspar	\$285.07	\$100.00	\$38.51	\$423.58
119-040-037	Caspar	\$285.07	\$100.00	\$38.51	\$423.58

3. The special taxes shall be levied and collected by the County of Contra Costa, California along with the regular property taxes.

PASSED, APPROVED and ADOPTED by the City Council of Clayton, California at a regular meeting of said Council held on July 17, 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 July 17, 2012.

Laci J. Jackson, City Clerk



Agenda Date: 7/17/12
Agenda Item: 5(e)

STAFF REPORT

Approved:

Gary A. Napper
City Manager/Executive Director

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION CONFIRMING THE LEVYING OF ASSESSMENTS WITHIN THE LYDIA LANE SEWER ASSESSMENT DISTRICT FOR FY 2012-13

RECOMMENDATION

Approve the attached Resolution.

BACKGROUND

The Lydia Lane Sewer Assessment District was formed to undertake the installation of sanitary sewers and laterals in the Lydia Lane and Verna Way area south of Clayton Road.

The City issued and sold bonds to provide the funding for the formation of the district and the construction of the sewers. The bonds are to be repaid by the property owners through assessments levied each year and collected by the County with their property taxes. Along with principal and interest costs, the assessments also include an administrative fee of \$150.00 per parcel to cover the City's overhead costs.

The first assessment was levied in FY 2002/03 and the final assessment will be levied in FY 2031/32.

The attached resolution confirms the proposed assessments for fiscal year 2012-13.

FISCAL IMPACT

The annual assessments will yield approximately \$18,400 for the Lydia Lane Sewer Assessment District for FY 2012-13. If this Resolution is not approved, the City would have

Subject: Lydia Lane Sewer Assessment District – Levy of Assessments

Date: July 17, 2012

Page 2 of 2

to pursue separate action against each assessed property owners to collect the monies due or default on the bonds.

CONCLUSION

Based upon the above, staff recommends the City Council approve this Resolution confirming the levying of annual assessments in the Lydia Lane Sewer Assessment District.

Attachments: Resolution Confirming Assessments [3 pp.]

RESOLUTION NO.

**A RESOLUTION CONFIRMING THE LEVYING OF ASSESSMENTS FOR
FY 2012-13 WITHIN THE LYDIA LANE SEWER ASSESSMENT DISTRICT
FOR THE REPAYMENT OF BONDS ISSUED FOR THE CONSTRUCTION OF
MUNICIPAL SANITARY SEWERS.**

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

WHEREAS, by passage of Resolution 36-2002, the City Council ordered the formation of the Lydia Lane Sewer Assessment District in accordance with and pursuant to the Municipal Improvement Act of 1913; and

WHEREAS, the City of Clayton issued and sold bonds in the amount of \$228,332.00 to fund the construction of municipal sanitary sewers in the Lydia Lane Assessment District which must be repaid by the real property owners within the assessment district; and

WHEREAS, the repayment of the bond costs by the real property owners is provided through the levying and inclusion of an annual assessment, for principal, interest and administrative costs, on each real property owner's County property tax bill; and

WHEREAS, the proposed assessments for Fiscal Year 2012-13 are shown on Exhibit A attached hereto;

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

1. The City Council hereby orders the levy of assessments for FY 2012-13 on those parcels within the Lydia Lane Sewer Assessment District for repayment of bonds issued for the construction of municipal sanitary sewers within the assessment district.
2. The annual assessment for each parcel in each assessment district shall be as shown on Exhibit A attached hereto.
3. The assessments shall be levied and collected by the County of Contra Costa along with the regular property taxes.

PASSED, APPROVED and ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 17th day of July 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 July 17, 2012.

Laci J. Jackson, City Clerk

EXHIBIT A

**ANNUAL ASSESSMENT AMOUNTS FOR FY 2012-13
FOR THE LYDIA LANE SEWER ASSESSMENT DISTRICT**

Lydia Lane Sewer Assessment District	
Parcel ID (APN)	Amount
120-042-005	\$972.38
120-042-006	\$972.38
120-043-007	\$972.38
120-043-009	\$972.38
120-051-007	\$1,209.18
120-051-008	\$1,209.18
120-051-010	\$1,209.18
120-052-003	\$1,209.18
120-052-004	\$1,209.18
120-052-005	\$1,209.18
120-052-006	\$1,209.18
120-052-009	\$1,209.18
120-052-011	\$1,209.18
120-052-015	\$1,209.18
120-052-016	\$1,209.18
120-052-017	\$1,209.18
Total Assessment	\$18,399.68



Agenda Date: 7/17/12
Agenda Item: 5(F)

STAFF REPORT

Approved:


Gary A. Napper
City Manager/Executive Director

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION CONFIRMING THE LEVYING OF ASSESSMENTS WITHIN THE OAK STREET SEWER ASSESSMENT DISTRICT FOR FY 2012-13

RECOMMENDATION

Approve the attached Resolution.

BACKGROUND

The Oak Street Sewer Assessment District was formed to undertake the installation of sanitary sewers and laterals in their respective neighborhoods.

The City issued and sold bonds to provide the funding for the formation of the district and the construction of the sewers. The bonds are to be repaid by the property owners through assessments levied each year and collected by the County with their property taxes. Along with principal and interest costs, the assessments also include an administrative fee of \$150.00 per parcel to cover the City's overhead costs.

The first assessment was levied in FY 2003/04 and the final assessment will be levied in FY 2026/27.

The attached resolution confirms the proposed assessments for fiscal year 2012-13.

FISCAL IMPACT

The annual assessments will yield approximately \$12,600 for the Oak Street Sewer Assessment District for FY 2012-13. If this Resolution is not approved, the City would have

Subject: Oak Street Sewer Assessment District – Levy of Assessments

Date: July 17, 2012

Page 2 of 2

to pursue separate action against each of the assessed property owners for collection or default on the bonds.

CONCLUSION

Based upon the above, staff recommends the City Council approve this Resolution confirming the levying of annual assessments in the Oak Street Sewer Assessment District.

Attachments: Resolution Confirming Assessments [3 pp.]

RESOLUTION NO.

**A RESOLUTION CONFIRMING THE LEVYING OF ASSESSMENTS FOR
FY 2012-13 WITHIN THE OAK STREET SEWER ASSESSMENT DISTRICT
FOR THE REPAYMENT OF BONDS ISSUED FOR THE CONSTRUCTION OF
MUNICIPAL SANITARY SEWERS.**

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

WHEREAS, by passage of Resolution 62-2002, the City Council ordered the formation of the Oak Street Sewer Assessment District in accordance with and pursuant to the Municipal Improvement Act of 1913; and

WHEREAS, the City of Clayton issued and sold bonds in the amount of \$187,000.00 to fund the construction of municipal sanitary sewers in the Oak Street Assessment District which must be repaid by the real property owners within the assessment district; and

WHEREAS, the repayment of the bond costs by the real property owners is provided through the levying and inclusion of an annual assessment, for principal, interest and administrative costs, on each property owner's County property tax bill; and

WHEREAS, the proposed assessments for Fiscal Year 2012-13 are shown on Exhibit A attached hereto;

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

1. The Council hereby orders the levy of assessments for FY 2012-13 on those parcels within the Oak Street Sewer Assessment Districts for repayment of bonds issued for the construction of municipal sanitary sewers within the assessment district.
2. The annual assessment for each parcel in each assessment district shall be as shown on Exhibit A attached hereto.
3. The assessments shall be levied and collected by the County along with the regular property taxes.

PASSED, APPROVED and ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on July 17, 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 Clayton, California at a regular public meeting thereof held on July 17, 2012.

Laci J. Jackson, City Clerk

EXHIBIT A

**ANNUAL ASSESSMENT AMOUNTS FOR FY 2012-13
FOR THE OAK STREET SEWER ASSESSMENT DISTRICT**

Oak Street Sewer Assessment District	
Parcel ID (APN)	Amount
119-040-021	\$1,143.64
119-040-023	\$1,143.64
119-040-024	\$1,143.64
119-040-027	\$1,143.64
119-040-028	\$1,143.64
119-040-030	\$1,143.64
119-040-032	\$1,143.64
119-040-033	\$1,143.64
119-040-036	\$1,143.64
119-040-037	\$1,143.64
119-050-036	\$1,143.64
Total Assessment	\$12,580.04



Agenda Date: 7/17/12
Agenda Item: 5(g)

STAFF REPORT

Approved:

Gary A. Napper
City Manager/Executive Director

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF RESOLUTIONS ACCEPTING AN ACCESS EASEMENT DEED AND A DEED OF DEVELOPMENT RIGHTS OVER PORTIONS OF LOTS 1 THROUGH 25, INCLUSIVE, IN SUBDIVISION 8719, DIABLO POINTE

RECOMMENDATION

Approve the attached Resolutions.

BACKGROUND

The development of Subdivision 8719, Diablo Pointe (aka Diablo Estates at Clayton) by Toll Bros., Inc., has evolved significantly from its original concepts under Lemke Construction.

The approval of the new houses proposed by Toll subjected the project to the latest stormwater treatment requirements including the construction of filtration planters on each lot. Additional conditions of approval were also imposed to insure that the sloped "natural" areas on each lot remained undeveloped in perpetuity. The duties, and budget, of the Diablo Estates at Clayton Benefit Assessment District ("BAD") have already been expanded to include maintenance of the additional stormwater facilities and the weed abatement of the sloped areas.

Toll Bros. is anticipating closing on its first house within the next week. Therefore, we must begin the process of accepting the various deeds and offers of dedication that will affect the lots. The first two items being presented to the Council are a Deed of Development Rights and an Easement Deed for City access.

The Deed of Development Rights covers the sloped areas of Lots 1 through 24 and all of Lot 25 (the lot being granted to Save Mt. Diablo). The Deed prohibits grading, landscaping and

Date: July 17, 2012

Page 2 of 2

the construction of any structures within the areas described in the deed. The Easement Deed for access covers the sloped areas of Lots 1 through 24 and allows the City to enter onto the described areas to perform the duties of the BAD.

FISCAL IMPACT

There is no fiscal impact due to this action.

CONCLUSION

Based upon the above, staff recommends the City Council approve the attached Resolutions accepting the Deeds and directing the City Clerk to record the resolutions in the Office of the County Recorder.

Attachments: Deed of Development Rights [16 pp.]
 Resolution Accepting Deed of Development Rights [2 pp.]
 Easement Deed [15 pp.]
 Resolution Accepting Easement Deed [2 pp.]

RESOLUTION NO. -2012

**A RESOLUTION ACCEPTING A DEED OF DEVELOPMENT RIGHTS OVER A
PORTION OF LOTS 1 THROUGH 24, INCLUSIVE, AND ALL OF LOT 25. OF
SUBDIVISION 8719, DIABLO POINTE (AKA DIABLO ESTATES AT CLAYTON)**

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

WHEREAS, the approval for the construction of new houses by Toll Bros. in Subdivision 8719 included a condition prohibiting the grading, landscaping or construction of any structures within the sloped portions of Lots 1 through 24, inclusive, and all of Lot 25; and

WHEREAS, Toll Bros. has prepared and executed a Deed of Development Rights specifying such restrictions for acceptance by the City and subsequent recording in the Office of the County Recorder to provide notice of such restrictions to future property owners; and

WHEREAS, the City Engineer and Community Development Director have reviewed the Deed and have recommended acceptance by the City Council;

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

1. The City Council hereby accepts the attached Deed of Development Rights.
2. The City Clerk is hereby instructed to cause a certified copy of this resolution and the Deed of Development Rights to be recorded with the County Recorder of Contra Costa County.

PASSED, APPROVED and ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 17th day of July 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 July 17, 2012.

Laci J. Jackson, City Clerk

RECORDED AT THE REQUEST OF:

WHEN RECORDED RETURN TO:

DEED OF DEVELOPMENT RIGHTS

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **TOLL CA XIX LIMITED PARTNERSHIP**, a California limited partnership ("**Grantor**"), hereby **GRANTS** to **CITY OF CLAYTON**, a municipal corporation ("**Grantee**"), the future "Development Rights" as defined below, over, under, upon and across the following described real property ("**Restricted Area**") situated in the City of Clayton, County of Contra Costa, State of California, described as follows:

That certain real property described in Exhibit "A" attached hereto and depicted in Exhibit "B" attached hereto, both of which are incorporated herein as though set forth in full.

DEFINITIONS

The following terms as used in this instrument shall have the meanings set forth below:

DEVELOPMENT RIGHTS: The term "**Development Rights**" are defined to mean and refer to the right of Grantee to approve or disapprove of any proposed construction, development or improvements within the Restricted Area. The Development Rights are and shall be a form of covenant, which shall run with the Restricted Area and shall bind the current owner and any future owner of all or any portion of the Restricted Area.

PROJECT TREE: The term "**Project Tree**" shall mean a tree installed by Grantor during the development of Subdivision 8719 by Grantor.

RETAINED TREE: The term "**Retained Tree**" shall mean those trees identified as such in the Tree Preservation Report - Diablo Pointe Project prepared by HortScience, dated November 2003, and any tree otherwise designated to be preserved or retained in such tree report.

PURPOSES

The purpose of this Deed is to restrict and prohibit structures, grading and landscaping (except to the extent expressly authorized by this instrument).

RESTRICTIONS

No structures shall be erected, constructed or placed within the Restricted Area. No grading is permitted within the Restricted Area. Landscaping, except for Retained Trees including Project Trees, shall not be permitted. The Restricted Area shall remain in a natural condition. These restrictions shall not prohibit the maintenance, repair and reconstruction of "V" and "J" ditches and related storm drainage improvements.

"Open wire fencing" shall be constructed and maintained by the Grantor on the boundaries of the Restricted Area which are situated approximately at the rear of the level portion of the building pads on the residential lots. No additional fencing is permitted within the Restricted Area.

SUCCESSORS AND ASSIGNS

Each reference to "Grantor" in this Easement Deed shall be deemed to refer to and include Grantor and all successors and assigns of Grantor. All references to "Grantee" in this Easement Deed shall be deemed to refer to and include Grantee and all successors and assigns of Grantee.

Dated: 7/10/12

GRANTOR:

TOLL CA XIX LIMITED PARTNERSHIP,
a California limited partnership

By: Toll CA GP Corp,
a California corporation,
Its General Partner

By: [Signature]
Name: Gary M. Mayo
Title: Group President

By: [Signature]
Name: Richard M. Nelson
Title: Division President

STATE OF CALIFORNIA
COUNTY OF _____ } ss.

On _____, before me, _____, Notary Public,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf
of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

ACKNOWLEDGMENT

State of California
County of Contra Costa)

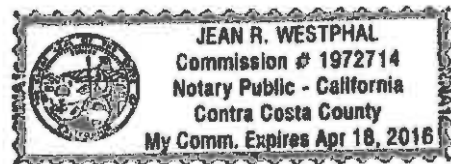
On July 10, 2012 before me, Jean R. Westphal, Notary Public
(insert name and title of the officer)

personally appeared Gary M. Mayo
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Jean R. Westphal (Seal)



ACKNOWLEDGMENT

State of California
County of Contra Costa)

On July 10, 2012 before me, Jean R. Westphal, Notary Public
(insert name and title of the officer)

personally appeared Richard M. Nelson
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

Jean R. Westphal

(Seal)



EXHIBITS

- A Legal Description of Restricted Area
- B Plat of Restricted Area

EXHIBIT 'A'
LEGAL DESCRIPTION
(NATURAL SPACE PROTECTION AND MAINTENANCE EASEMENT
AND STORM DRAIN EASEMENT.)

PARCEL ONE

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS 1-6, INCLUSIVE, AND 11-24, INCLUSIVE, AS SHOWN ON THE FINAL MAP OF SUBDIVISION 8719, FILED JUNE 10, 2008, IN BOOK 506 OF MAPS AT PAGE 45, DOCUMENT NO. 2008 - 128962, CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 11 (506M 45), SAID POINT BEING DISTANT THEREON SOUTH 24°57'04" WEST, 117.91 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 11 (506M45); THENCE, FROM SAID POINT OF BEGINNING, ALONG SAID SOUTHEASTERLY LINE, SOUTH 24°57'04" WEST, 34.73 FEET AND SOUTH 57°36'41" WEST, 84.20 FEET TO A POINT ON THE BOUNDARY LINE AS SHOWN ON SAID FINAL MAP (506M45), SAID POINT LYING ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 656.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 15°55'51" EAST; THENCE, ALONG SAID BOUNDARY LINE, WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°06'56", AN ARC DISTANCE OF 92.92 FEET; THENCE NORTH 82°11'05" WEST, 83.41 FEET TO A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 83°57'51", AN ARC DISTANCE OF 29.31 FEET TO A REVERSE CURVE, CONCAVE TO THE WEST AND HAVING A RADIUS OF 230.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 88°13'13" EAST; THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 25°27'59", AN ARC DISTANCE OF 102.23 FEET TO A REVERSE CURVE, CONCAVE TO THE EAST AND HAVING A RADIUS OF 300.00 FEET; THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 53°48'51", AN ARC DISTANCE OF 281.77 FEET TO A REVERSE CURVE, CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 900.00 FEET (A RADIAL TO THE BEGINNING OF SAID CURVE BEARS SOUTH 59°52'21" EAST); THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°21'17", AN ARC DISTANCE OF 288.32 FEET; THENCE, CONTINUING ALONG SAID BOUNDARY LINE THE FOLLOWING COURSES:

- 1) NON TANGENT, SOUTH 85°57'35" EAST, 159.86 FEET;
- 2) SOUTH 50°37'18" EAST, 117.37 FEET;
- 3) SOUTH 47°29'26" EAST, 101.69 FEET;
- 4) SOUTH 37°51'51" EAST, 83.76 FEET;
- 5) SOUTH 56°35'51" EAST, 142.17 FEET;

- 6) NORTH 87°18'05" EAST, 95.94 FEET;
- 7) NORTH 32°04'26" EAST, 53.48 FEET TO THE SOUTHWESTERLY LINE OF LOT 25 AS SHOWN ON SAID FINAL MAP (506M45);

THENCE, ALONG SAID SOUTHWESTERLY LINE, THE FOLLOWING COURSES:

- 1) SOUTH 53°59'12" EAST, 20.01 FEET;
- 2) SOUTH 20°57'20" WEST, 150.32 FEET;
- 3) SOUTH 43°23'03" EAST, 256.02 FEET;
- 4) SOUTH 37°27'53" EAST, 175.01 FEET;
- 5) SOUTH 14°09'33" EAST, 600.25 FEET TO SAID BOUNDARY LINE (506M45);

THENCE, ALONG SAID BOUNDARY LINE, THE FOLLOWING COURSES:

- 1) NORTH 89°03'48" WEST, 783.98 FEET;
- 2) NORTH 10°43'51" EAST, 71.58 FEET;
- 3) NORTH 10°53'52" EAST, 81.50 FEET;
- 4) NORTH 03°11'15" EAST, 87.45 FEET;
- 5) NORTH 15°42'21" EAST, 76.47 FEET;
- 6) NORTH 17°24'41" EAST, 85.94 FEET;
- 7) NORTH 13°16'28" EAST, 92.95 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 6 (506M45);

THENCE, ALONG THE NORTHWESTERLY LINE OF SAID LOT 6 (506M45), NORTH 36°23'05" EAST, 98.49 FEET; THENCE, LEAVING SAID LINE, THE FOLLOWING COURSES:

- 1) SOUTH 16°16'44" EAST, 26.06 FEET;
- 2) SOUTH 07°52'18" EAST, 26.48 FEET;
- 3) SOUTH 36°22'33" EAST, 25.54 FEET;
- 4) SOUTH 55°18'56" EAST, 28.19 FEET;
- 5) SOUTH 16°26'32" EAST, 15.85 FEET;
- 6) SOUTH 07°21'37" EAST, 40.28 FEET;
- 7) SOUTH 07°14'35" EAST, 80.34 FEET;
- 8) SOUTH 81°03'47" EAST, 217.64 FEET;
- 9) SOUTH 75°46'30" EAST, 95.44 FEET;
- 10) SOUTH 76°57'52" EAST, 49.22 FEET;
- 11) NORTH 72°53'10" EAST, 21.07 FEET;
- 12) NORTH 27°00'46" EAST, 24.53 FEET;
- 13) NORTH 19°41'30" EAST, 30.44 FEET;
- 14) NORTH 10°04'18" EAST, 23.61 FEET;
- 15) NORTH 05°59'26" EAST, 24.20 FEET;
- 16) NORTH 34°35'17" EAST, 22.05 FEET;
- 17) NORTH 11°10'17" WEST, 6.00 FEET;
- 18) SOUTH 78°49'43" WEST, 16.48 FEET;
- 19) NORTH 84°14'13" WEST, 20.11 FEET;
- 20) NORTH 74°20'19" WEST, 19.62 FEET;
- 21) NORTH 57°31'52" WEST, 25.74 FEET;
- 22) NORTH 48°17'32" WEST, 28.77 FEET;
- 23) NORTH 43°08'15" WEST, 27.36 FEET;

24) NORTH 28°42'15" WEST, 24.53 FEET;
25) NORTH 11°32'35" WEST, 30.85 FEET;
26) NORTH 03°47'54" WEST, 21.06 FEET;
27) NORTH 10°57'06" EAST, 22.32 FEET;
28) NORTH 26°05'13" EAST, 24.68 FEET;
29) NORTH 22°56'18" EAST, 28.76 FEET;
30) NORTH 00°11'56" WEST, 27.28 FEET;
31) NORTH 41°30'36" WEST, 25.23 FEET;
32) NORTH 54°38'02" WEST, 27.70 FEET;
33) NORTH 22°43'08" WEST, 5.71 FEET;
34) NORTH 54°37'02" WEST, 69.43 FEET;
35) NORTH 32°41'02" WEST, 7.62 FEET;
36) NORTH 57°07'11" WEST, 66.63 FEET;
37) NORTH 36°30'09" WEST, 21.51 FEET;
38) NORTH 66°29'30" WEST, 68.63 FEET;
39) NORTH 32°22'39" WEST, 9.59 FEET;
40) NORTH 54°50'43" WEST, 64.88 FEET;
41) NORTH 43°28'35" WEST, 19.16 FEET;
42) NORTH 33°59'57" EAST, 1.45 FEET;
43) NORTH 67°04'28" WEST, 56.30 FEET;
44) NORTH 57°39'46" WEST, 81.39 FEET;
45) NORTH 53°59'02" WEST, 36.75 FEET;
46) NORTH 51°21'22" WEST, 61.40 FEET;
47) NORTH 47°44'47" WEST, 73.28 FEET;
48) NORTH 45°47'30" WEST, 36.10 FEET;
49) NORTH 57°32'06" WEST, 36.02 FEET;
50) NORTH 80°00'12" WEST, 29.81 FEET;
51) SOUTH 67°25'42" WEST, 21.54 FEET;
52) SOUTH 31°03'03" WEST, 55.99 FEET;
53) SOUTH 35°25'18" WEST, 54.68 FEET;
54) SOUTH 40°02'16" WEST, 36.54 FEET;
55) SOUTH 28°22'30" WEST, 22.79 FEET;
56) SOUTH 16°22'28" WEST, 24.39 FEET;
57) SOUTH 15°52'23" WEST, 57.04 FEET;
58) SOUTH 07°32'21" WEST, 39.84 FEET;
59) SOUTH 11°49'43" EAST, 41.02 FEET;
60) SOUTH 28°34'39" EAST, 43.68 FEET;
61) SOUTH 53°40'56" EAST, 59.96 FEET;
62) SOUTH 61°42'36" EAST, 56.34 FEET;
63) SOUTH 66°42'20" EAST, 23.02 FEET;
64) NORTH 77°53'24" EAST, 19.03 FEET;
65) NORTH 67°44'40" EAST, 38.01 FEET TO THE POINT OF BEGINNING.
CONTAINING 11.6 ACRES, MORE OR LESS.

PARCEL TWO

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

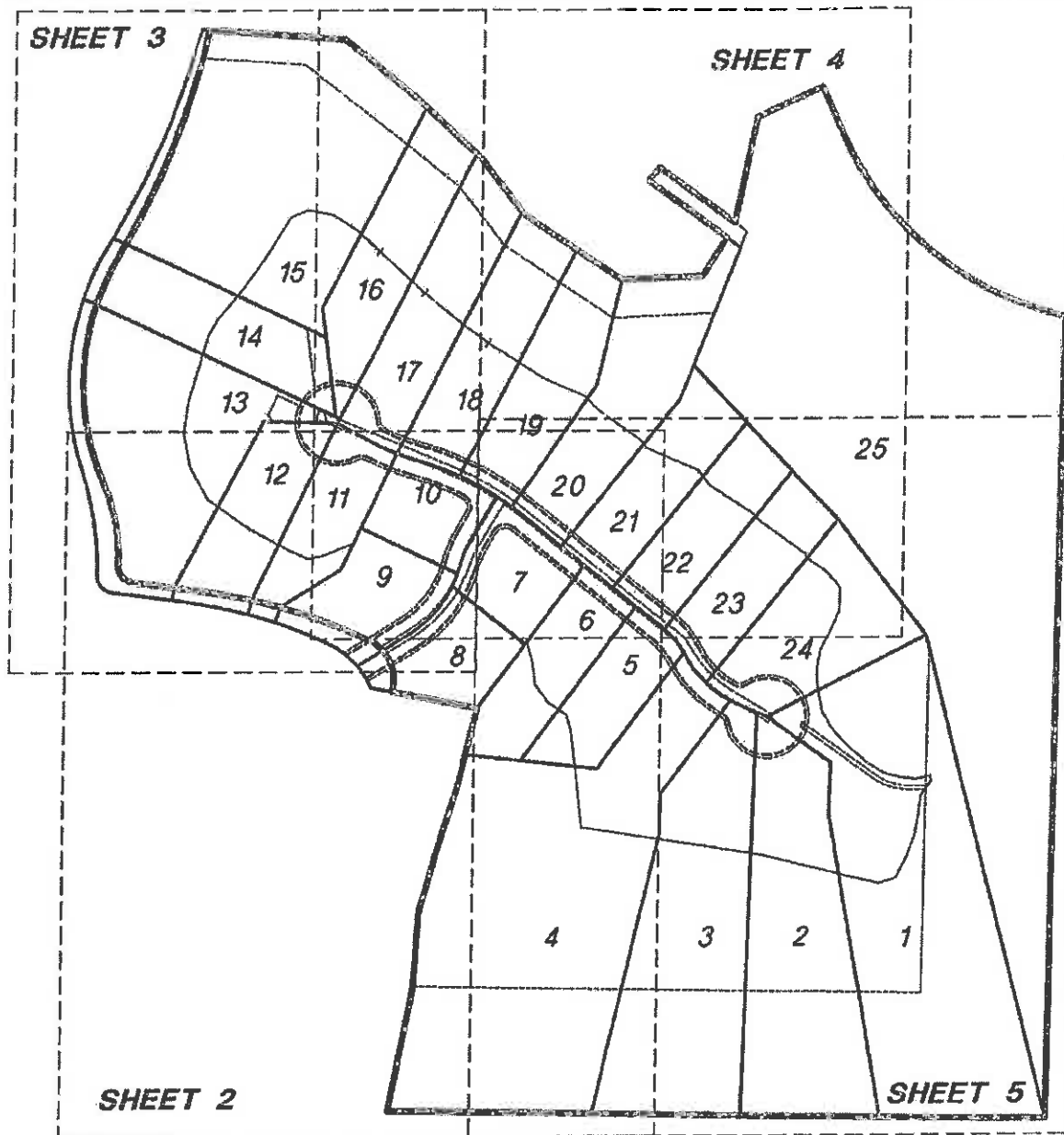
LOT 25 AS SHOWN ON THE FINAL MAP OF SUBDIVISION 8719, FILED JUNE 10, 2008, IN BOOK 506 OF MAPS AT PAGE 45, DOCUMENT NO. 2008 - 128962, CONTRA COSTA COUNTY RECORDS.

CONTAINING 4.98 ACRES, MORE OR LESS (506 M 45).

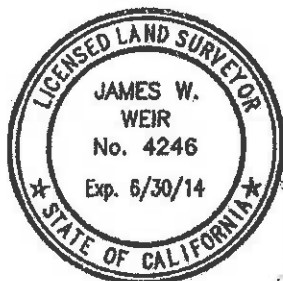
ATTACHED HERETO IS A PLAT, CONSISTING OF SIX (6) PAGES, ENTITLED EXHIBIT 'B' AND BY THIS REFERENCE IS MADE A PART HEREOF.


JAMES W. WEIR DATED
L.S. 4246 EXP. 6/30/14





KEY MAP

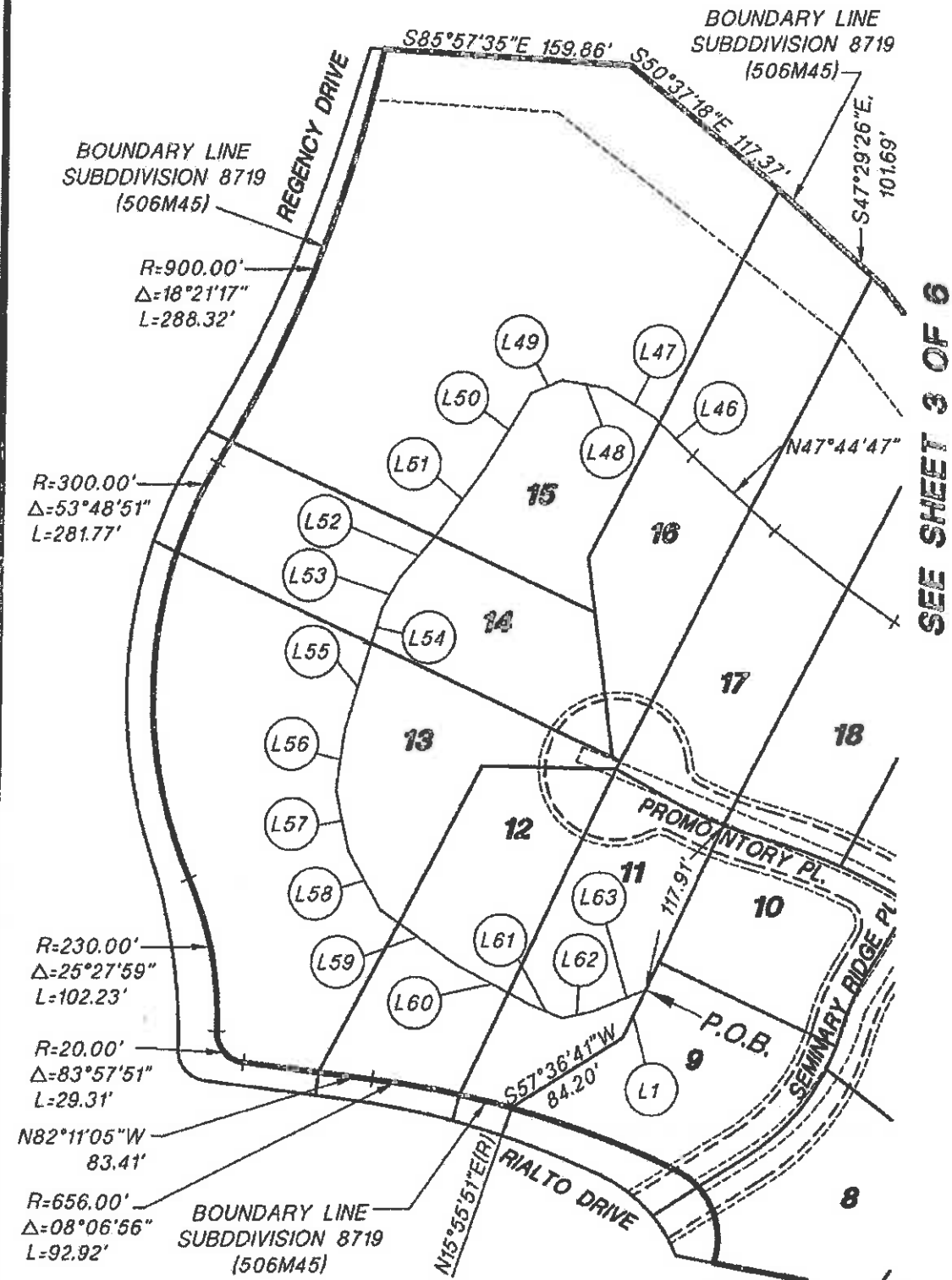


[Signature] 07-09-12
 JAMES W. WEIR, DATED
 L.S. 4246

DATE: 07/09/12
 SCALE: 1"=200'
 SHEET
1
 OF 6 SHEET
 PROJ. NO. 11001

EXHIBIT 'B'
SUBDIVISION 8719 DIABLO POINTE
(506 M 45)
CONSERVATION EASEMENT
CLAYTON, CALIFORNIA

PA Design Resources, Inc.
 Planning • Engineering • Surveying
 3071 Olive Circle, Suite 150
 Walnut Creek, California 94598-3636 TEL 925/210-8300



DATE: 07/09/12

SCALE: 1"=100'

SHEET

2

OF 6 SHEET

PROJ. NO. 11001

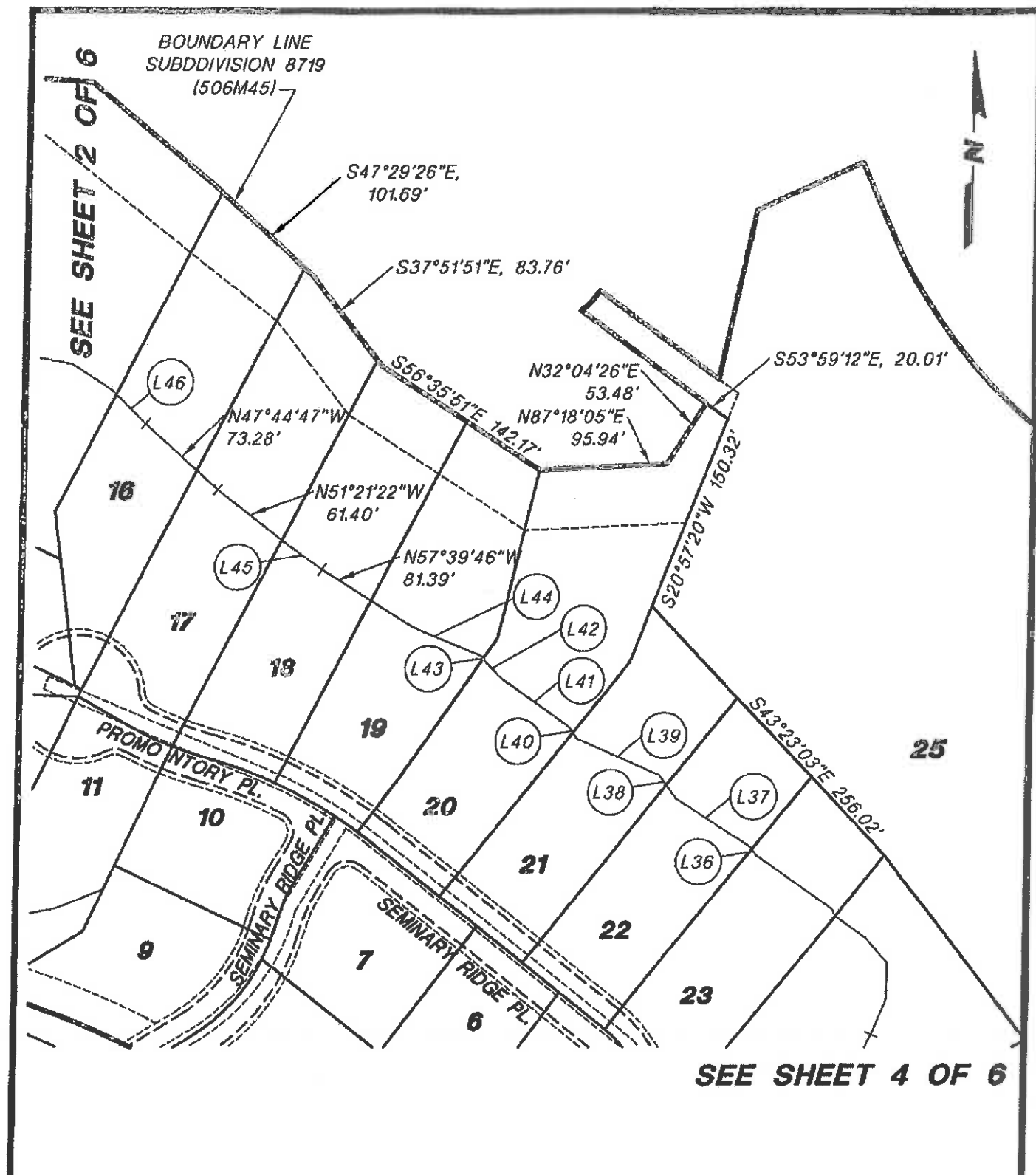
EXHIBIT 'B'
SUBDIVISION 8719 DIABLO POINTE
(506 M 45)
CONSERVATION EASEMENT
CLAYTON, CALIFORNIA



Design Resources, Inc.

Planning • Engineering • Surveying

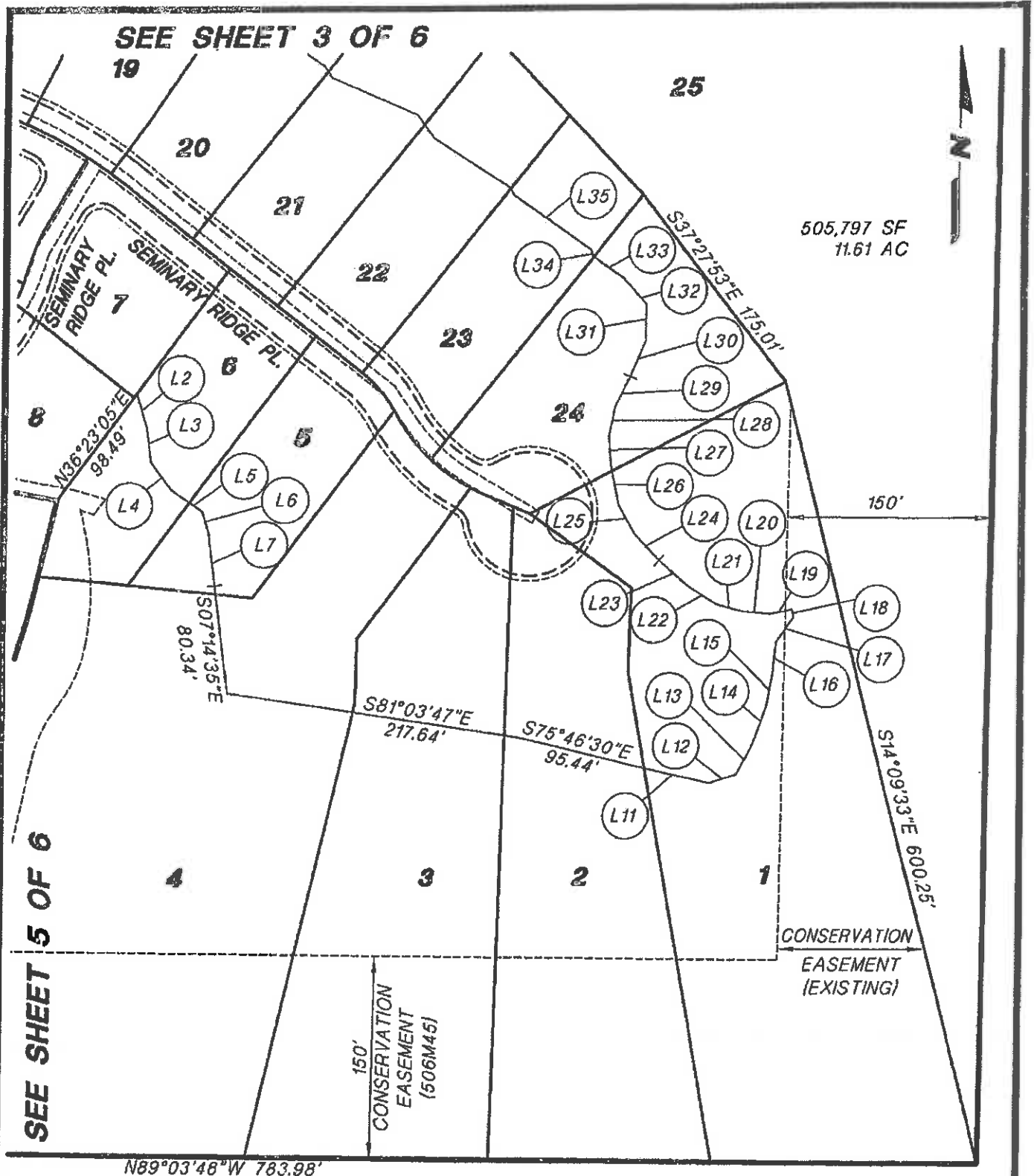
3021 Citrus Circle, Suite 150
Walnut Creek, California 94598-3638 TEL (925) 210-8200



DATE: 07/09/12
 SCALE: 1"=100'
 SHEET
3
 OF 6 SHEET
 PROJ. NO. 11001

EXHIBIT 'B'
 SUBDIVISION 8719 DIABLO POINTE
 (506 M 45)
CONSERVATION EASEMENT
 CLAYTON, CALIFORNIA

P/A Design Resources, Inc.
 Planning • Engineering • Surveying
 3821 Citrus Circle, Suite 180
 Walnut Creek, California 94598-2433 TEL 925/210-9300



DATE: 07/09/12

SCALE: 1"=100'

SHEET

4

OF 6 SHEET

PROJ. NO. 11001

EXHIBIT 'B'

SUBDIVISION 8719 DIABLO POINTE
(506 M 45)

CONSERVATION EASEMENT

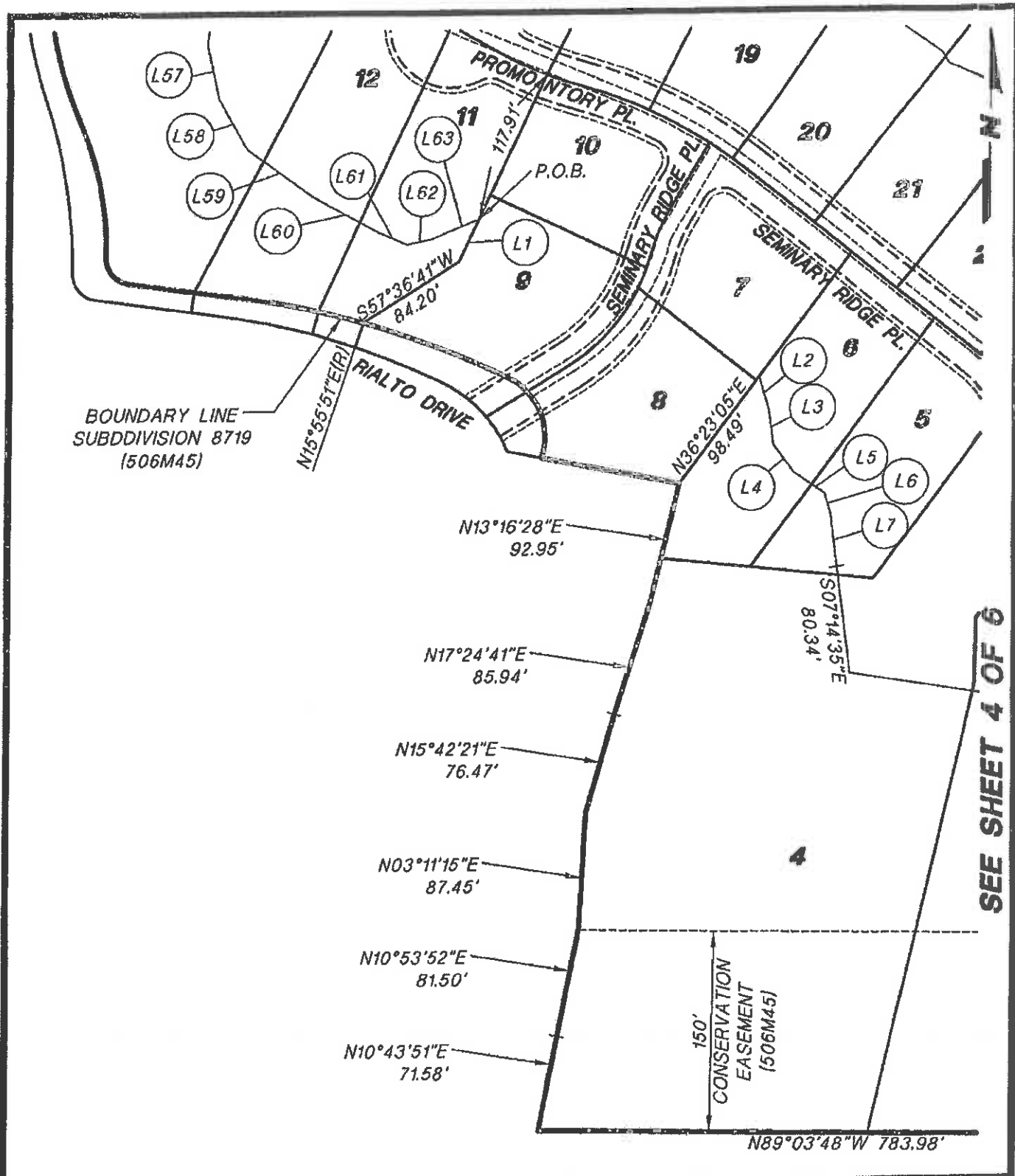
CLAYTON, CALIFORNIA



Design Resources, Inc.

Planning • Engineering • Surveying

3071 Citrus Oaks, Suite 100
Walnut Creek, California 94598-2638 TEL (924) 210-9300



SEE SHEET 4 OF 6

DATE: 07/09/12	EXHIBIT 'B' SUBDIVISION 8719 DIABLO POINTE (506 M 45) CONSERVATION EASEMENT CLAYTON, CALIFORNIA	PA Design Resources, Inc. <i>Planning • Engineering • Surveying</i> 3621 Citrus Circle, Suite 169 Walnut Creek, California 94598-2625 TEL (925) 210-9200
SCALE: 1"=100'		
SHEET		
OF 6 SHEET		
PROJ. NO. 11001		

LINE TABLE					
NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	S24°57'04"W	34.73'	L34	N22°43'08"W	5.71'
L2	S16°16'44"E	26.06'	L35	N54°37'02"W	69.43'
L3	S07°52'18"E	26.48'	L36	N32°41'02"W	7.62'
L4	S36°22'33"E	25.54'	L37	N57°07'11"W	66.63'
L5	S55°18'56"E	28.19'	L38	N36°30'09"W	21.51'
L6	S16°26'32"E	15.85'	L39	N66°29'30"W	68.63'
L7	S07°21'37"E	40.28'	L40	N32°22'39"W	9.59'
L8	NOT USED		L41	N54°50'43"W	64.88'
L9	NOT USED		L42	N43°28'35"W	19.16'
L10	NOT USED		L43	N33°59'57"E	1.45'
L11	S76°57'52"E	49.22'	L44	N67°04'28"W	56.30'
L12	N72°53'10"E	21.07'	L45	N53°59'02"W	36.75'
L13	N27°00'46"E	24.53'	L46	N45°47'30"W	36.10'
L14	N19°41'30"E	30.44'	L47	N57°32'06"W	36.02'
L15	N10°04'18"E	23.61'	L48	N80°00'12"W	29.81'
L16	N05°59'26"E	24.20'	L49	S67°25'42"W	21.54'
L17	N34°35'17"E	22.05'	L50	S31°03'03"W	55.99'
L18	N11°10'17"W	6.00'	L51	S35°25'18"W	54.68'
L19	S78°49'43"W	16.48'	L52	S40°02'16"W	36.54'
L20	N84°14'13"W	20.11'	L53	S28°22'30"W	22.79'
L21	N74°20'19"W	19.62'	L54	S16°22'28"W	24.39'
L22	N57°31'52"W	25.74'	L55	S15°52'23"W	57.04'
L23	N48°17'32"W	28.77'	L56	S07°32'21"W	39.84'
L24	N43°08'15"W	27.36'	L57	S11°49'43"E	41.02'
L25	N28°42'15"W	24.53'	L58	S28°34'39"E	43.68'
L26	N11°32'35"W	30.85'	L59	S53°40'56"E	59.96'
L27	N03°47'54"W	21.06'	L60	S61°42'36"E	56.34'
L28	N10°57'06"E	22.32'	L61	S66°42'20"E	23.02'
L29	N26°05'13"E	24.68'	L62	N77°53'24"E	19.03'
L30	N22°56'18"E	28.76'	L63	N67°44'40"E	38.01'
L31	N00°11'56"W	27.28'			
L32	N41°30'36"W	25.23'			
L33	N54°38'02"W	27.70'			

DATE: 07/09/12

SCALE: 1"=100'

SHEET

6

OF 6 SHEET

PROJ. NO. 11001

EXHIBIT 'B'
SUBDIVISION 8719 DIABLO POINTE
(506 M 45)
CONSERVATION EASEMENT
CLAYTON, CALIFORNIA

P/A Design Resources, Inc.
 Planning • Engineering • Surveying

3071 Citrus Circle, Suite 150
 Walnut Creek, California 94598-3636 TEL 925/210-9300

RESOLUTION NO.

**A RESOLUTION ACCEPTING AN EASEMENT DEED FOR ACCESS OVER A
PORTION OF LOTS 1 THROUGH 24, INCLUSIVE, OF SUBDIVISION 8719, DIABLO
POINTE (AKA DIABLO ESTATES AT CLAYTON)**

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

WHEREAS, the duties of the Diablo Estates at Clayton Benefit Assessment District (“BAD”) include the maintenance of various drainage facilities located in the sloped areas of Lots 1 through 24, inclusive, of Subdivision 8719, as well as fire protection weed abatement of those slopes; and

WHEREAS, in order to perform its duties, the BAD must have rights of access to said sloped areas; and

WHEREAS, Toll Bros. has prepared and executed an Easement Deed granting the City access to the sloped areas for acceptance by the City and subsequent recording in the Office of the County Recorder to provide notice of such restrictions to future property owners; and

WHEREAS, the City Engineer has reviewed the Easement Deed and has recommended acceptance by the City Council;

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

1. The City Council hereby accepts the attached Easement Deed for access rights.
2. The City Clerk is hereby instructed to cause a certified copy of this resolution and the Easement Deed to be recorded with the County Recorder of Contra Costa County.

PASSED, APPROVED and ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 17th day of July 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 July 17, 2012.

Laci J. Jackson, City Clerk

RECORDED AT THE REQUEST OF:

WHEN RECORDED RETURN TO:

EASEMENT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **TOLL CA XIX LIMITED PARTNERSHIP**, a California limited partnership ("**Grantor**"), hereby **GRANTS** to **CITY OF CLAYTON**, a municipal corporation ("**Grantee**"), an easement over, under, upon and across the following described real property ("**Easement Area**") situated in the City of Clayton, County of Contra Costa, State of California, described as follows:

That certain real property described in Exhibit "A" attached hereto and depicted in Exhibit "B" attached hereto, both of which are incorporated herein as though set forth in full, **EXCEPTING THEREFROM** Lot 25 ("Lot 25"), as shown on the Map of Subdivision 8719, filed on June 10, 2008, in Book 506 of Maps, at Page 45, Contra Costa County Records.

Lot 25 is not subject to this Easement Deed

PURPOSES

The easement is for the purposes of (i) construction, reconstruction, maintenance and repair of "V" and "J" ditches and related storm drainage improvements within the Easement Area, (ii) the use of and discharge of storm water through the "V" and "J" ditches and related storm drainage improvements, (iii) weed abatement, and (iv) the right to enter within the Easement Area for each of the preceding purposes.

MAINTENANCE

The "V" and "J" ditches and related storm drainage improvements constructed or reconstructed within the Easement Area in connection with the easements granted herein shall be maintained, repaired and replaced by Grantee. It is also the intent that Grantee shall perform all required weed abatement within the Easement Area. Grantor acknowledges and agrees that the costs of performing such maintenance, repair or replacement and weed abatement shall be funded by the Diablo Estates at Clayton Benefit Assessment District. Each party is responsible for and shall promptly repair, at its sole cost and expense, all damage caused by the party or its agents, guests, invitees, licensees, contractors, or employees, other than damage which is the result of ordinary wear and tear.

SUCCESSORS AND ASSIGNS

Each reference to "Grantor" in this Easement Deed shall be deemed to refer to and include Grantor and all successors and assigns of Grantor. All references to "Grantee" in this Easement Deed shall be deemed to refer to and include Grantee and all successors and assigns of Grantee.

Dated: 7/10/12

GRANTOR:

TOLL CA XIX LIMITED PARTNERSHIP,
a California limited partnership

By: Toll CA GP Corp,
a California corporation,
Its General Partner

By: [Signature]
Name: Gary H. Mayo
Title: Group President

By: [Signature]
Name: Richard H. Nelson
Title: Division President

STATE OF CALIFORNIA
COUNTY OF _____ } ss.

On _____, before me, _____, Notary Public,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity
upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

ACKNOWLEDGMENT

State of California
County of Contra Costa)

On July 10, 2012 before me, Jean R. Westphal, Notary Public
(insert name and title of the officer)

personally appeared Gary M. Mayo
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

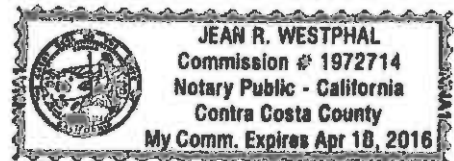
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jean R. Westphal

(Seal)



ACKNOWLEDGMENT

State of California
County of Contra Costa)

On July 10, 2012 before me, Jean R. Westphal, Notary Public
(insert name and title of the officer)

personally appeared Richard M. Nelson
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

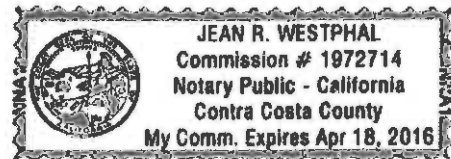
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jean R. Westphal

(Seal)



EXHIBITS

- A Legal Description of Easement Area
- B Plat of Easement Area

EXHIBIT 'A'
LEGAL DESCRIPTION
(NATURAL SPACE PROTECTION AND MAINTENANCE EASEMENT
AND STORM DRAIN EASEMENT.)

PARCEL ONE

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS 1-6, INCLUSIVE, AND 11-24, INCLUSIVE, AS SHOWN ON THE FINAL MAP OF SUBDIVISION 8719, FILED JUNE 10, 2008, IN BOOK 506 OF MAPS AT PAGE 45, DOCUMENT NO. 2008 - 128962, CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 11 (506M 45), SAID POINT BEING DISTANT THEREON SOUTH 24°57'04" WEST, 117.91 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 11 (506M45); THENCE, FROM SAID POINT OF BEGINNING, ALONG SAID SOUTHEASTERLY LINE, SOUTH 24°57'04" WEST, 34.73 FEET AND SOUTH 57°36'41" WEST, 84.20 FEET TO A POINT ON THE BOUNDARY LINE AS SHOWN ON SAID FINAL MAP (506M45), SAID POINT LYING ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 656.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 15°55'51" EAST; THENCE, ALONG SAID BOUNDARY LINE, WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°06'56", AN ARC DISTANCE OF 92.92 FEET; THENCE NORTH 82°11'05" WEST, 83.41 FEET TO A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 83°57'51", AN ARC DISTANCE OF 29.31 FEET TO A REVERSE CURVE, CONCAVE TO THE WEST AND HAVING A RADIUS OF 230.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 88°13'13" EAST; THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 25°27'59", AN ARC DISTANCE OF 102.23 FEET TO A REVERSE CURVE, CONCAVE TO THE EAST AND HAVING A RADIUS OF 300.00 FEET; THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 53°48'51", AN ARC DISTANCE OF 281.77 FEET TO A REVERSE CURVE, CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 900.00 FEET (A RADIAL TO THE BEGINNING OF SAID CURVE BEARS SOUTH 59°52'21" EAST); THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°21'17", AN ARC DISTANCE OF 288.32 FEET; THENCE, CONTINUING ALONG SAID BOUNDARY LINE THE FOLLOWING COURSES:

- 1) NON TANGENT, SOUTH 85°57'35" EAST, 159.86 FEET;**
- 2) SOUTH 50°37'18" EAST, 117.37 FEET;**
- 3) SOUTH 47°29'26" EAST, 101.69 FEET;**
- 4) SOUTH 37°51'51" EAST, 83.76 FEET;**
- 5) SOUTH 56°35'51" EAST, 142.17 FEET;**

- 6) NORTH 87°18'05" EAST, 95.94 FEET;
- 7) NORTH 32°04'26" EAST, 53.48 FEET TO THE SOUTHWESTERLY LINE OF LOT 25 AS SHOWN ON SAID FINAL MAP (506M45);

THENCE, ALONG SAID SOUTHWESTERLY LINE, THE FOLLOWING COURSES:

- 1) SOUTH 53°59'12" EAST, 20.01 FEET;
- 2) SOUTH 20°57'20" WEST, 150.32 FEET;
- 3) SOUTH 43°23'03" EAST, 256.02 FEET;
- 4) SOUTH 37°27'53" EAST, 175.01 FEET;
- 5) SOUTH 14°09'33" EAST, 600.25 FEET TO SAID BOUNDARY LINE (506M45);

THENCE, ALONG SAID BOUNDARY LINE, THE FOLLOWING COURSES:

- 1) NORTH 89°03'48" WEST, 783.98 FEET;
- 2) NORTH 10°43'51" EAST, 71.58 FEET;
- 3) NORTH 10°53'52" EAST, 81.50 FEET;
- 4) NORTH 03°11'15" EAST, 87.45 FEET;
- 5) NORTH 15°42'21" EAST, 76.47 FEET;
- 6) NORTH 17°24'41" EAST, 85.94 FEET;
- 7) NORTH 13°16'28" EAST, 92.95 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 6 (506M45);

THENCE, ALONG THE NORTHWESTERLY LINE OF SAID LOT 6 (506M45), NORTH 36°23'05" EAST, 98.49 FEET; THENCE, LEAVING SAID LINE, THE FOLLOWING COURSES:

- 1) SOUTH 16°16'44" EAST, 26.06 FEET;
- 2) SOUTH 07°52'18" EAST, 26.48 FEET;
- 3) SOUTH 36°22'33" EAST, 25.54 FEET;
- 4) SOUTH 55°18'56" EAST, 28.19 FEET;
- 5) SOUTH 16°26'32" EAST, 15.85 FEET;
- 6) SOUTH 07°21'37" EAST, 40.28 FEET;
- 7) SOUTH 07°14'35" EAST, 80.34 FEET;
- 8) SOUTH 81°03'47" EAST, 217.64 FEET;
- 9) SOUTH 75°46'30" EAST, 95.44 FEET;
- 10) SOUTH 76°57'52" EAST, 49.22 FEET;
- 11) NORTH 72°53'10" EAST, 21.07 FEET;
- 12) NORTH 27°00'46" EAST, 24.53 FEET;
- 13) NORTH 19°41'30" EAST, 30.44 FEET;
- 14) NORTH 10°04'18" EAST, 23.61 FEET;
- 15) NORTH 05°59'26" EAST, 24.20 FEET;
- 16) NORTH 34°35'17" EAST, 22.05 FEET;
- 17) NORTH 11°10'17" WEST, 6.00 FEET;
- 18) SOUTH 78°49'43" WEST, 16.48 FEET;
- 19) NORTH 84°14'13" WEST, 20.11 FEET;
- 20) NORTH 74°20'19" WEST, 19.62 FEET;
- 21) NORTH 57°31'52" WEST, 25.74 FEET;
- 22) NORTH 48°17'32" WEST, 28.77 FEET;
- 23) NORTH 43°08'15" WEST, 27.36 FEET;

24) NORTH 28°42'15" WEST, 24.53 FEET;
25) NORTH 11°32'35" WEST, 30.85 FEET;
26) NORTH 03°47'54" WEST, 21.06 FEET;
27) NORTH 10°57'06" EAST, 22.32 FEET;
28) NORTH 26°05'13" EAST, 24.68 FEET;
29) NORTH 22°56'18" EAST, 28.76 FEET;
30) NORTH 00°11'56" WEST, 27.28 FEET;
31) NORTH 41°30'36" WEST, 25.23 FEET;
32) NORTH 54°38'02" WEST, 27.70 FEET;
33) NORTH 22°43'08" WEST, 5.71 FEET;
34) NORTH 54°37'02" WEST, 69.43 FEET;
35) NORTH 32°41'02" WEST, 7.62 FEET;
36) NORTH 57°07'11" WEST, 66.63 FEET;
37) NORTH 36°30'09" WEST, 21.51 FEET;
38) NORTH 66°29'30" WEST, 68.63 FEET;
39) NORTH 32°22'39" WEST, 9.59 FEET;
40) NORTH 54°50'43" WEST, 64.88 FEET;
41) NORTH 43°28'35" WEST, 19.16 FEET;
42) NORTH 33°59'57" EAST, 1.45 FEET;
43) NORTH 67°04'28" WEST, 56.30 FEET;
44) NORTH 57°39'46" WEST, 81.39 FEET;
45) NORTH 53°59'02" WEST, 36.75 FEET;
46) NORTH 51°21'22" WEST, 61.40 FEET;
47) NORTH 47°44'47" WEST, 73.28 FEET;
48) NORTH 45°47'30" WEST, 36.10 FEET;
49) NORTH 57°32'06" WEST, 36.02 FEET;
50) NORTH 80°00'12" WEST, 29.81 FEET;
51) SOUTH 67°25'42" WEST, 21.54 FEET;
52) SOUTH 31°03'03" WEST, 55.99 FEET;
53) SOUTH 35°25'18" WEST, 54.68 FEET;
54) SOUTH 40°02'16" WEST, 36.54 FEET;
55) SOUTH 28°22'30" WEST, 22.79 FEET;
56) SOUTH 16°22'28" WEST, 24.39 FEET;
57) SOUTH 15°52'23" WEST, 57.04 FEET;
58) SOUTH 07°32'21" WEST, 39.84 FEET;
59) SOUTH 11°49'43" EAST, 41.02 FEET;
60) SOUTH 28°34'39" EAST, 43.68 FEET;
61) SOUTH 53°40'56" EAST, 59.96 FEET;
62) SOUTH 61°42'36" EAST, 56.34 FEET;
63) SOUTH 66°42'20" EAST, 23.02 FEET;
64) NORTH 77°53'24" EAST, 19.03 FEET;
65) NORTH 67°44'40" EAST, 38.01 FEET TO THE POINT OF BEGINNING.
CONTAINING 11.6 ACRES, MORE OR LESS.

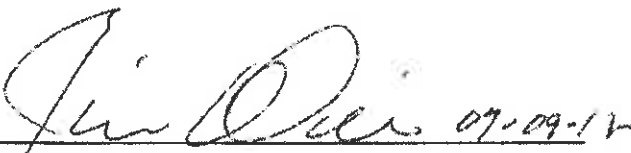
PARCEL TWO

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CLAYTON, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 25 AS SHOWN ON THE FINAL MAP OF SUBDIVISION 8719, FILED JUNE 10, 2008, IN BOOK 506 OF MAPS AT PAGE 45, DOCUMENT NO. 2008 - 128962, CONTRA COSTA COUNTY RECORDS.

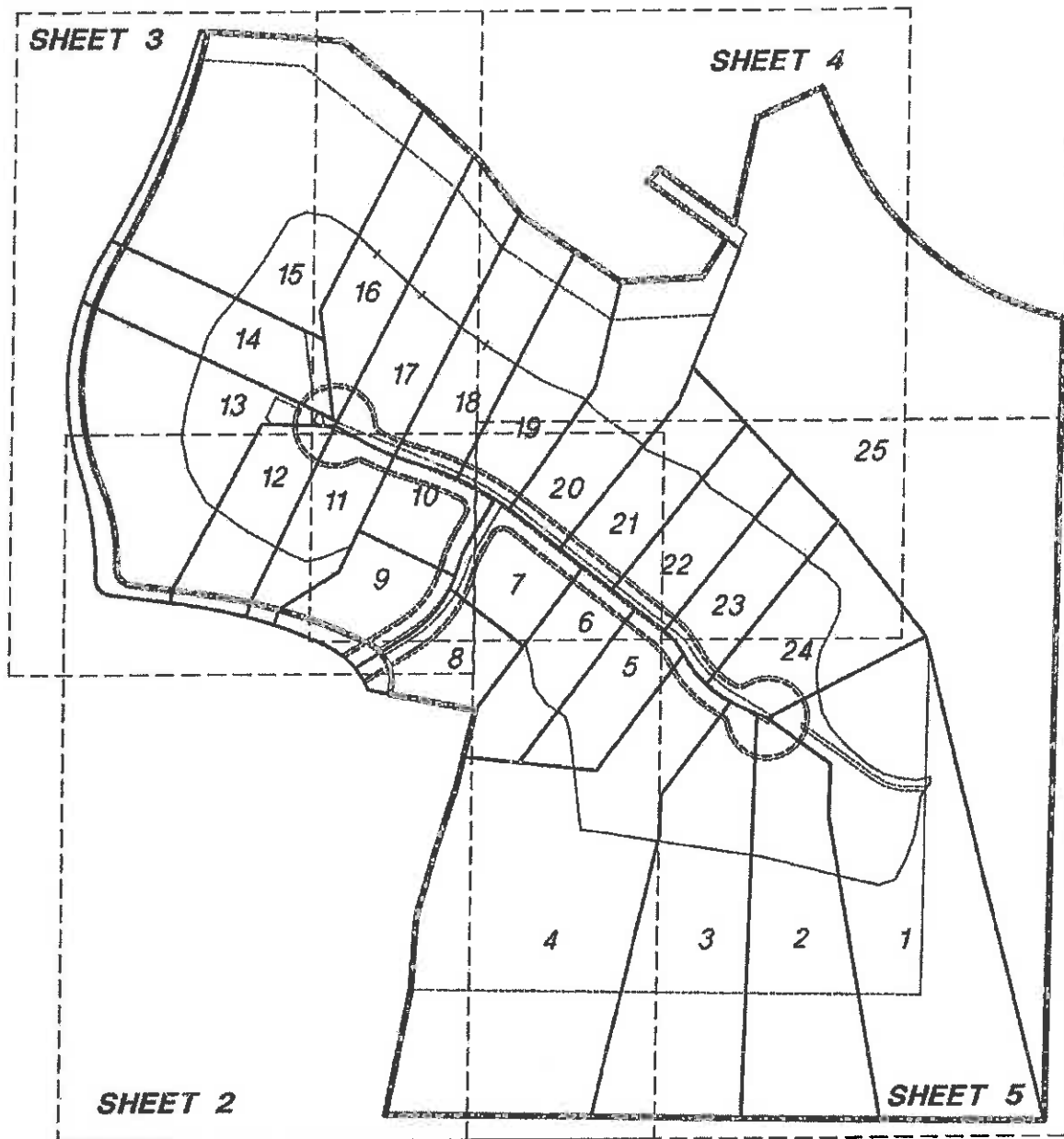
CONTAINING 4.98 ACRES, MORE OR LESS (506 M 45).

ATTACHED HERETO IS A PLAT, CONSISTING OF SIX (6) PAGES, ENTITLED EXHIBIT 'B' AND BY THIS REFERENCE IS MADE A PART HEREOF.

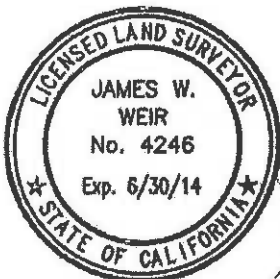

JAMES W. WEIR
I.S. 4246 EXP. 6/30/14

DATED





KEY MAP



JAMES W. WEIR,
L.S. 4246

DATED

DATE: 07/09/12

SCALE: 1"=200'

SHEET

1

OF 6 SHEET

PROJ. NO. 11001

EXHIBIT 'B'
SUBDIVISION 8719 DIABLO POINTE
(506 M 45)
CONSERVATION EASEMENT
CLAYTON, CALIFORNIA

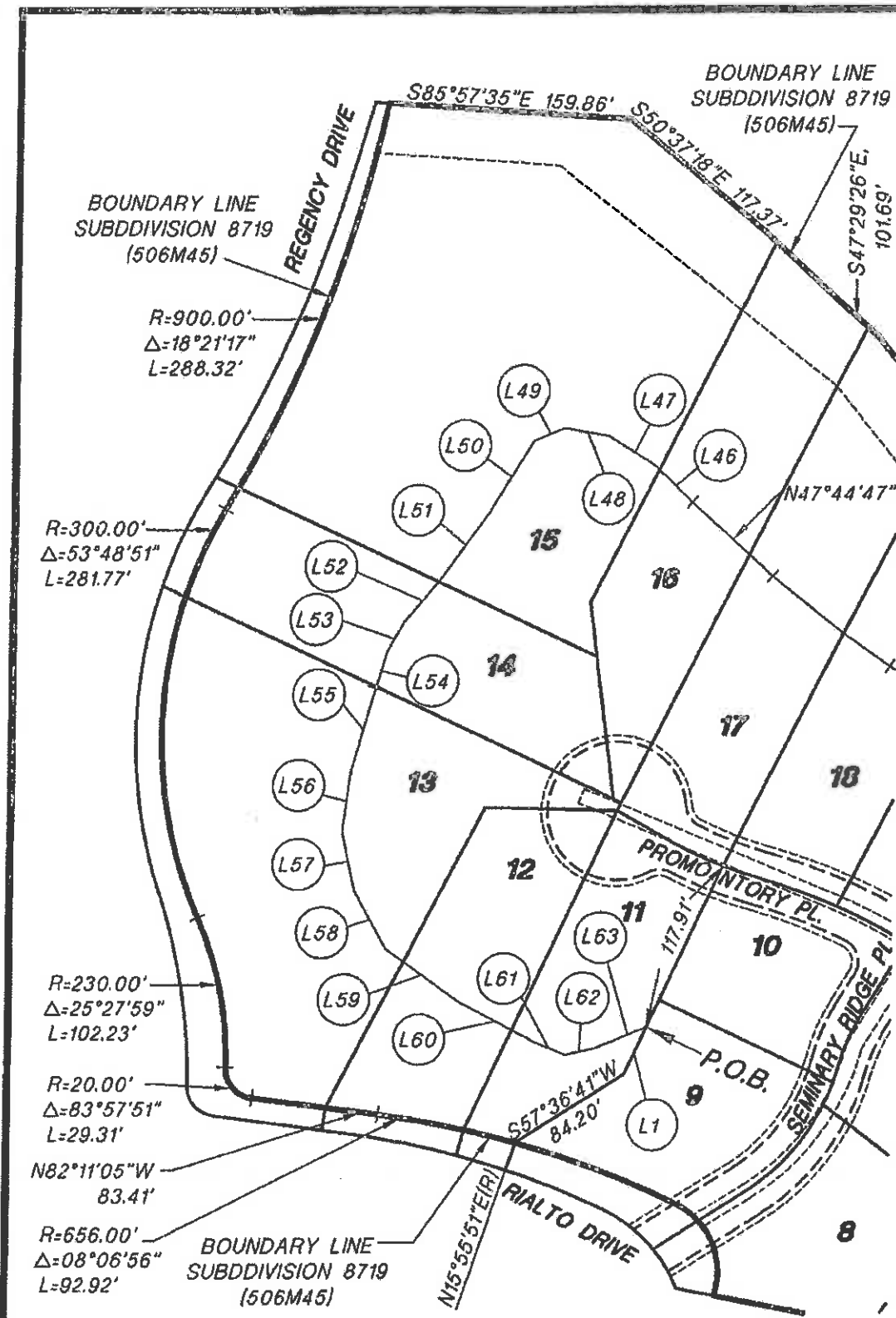


Design Resources, Inc.
Planning • Engineering • Surveying

3071 Olive Circle, Suite 100
Walnut Creek, California 94598-2639 TEL 925/951-8300



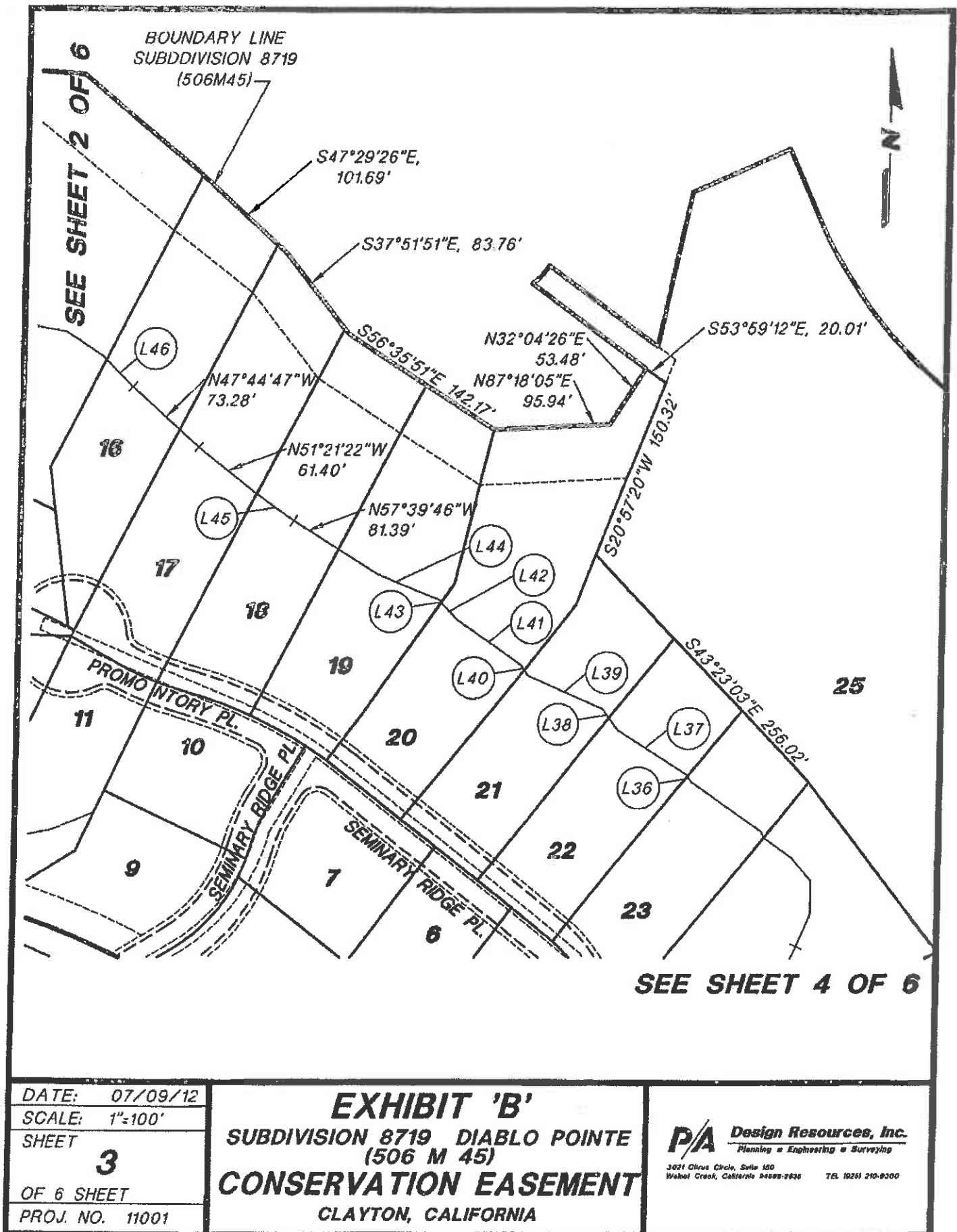
SEE SHEET 3 OF 6



DATE: 07/09/12
SCALE: 1"=100'
SHEET
2
OF 6 SHEET
PROJ. NO. 11001

EXHIBIT 'B'
SUBDIVISION 8719 DIABLO POINTE
(506 M 45)
CONSERVATION EASEMENT
CLAYTON, CALIFORNIA

PA **Design Resources, Inc.**
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3021 Citrus Circle, Suite 350
Walnut Creek, California 94598-2535 TEL 925/ 210-9300



DATE: 07/09/12

SCALE: 1"=100'

SHEET

3

OF 6 SHEET

PROJ. NO. 11001

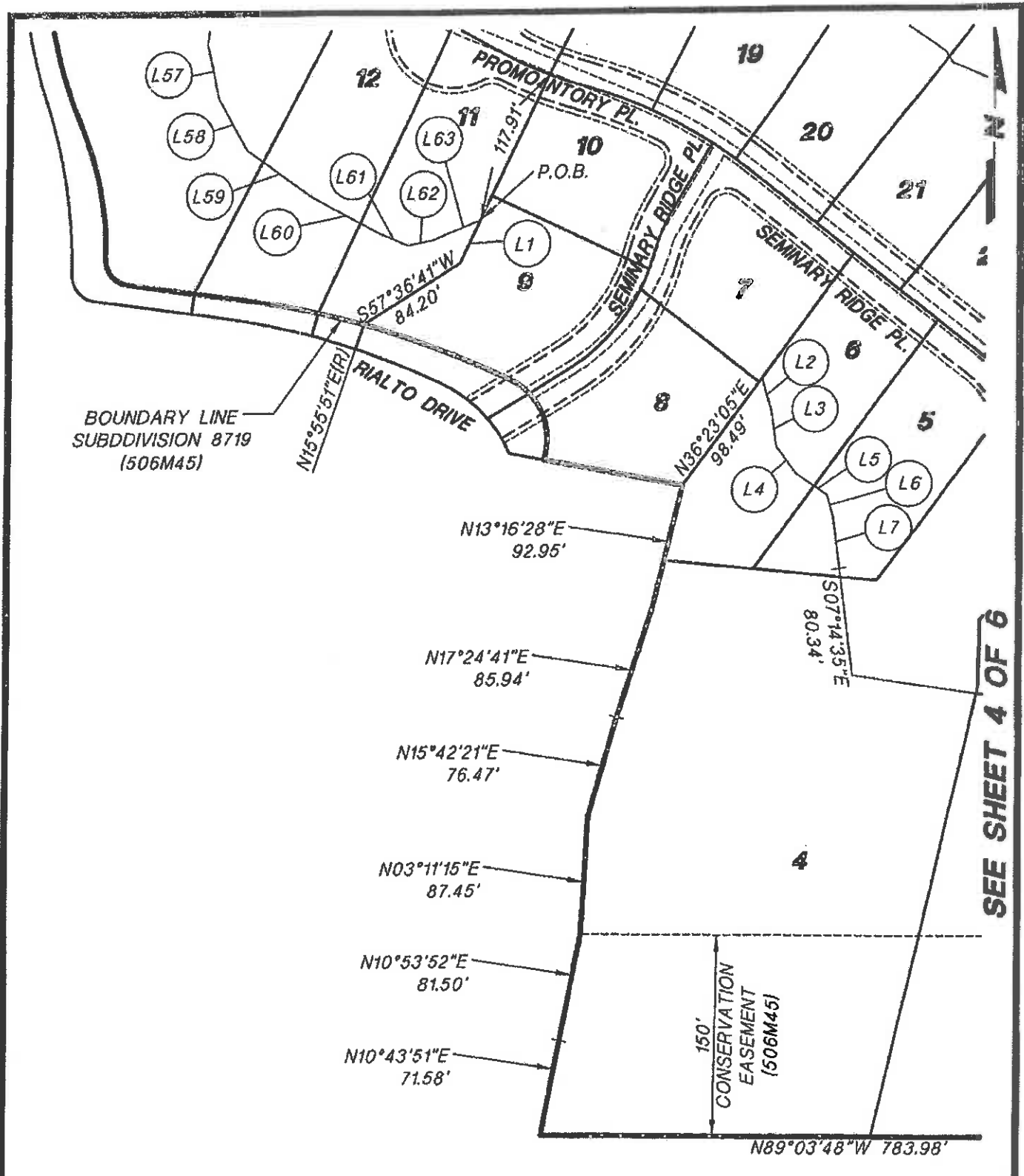
EXHIBIT 'B'
SUBDIVISION 8719 DIABLO POINTE
(506 M 45)
CONSERVATION EASEMENT
CLAYTON, CALIFORNIA



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SEE SHEET 4 OF 6

DATE: 07/09/12
 SCALE: 1"=100'
 SHEET
5
 OF 6 SHEET
 PROJ. NO. 11001

EXHIBIT 'B'
SUBDIVISION 8719 DIABLO POINTE
(506 M 45)
CONSERVATION EASEMENT
CLAYTON, CALIFORNIA

P/A Design Resources, Inc.
 Planning • Engineering • Surveying
 7071 Citrus Circle, Suite 100
 Walnut Creek, California 94598-2435 TEL 926/ 210-9300

LINE TABLE

NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	S24°57'04"W	34.73'	L34	N22°43'08"W	5.71'
L2	S16°16'44"E	26.06'	L35	N54°37'02"W	69.43'
L3	S07°52'18"E	26.48'	L36	N32°41'02"W	7.62'
L4	S36°22'33"E	25.54'	L37	N57°07'11"W	66.63'
L5	S55°18'56"E	28.19'	L38	N36°30'09"W	21.51'
L6	S16°26'32"E	15.85'	L39	N66°29'30"W	68.63'
L7	S07°21'37"E	40.28'	L40	N32°22'39"W	9.59'
L8	NOT USED		L41	N54°50'43"W	64.88'
L9	NOT USED		L42	N43°28'35"W	19.16'
L10	NOT USED		L43	N33°59'57"E	1.45'
L11	S76°57'52"E	49.22'	L44	N67°04'28"W	56.30'
L12	N72°53'10"E	21.07'	L45	N53°59'02"W	36.75'
L13	N27°00'46"E	24.53'	L46	N45°47'30"W	36.10'
L14	N19°41'30"E	30.44'	L47	N57°32'06"W	36.02'
L15	N10°04'18"E	23.61'	L48	N80°00'12"W	29.81'
L16	N05°59'26"E	24.20'	L49	S67°25'42"W	21.54'
L17	N34°35'17"E	22.05'	L50	S31°03'03"W	55.99'
L18	N11°10'17"W	6.00'	L51	S35°25'18"W	54.68'
L19	S78°49'43"W	16.48'	L52	S40°02'16"W	36.54'
L20	N84°14'13"W	20.11'	L53	S28°22'30"W	22.79'
L21	N74°20'19"W	19.62'	L54	S16°22'28"W	24.39'
L22	N57°31'52"W	25.74'	L55	S15°52'23"W	57.04'
L23	N48°17'32"W	28.77'	L56	S07°32'21"W	39.84'
L24	N43°08'15"W	27.36'	L57	S11°49'43"E	41.02'
L25	N28°42'15"W	24.53'	L58	S28°34'39"E	43.68'
L26	N11°32'35"W	30.85'	L59	S53°40'56"E	59.96'
L27	N03°47'54"W	21.06'	L60	S61°42'36"E	56.34'
L28	N10°57'06"E	22.32'	L61	S66°42'20"E	23.02'
L29	N26°05'13"E	24.68'	L62	N77°53'24"E	19.03'
L30	N22°56'18"E	28.76'	L63	N67°44'40"E	38.01'
L31	N00°11'56"W	27.28'			
L32	N41°30'36"W	25.23'			
L33	N54°38'02"W	27.70'			

DATE: 07/09/12

SCALE: 1"=100'

SHEET

6

OF 6 SHEET

PROJ. NO. 11001

EXHIBIT 'B'

**SUBDIVISION 8719 DIABLO POINTE
(506 M 45)**

CONSERVATION EASEMENT

CLAYTON, CALIFORNIA



Design Resources, Inc.
Planning • Engineering • Surveying

3071 Glenside Circle, Suite 150
Walton Creek, California 94098-2028 TEL (926) 210-0300

Agenda Date: 7/17/12

Agenda Item: 4 (a)

**Declaring
August 11-12, 2012**

as

RELAY FOR LIFE: Fight Back against Cancer Days" in Clayton, CA

WHEREAS, Relay For Life is the signature activity of the American Cancer Society and celebrates cancer survivors and caregivers, remembers loved ones lost to the disease, and empowers individuals and communities to fight back against cancer; and

WHEREAS, money raised during various Relays For Life supports the American Cancer Society's mission of saving lives and creating a world with less cancer and more birthdays – by helping people stay well, by helping people get well, by finding cures for cancer and by fighting back; and

WHEREAS, the power of the Relay is that it allows a community to grieve for those lost to cancer, to celebrate the lives of those who have survived, and to provide an opportunity for cancer patients to share with others; and

WHEREAS, Relay For Life helped fund more than \$150 million in cancer research last year; and

WHEREAS, sponsors and supporters of Relay for Life wish to hold such an event in the City of Clayton during August 11-12, 2012.

NOW, THEREFORE, BE IT RESOLVED, that I, Howard Geller, Mayor of the City of Clayton, on behalf of the entire City Council, do hereby proclaim August 11th-12th, 2012 as, "RELAY FOR LIFE: Fight Back against Cancer Days" in Clayton and encourage all citizens to participate in the Relay For Life event at Field 1 in Clayton Community Park on August 11th-12th, 2012.



Agenda Date: 7/17/12
Agenda Item: 9(a)

STAFF REPORT

Approved:

Gary A. Napper
City Manager/Executive Director

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: JULY 17, 2012

**SUBJECT: PUBLIC HEARING ON PROPOSED ASSESSMENTS FOR THE
OPERATION & MAINTENANCE OF STREET LIGHTS IN THE STREET
LIGHTING ASSESSMENT DISTRICT, FY 2012-13**

RECOMMENDATION

Open Public Hearing, receive public comments, close the Public Hearing, tabulate ballots from Subdivision 8719 property owners and approve the attached Resolution.

BACKGROUND

The Engineer's Report approved at the City Council's May 15th meeting recommended leaving the proposed street light assessment amounts unchanged from last year's levies. The levy rate has remained the same amount since 1996. This annual levy pays for street lights located within residential neighborhoods.

In addition, the 24 residential lots in Subdivision 8719 (Diablo Pointe/Estates) were annexed into the Street Lighting Assessment District. The lots were proposed to have an initial annual assessment of \$22.18 due to the subdivision's streets being private. As required by Proposition 218, the initial assessment must be approved by a majority of the property owners and the required notice and ballots were distributed to the property owners.

Also as required by law, notices were mailed and a public meeting was held on June 21st 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 tabulate the ballots received from the property owners in Subdivision 8719. Assuming a majority protest for Subdivision 8719 does not exist, the Council shall consider any comments received during the public hearing prior to any action on the attached Resolution levying assessments for fiscal year 2012-13.

Date: July 17, 2012

Page 2 of 2

FISCAL IMPACT

If this \$125,991.08 annual assessment and Resolution are not approved, the Council must decide whether to fund all street lighting costs on our residential streets from another source, such as at-risk Gas Tax funds or the General Fund of the City, or turn off the street lights.

CONCLUSION

Staff recommends the City Council approve this Resolution confirming the levy of assessments within the Street Lighting Assessment District for FY 2012-13.

Attachments: Resolution confirming Assessments [5 pp.]
Engineer's Report

RESOLUTION NO.

A RESOLUTION DETERMINING LACK OF MAJORITY PROTEST AND CONFIRMING ASSESSMENT FOR OPERATION AND MAINTENANCE OF STREET LIGHTS IN THE STREET LIGHTING ASSESSMENT DISTRICT FOR FISCAL YEAR 2012-13.

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

WHEREAS, by adoption of Resolution No. 20-2012, the Clayton City Council approved the Engineer's Report on the proposed assessment levy for maintaining street lights during fiscal year 2012-13 in the Clayton Street Lighting Assessment District, and set a public meeting thereon for June 19, 2012, and a public hearing thereon for July 17, 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. 20-2012 was duly given as required by Section 54954.6 of the Government Code; and

WHEREAS, on June 19, 2012, and July 17, 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; and

WHEREAS, on July 17, 2012, the ballots from the property owners in Subdivision 8719 were counted and a majority protest against the levy of an initial assessment of \$22.18 was not established;

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 orders the levy of an assessment in the amounts shown on Exhibit A attached hereto per subdivision lot on each of the lots within the following subdivisions in the Street Lighting Assessment District and this Resolution shall constitute the levy and confirmation of such

assessment for fiscal year 2012-13. The total subdivision lots so assessed are 3,458 and consist of each lot within 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.

3. The City will pay from the Special District Augmentation moneys, gas tax or other City funds, the cost of operation for some 166 street lights on arterial streets as described in the Engineer's Report. The herein mentioned assessment levy is to pay for the cost of operation for some 800 subdivision street lights along the interior streets within the above described subdivisions.

4. 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 July 17, 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 July 17, 2012.

Laci J. Jackson, City Clerk

**RESOLUTION NO.
EXHIBIT A**

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
TOTALS		3482				2908.5		\$125,991.08

ENGINEER'S REPORT

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

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

CITY OF CLAYTON								
STREETLIGHT ASSESSMENT DISTRICT FY 2012-13								
PROPOSED ASSESSMENTS								
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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
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Windmill Canyon I	6990	92	SF	Y	1.00	92.00	\$43.54	\$4,005.68
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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
TOTALS		3482				2908.5		\$125,991.08



Agenda Date: 7/17/12
Agenda Item: 10(a)

STAFF REPORT

Approved:

Gary A. Napper
City Manager

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: RICK ANGRISANI, CITY ENGINEER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING TWO SETTLEMENT AGREEMENTS RESOLVING NUMEROUS LAWSUITS IN THE OAKHURST COUNTRY CLUB DEVELOPMENT

RECOMMENDATION

Approve the attached Resolution approving two settlement agreements and authorizing the Mayor to execute the agreements on behalf of the City of Clayton.

BACKGROUND

Construction Defects Lawsuits

Since 2005, there have been numerous construction defect lawsuits filed against the original builder, Presley Homes (now William Lyon Homes), and several of the construction contractors regarding its development and construction of the Oakhurst Country Club residential subdivisions. Most of these lawsuits were settled by Presley. However, several property owners refused individual settlement and were combined into a single action entitled *Lorna Belskey, et al. v. The Presley Companies, et al.* ("Belskey - Defects")

The various parties finally negotiated a Settlement Agreement and Release of All Claims for the Belskey – defects case. However, during the final negotiations, the City and the Oakhurst Geological Hazard Abatement District (GHAD) were also sued and brought into the case. The attached document entitled "Settlement Agreement and Partial Release of All Claims", negotiated between the City, the GHAD, and Presley, modifies the original settlement agreement and incorporates the results of the settlement agreement relating to the Kelok Way slope movement discussed below.

Date: July 17, 2012

Page 2 of 2

Kelok Way Slope Movement

Since 2002, the movement of the slope in the City-owned open space north of Kelok Way has been monitored and evaluated. This slope movement has generated additional lawsuits against Presley, the City, the GHAD, and several contractors for damages based upon inverse condemnation and nuisance caused by the movement in City-owned property. In addition, there have been several cross-complaints filed between Presley, the City and the GHAD.

The attached document (Attachment 2) entitled "Settlement Agreement, Release, and Covenant Not To Sue" effectively resolves the remaining lawsuits. The agreement calls for the contribution of \$1,325,000 as follows:

Presley (Lyon)	\$1,000,000
City/GHAD*	\$250,000
DMC Concrete	\$25,000
Merit Concrete	\$25,000
Rivera Company	\$25,000

*NOTE: the contribution by the City/GHAD will be made by the joint powers insurance authority, the Municipal Pooling Authority of Northern California (MPA), not from funds of the City or the GHAD.

Of these funds, \$600,000 will be paid to the property owners and \$725,000 will be used by the GHAD for the construction of dewatering wells in Kelok Way which geologic engineers indicate will help stabilize the slope and minimize future movement.

FISCAL IMPACT

Approval of these settlement agreements requires a minimal direct contribution by the City to fulfill its \$5,000 self-insured deductible payment (note: the GHAD is included in the City's MPA coverage and has no additional deductible obligation). Further, it will end the payment of attorney fees and significant staff time currently being expended on these issues.

The cost of the dewatering well construction has a "not-to-exceed" limit and includes the cost of design and oversight by a separate consultant and administration by the GHAD.

CONCLUSION

Based upon the above, Staff recommends the City Council adopt the attached Resolution approving the two settlement agreements and authorizing the Mayor to execute the agreements on behalf of the City of Clayton.

Attachments: 1. Resolution
 2. Settlement Agreement and Partial Release of All Claim
 3. Settlement Agreement, Release, and Covenant Not To Sue

RESOLUTION NO. - 2012

**A RESOLUTION APPROVING TWO SETTLEMENT AGREEMENTS RELATING
TO NUMEROUS LAWSUITS CONCERNING CONSTRUCTION DEFECTS AND
LAND MOVEMENT IN THE OAKHURST COUNTRY CLUB DEVELOPMENT**

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

WHEREAS, since 2005, numerous lawsuits alleging damages caused by construction defects and land movement in City-owned open space have been filed by property owners in the Oakhurst Country Club development against the project developer, Presley Homes (now William Lyon Homes), the City, the Oakhurst Geological Hazard Abatement District (GHAD), and various contractors (the Parties); and

WHEREAS, two settlement agreements ("Agreements") entitled "Settlement Agreement and Partial Release of All Claims" and "Settlement Agreement, Release, and Covenant Not To Sue", each Agreement attached hereto and labeled as Attachment 1 and 2, respectively, and incorporated herein as if fully set forth, have been negotiated and tentatively agreed to by all of the Parties; and

WHEREAS, the Agreements resolve the outstanding lawsuits and provide for the installation of dewatering wells in Kelok Way in order to stabilize the slope movement in the City-owned open space north of Kelok Way; and

WHEREAS, City staff and legal counsels have recommended approval of the Agreements.

NOW, THEREFORE, BE IT RESOLVED the City Council of Clayton, California, does hereby adopt this Resolution approving the Agreements as noted and described above, and does hereby authorize the Mayor to execute each Agreement on behalf of the City of Clayton.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 17th day of July, 2012 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

HOWARD GELLER, Mayor

ATTEST:

Laci 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 its regular public meeting held on July 17, 2012.

Laci J. Jackson, City Clerk

**SETTLEMENT AGREEMENT AND
PARTIAL RELEASE OF ALL CLAIMS**

I

INTRODUCTION

This Settlement Agreement (the "Agreement") is entered into by and between the CITY OF CLAYTON (hereinafter "CITY") and OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (hereinafter "GHAD") and THE PRESLEY COMPANIES, PRESLEY HOMES and WILLIAM LYON HOMES, INC. (hereinafter "LYON"). Collectively, the above parties are referred to as "the Settling Parties."

For valuable consideration as between the Settling Parties herein, this Agreement is incorporated into, modifies and controls the Settlement Agreement and Release of All Claims in the matter of *Lorna Belskey, et al. v. The Presley Companies, et al.*, Contra Costa County Superior Court Case No. C05-00837. This Settlement Agreement applies to the following cases:

1. **Daniel Katzman, et al., Plaintiffs v. City of Clayton, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C07-00707.
2. **Andrew Brown, et al., Plaintiffs v. The Presley Company, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C07-01461.
3. **Glade Gaffney, an individual, Plaintiff v. City of Clayton, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C07-02677.
4. **Francis Achim, et al., Plaintiffs v. The Presley Company, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C08-01079. The Achims are proceeding in pro per.
5. **Alan R. Brooks, et al., Plaintiffs v. The Presley Company, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C08-00442. All plaintiffs, except Nancy Robinson Beaver, have dismissed their Complaints with prejudice.
6. **Lorna Belskey, et al., Plaintiffs v. The Presley Companies, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C05-00837. Currently, five Plaintiffs (homes) remain.
7. **Robert Sheffield, et al., Plaintiffs v. William Lyon Homes, Inc., Defendants**, Contra Costa Superior Court Case No. C07-00694.

II

THE PARTIES

The following are the parties to this Agreement and shall hereinafter be referred to as the "Settling Parties":

1. The CITY OF CLAYTON including, but not limited to, its City Council members, City Manager, employees, attorneys, experts, agents and representatives;
2. The OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT including, but not limited to, its Board members, District Manager, employees, attorneys, experts, agents and representatives;
3. WILLIAM LYON HOMES, INC., THE PRESLEY COMPANIES, PRESLEY HOMES including, but not limited to, their predecessor or successor owners or entities, past, present and future parent companies, subsidiaries, divisions, subdivisions, affiliates, related companies, general partners, limited partners, partnerships, partners, joint ventures, shareholders, investors, owners, directors, officers, employees, attorneys, experts, consultants, assigns, agents and representatives. This Agreement does not apply to any insurers of the above-named entities related to LYON.

III

THE CLAIMS

The claims herein shall refer, except as otherwise set forth in this Agreement, to any and all claims or causes of action that were brought, related to the development, planning, improvement, design, construction, maintenance and ownership of all common areas, open spaces, lots and any Plaintiffs' homes related to the above-named seven lawsuits in the Oakhurst Development. In the seven above-referenced actions, LYON and the CITY/GHAD have Cross-Complaints against one another for various causes of action, including equitable indemnity, contribution, breach of contract and express indemnity. The Settling Parties wish to resolve these claims, with such limitations as are set forth below.

IV

MODIFICATIONS TO THE OVERALL BELSKEY v. PRESLEY HOMES SETTLEMENT

LYON and the CITY/GHAD agree to the following terms modifying any global Settlement Agreement between all of the parties in the above-named actions.

A. The CITY/GHAD will contribute TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) toward the BELSKEY Plaintiffs' claims payable to the BELSKEY Plaintiffs and their counsel of record. This money is solely for the alleged property damage to the Plaintiffs' homes and real property. This money will not be used for any hillside repairs.

B. The CITY/GHAD and LYON do not release each other or their respective insurers from any future liability. The CITY/GHAD and LYON agree to reserve any and all arguments and defenses concerning the interpretation of the 2003 Settlement Agreement between LYON and the CITY, the Oakhurst Country Club Development Agreement, any and all Subdivision Agreements and related Addendums and Amendments including whether or not these Agreements remain valid. Neither LYON nor the CITY/GHAD waive or release any factual or legal arguments concerning the above-referenced documents, including that the documents have expired.

C. LYON and the CITY/GHAD agree to mutually waive all claims against each other to recover past, present and future attorneys' fees and costs incurred relating to the ACHIM, BROOKS, BELSKEY, BROWN, KATZMAN, GAFFNEY and SHEFFIELD actions.

D. LYON and the CITY/GHAD agree to "stand down" on the ACHIM and BROOKS actions. LYON will take the lead in the defense of both these actions. LYON agrees to indemnify, but not defend, the CITY and GHAD for the ACHIM and BROOKS actions. The indemnity will apply except where there is a determination by a finder of fact that the liability to the ACHIMS and NANCY ROBINSON BEAVER Plaintiffs for their property damage was the "sole negligence" of the CITY/GHAD. The CITY and GHAD agree to bear their own attorneys' fees and costs for the ACHIM and BROOKS matters.

E. Lyon and the CITY/GHAD agree that all arguments and defenses as to the interpretation of the the Oakhurst Development Agreement, all Subdivision Agreements, the 2003 Settlement Agreement and Release and related written agreements between LYON and the CITY/GHAD shall remain unaffected by this Agreement.

F. Upon full funding by all settling parties to the BELSKEY settlement, GHAD will contract with Engineered Soil Repairs, Inc. (ESR) or another qualified contractor for the repairs/remediation of the "Katzman slide." The ESR contract is a fixed price contract to perform work on the hillside for a total of SIX HUNDRED THIRTY-FIVE THOUSAND FOUR HUNDRED EIGHTY DOLLARS (\$635,480.00), plus an additional cost of THIRTEEN THOUSAND THREE HUNDRED NINETY-THREE DOLLARS (\$13,393.00) if it is determined that the project is a "prevailing wage" project. Neither the CITY/GHAD nor LYON shall be responsible for any contract overages. In the event that ESR cannot or will not sign a contract for the work acceptable to the CITY or GHAD, GHAD will put out the repair work to bid using the Contract Documents prepared by Stevens, Ferrone & Bailey. The total amount of money being contributed by LYON and/or its subcontractors for the hillside repairs is SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00). In addition to the ESR (or other qualified contractor) contract price, additional fees and expenses out of the SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00) shall include expert fees paid to Stevens, Ferrone & Bailey for inspections and/or any other fees and costs associated and/or performed with the repairs including any required inspections by the CITY or GHAD. Upon full funding by all settling parties to the BELSKEY settlement, GHAD will contract with Stevens, Ferrone & Bailey. The invoices of Stevens, Ferrone & Bailey will be reviewed by the GHAD District Manager whose time will be compensated out of the SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00) in an amount NOT TO EXCEED \$5,000. ESR or

another qualified contractor has agreed or will agree to pay all permitting and required GHAD inspection/bond fees. Any money not used out of the SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00) will be split between LYON HOMES and the CITY/GHAD on an 80/20 basis with eighty percent (80%) going back to LYON HOMES and twenty percent (20%) going to the CITY/GHAD. ESR or another qualified contractor has agreed or will agree to defend and indemnify LYON HOMES, the CITY and GHAD. In addition, neither LYON nor the CITY/GHAD shall be responsible for any additional costs above the fixed price contract work.

V

MISCELLANEOUS

A. LYON and the CITY/GHAD agree that they are not relying on any representations made by the other in agreeing to the settlement other than what is included in this Release Agreement. LYON HOMES and the CITY/GHAD further represent that they understand that they are dismissing their respective cross complaints against each other voluntarily and not in reliance of any representation or promise or inducement not expressed herein.

B. This AGREEMENT is the result of a compromise among the SETTLING PARTIES and shall never at any time or for any purpose be considered as an admission of liability and/or responsibility on the part of any party herein released as to this agreement, nor shall the payment of any sum of money in consideration for the execution of this AGREEMENT constitute or be construed as an admission of any liability whatsoever by any party herein released, each of which continues to deny such liability and disclaim such responsibility.

C. This Agreement and the terms of this Agreement are contractual and not a mere recital. Each Party has carefully read and understands the contents of this Agreement and signs the same as the undersigned's own free act.

D. This Agreement shall bind and be binding upon the heirs, executors, administrators and assigns of each Party.

E. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be wholly or partially illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions of this Agreement shall not be affected thereby. Said illegal, unenforceable or invalid part, term or provision shall be deemed not to be a part of this Agreement.

F. This Agreement may be signed in counterparts which, when taken together, shall constitute the same Agreement. This document sets forth the entire Agreement between the Parties hereto. It supersedes any and all prior agreements (except as noted herein) or understandings, written or oral, among the Parties pertaining to the specific subject matter (the Belskey Settlement) of this Agreement.

G. This Agreement shall be effective as of the date it is fully executed by all of the undersigned (the "Effective Date").

H. This Agreement is the product of arms length negotiations prepared by and among the Parties and their counsel. All Parties expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one Party or another. No presumption of drafting or interpretation based on drafting for or against the Parties shall apply.

I. This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California, without reference to choice of law rules.

WILLIAM LYON HOMES, INC.

Dated: _____, 2012.

By _____
Print Name: _____
Title: _____

CITY OF CLAYTON

Dated: _____, 2012.

By _____
Howard Geller, Mayor

OAKHURST GEOLOGICAL HAZARD
ABATEMENT DISTRICT

Dated: _____, 2012.

By _____
Hank Stratford, Chairman

SETTLEMENT AGREEMENT, RELEASE, AND COVENANT NOT TO SUE

INTRODUCTION

This Settlement Agreement, Release and Covenant Not to Sue ("AGREEMENT") was effectively entered into on the 7th day of September 2011, by and between Plaintiffs Lailuma and Hamid Hossaini, William J. and Beverly J. Plambeck, Gregory S. and Phyllis O. Redmond, Debra Vanslambrook, and Amin and Nahida Zafari, and all other legal or equitable owners of the properties and all Related Persons or Entities, as defined herein, whether or not named as plaintiffs herein (herein collectively referred to as "PLAINTIFFS"), and Presley Homes, The Presley Companies and William Lyon Homes, Inc. (herein collectively referred to as "LYON"), DMC Concrete, Inc., Merit Concrete, Inc., Rivera Company, City of Clayton, and Oakhurst Geological Hazard Abatement District and all other Related Person or Entities, as defined herein.

1. DEFINITIONS

The following definitions shall apply in this AGREEMENT:

1.1 "AGREEMENT" shall mean and refer to this Settlement Agreement, Release and Covenant Not to Sue.

1.2 "PLAINTIFFS" shall mean and refer to Lailuma and Hamid Hossaini, William J. and Beverly J. Plambeck, Gregory S. and Phyllis O. Redmond, Debra Vanslambrook, and Amin and Nahida Zafari and all other current legal or equitable owners of the properties and all related person or entities whether or not named as plaintiffs herein.

1.3 "CITY" shall mean and refer to the City of Clayton.

1.4 "GHAD" shall mean and refer to the Oakhurst Geological Hazard Abatement District.

1.5 "SETTLING SUBCONTRACTORS" shall mean and refer to DMC Concrete, Inc., Merit Concrete, Inc., and Rivera Company, and all who are Related Persons.

1.6 "SETTLING PARTIES" shall mean and refer to PLAINTIFFS, LYON, DMC Concrete, Inc., Merit Concrete, Inc., Rivera Company, CITY, and GHAD.

1.7 "THE ACTION" shall mean and refer to the case filed individually by PLAINTIFFS, on or about April 25, 2005, against LYON and others, and more particularly described as follows: *Lorna Belskey, et al. v. The Presley Companies, et al.*, bearing the Contra Costa County Superior Court Case Number MSC05-00837.

1.8 “THE CROSS-ACTION” shall mean and refer to any and all cross-complaints filed in THE ACTION by any party.

1.9 “SUBJECT PROPERTIES” shall mean and refer to all right, title and interest that PLAINTIFFS have in the five (5) single-family homes, including the real property and improvements thereon located at the Falcon Ridge subdivision at the Oakhurst Country Club located in Clayton, California. Specifically, “SUBJECT PROPERTIES” are described with particularity in Exhibit “A” attached hereto and incorporated by reference.

1.10 “CITY OWNED ADJACENT LAND” shall mean and refer to the hillside slopes owned by the City and adjacent to the SUBJECT PROPERTIES. The CITY OWNED ADJACENT LAND includes primarily tract 7261, and peripherally tracts 7264 and 7263.

1.11 “RELATED PERSONS AND ENTITIES” as it pertains to LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS shall mean and refer to any and all of their past, present and future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, stockholders, directors, officers, officials, employees, lenders, mortgage holders, predecessors, partners, joint venturers, legal representatives, agents, experts, consultants, heirs, administrators, trusts, trustees, trust beneficiaries, creditors, assignees, and each of their predecessors, successors, and assigns as to this case only and not as to any future third party claims related to the SUBJECT PROPERTIES.

1.12 “RELATED PERSONS AND ENTITIES” as it pertains to the PLAINTIFFS shall mean and refer to any and all legal and equitable owners of the SUBJECT PROPERTIES and their legal representatives, insurers, lenders, mortgage holders, agents, experts, consultants, heirs, trusts, trustees, trust beneficiaries, creditors, assignees, lessees, tenants, residents of the SUBJECT PROPERTIES, administrators and conservators, and each of their predecessors, successors and assigns.

1.13 “CLAIM” or “CLAIMS” shall mean and refer to any and all claims, demands, liabilities, causes of action of any kind, arising out of the matters alleged in the ACTION, including but not limited to strict liability, breach of implied warranty, breach of contract, negligence per se, breach of express warranty, negligence, trespass, inverse condemnation, nuisance, and all losses and damages, whether economic or non-economic, including, but not limited to, losses and damages associated with patent or latent defects, loss of compensation, property damage, indemnity, loss of use, loss of services, attorney’s fees, expert’s fees, repair costs, investigative costs, relocation costs, diminution in value claims, and any other actionable omissions, conduct or damages of any kind and nature whatsoever, whether subrogated or non-subrogated, whether in tort, contract or extracontractual, at law or in equity, actual or contingent, foreseen or unforeseen, known or unknown, past or future

1.14 "CLAIM" or "CLAIMS" specifically excludes from this Settlement Agreement: (1) Any and all CLAIMS as that term is defined herein which LYON and its respective RELATED PERSONS AND ENTITIES have or may have against any party, person, or entity other than PLAINTIFFS, SETTLING SUBCONTRACTORS and their respective RELATED PERSONS AND ENTITIES; (2) Any and all CLAIMS as that term is defined herein which LYON and its respective RELATED PERSONS AND ENTITIES have or may have pursuant to their status as named or additional insureds to the insurance policies issued to any individual or entity; (3) any and all claims for personal injury or bodily injury, which PLAINTIFFS have not alleged in the present ACTION; (4) any and all future damages arising out the maintenance of the hillside slopes adjacent to the SUBJECT PROPERTIES that are owned by the CITY and maintained by the GHAD and/or any repairs performed in the future to the hillside slopes that are unrelated to the CLAIMS released herein which are caused by the negligent acts or omissions of the CITY and GHAD occurring after the date of this Agreement.

1.15 Section 1.14 above does not apply as between LYON and the CITY and GHAD and all issues concerning claims by and between LYON and the CITY and GHAD shall be governed by a separate agreement.

2. RECITALS

2.1 On or about April 25, 2005, PLAINTIFFS filed THE ACTION against LYON claiming damages for strict liability, breach of implied warranty, breach of contract, negligence per se, breach of express warranty, negligence, and nuisance, with claims of alleged defects in the design, construction, grading and repair of the SUBJECT PROPERTIES and all component parts of the SUBJECT PROPERTIES. PLAINTIFFS also claimed damages against the CITY and GHAD for inverse condemnation and nuisance regarding the CITY OWNED ADJACENT LAND.

2.2 On or around June 30, 2005, LYON filed THE CROSS-ACTION against certain subcontractors whose work was implicated in THE ACTION and/or tendered claims to them or their representatives. Pursuant to THE CROSS-ACTION, LYON sought indemnification and contribution from THE SETTLING SUBCONTRACTORS, as well as the CITY and GHAD. The CITY and GHAD filed a CROSS ACTION against LYON seeking, among other things, indemnification.

2.3 On or about September 7, 2011, a settlement was reached between PLAINTIFFS, LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS for a total of \$1,325,000. \$725,000 of the settlement funds will be used by GHAD to perform a dewatering repair of the hillside. No settlement funds from the CITY or GHAD shall be used for hillside repairs. GHAD agrees to be the contracting party for the hillside repair and the construction management oversight contracts.

2.4 The SETTLING PARTIES desire and intend by this AGREEMENT to now settle, finally and completely, all claims, demands, actions, causes of action and obligations, known or unknown, relating to drainage, grading, foundation, concrete,

geotechnical and all below-ground soils, including allegations of faulty soil compaction, adjacent landslides, faulty existing underlying soils and expansive soils resulting in soil movement and damage to the structures, concrete slabs, flatwork and foundation defects including any and all resulting damages associated with and arising from the ACTION or CROSS ACTION. All issues by and between LYON and the CITY and GHAD shall be governed by a separate agreement.

2.5 Upon approval of this Agreement and full funding of the settlement by all SETTLING PARTIES, GHAD will contract with Engineered Soil Repair, Inc. ("ESR") or another qualified contractor to install dewatering wells on CITY OWNED ADJACENT LAND. Upon approval of this Agreement and full funding by all SETTLING PARTIES, GHAD will retain Steven, Ferrone & Bailey Engineering Company, Inc. to inspect, manage and supervise the construction.

2.6 This AGREEMENT does not modify, diminish, or release the CITY or GHAD from any duty or obligation to maintain the CITY OWNED ADJACENT LAND.

3. PAYMENT AND ASSIGNMENT

3.1 Settlement Payments. The total amount to be collectively paid to PLAINTIFFS by LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS, pursuant to the settlement reached between SETTLING PARTIES is \$600,000.00. The remaining payments (excluding all funds from the CITY and GHAD) are to be used for payment of the hillside repairs and construction management oversight expenses or costs.

3.2 The settlement contributions are broken down as follows:

LYON	\$1,000,000
CITY and GHAD	\$250,000
DMC Concrete	\$25,000
Merit Concrete	\$25,000
Rivera Company	\$25,000

3.3 ASSIGNMENT. In exchange for the monetary contribution of LYON, PLAINTIFFS agree to assign to LYON any all claims they may have against any NON-SETTLING PARTY, known or unknown, including, but not limited to equitable and implied indemnity rights.

3.4 In exchange for the settlement amount described above, PLAINTIFFS shall dismiss any and all CLAIMS in THE ACTION and/or arising from or related to the

SUBJECT PROPERTIES, with prejudice, as to LYON, the SETTLING SUBCONTRACTORS, the CITY, and GHAD.

3.5 All Parties agree that the settlement amount described above was made in good faith in accord with Code of Civil Procedure sections 877 and 877.6.

3.6 All Settlement Payments due PLAINTIFFS shall be forwarded to plaintiffs' counsel by December 1, 2011 for SETTLING PARTIES. Timing of settlement payments by LYON and/or LYON's carriers is governed by a separate agreement between PLAINTIFFS and LYON. Settlement checks shall be made payable to the "Milstein Adelman Client Trust Account" (Federal Tax ID No. 95-4598207) and delivered to PLAINTIFFS' counsel.

3.7 Each party shall be responsible to pay only their contribution to the total settlement amount and shall not be responsible or liable for any other party's settlement contribution.

4. RELEASES

4.1 PLAINTIFFS' Release. For and in consideration of the settlement amount as described in Paragraph 3 of this AGREEMENT, and the other representations and promises contained herein, and except as otherwise set forth herein, PLAINTIFFS, individually and collectively, and on behalf of their RELATED PERSONS AND ENTITIES, do hereby fully and finally settle, release, acquit and forever discharge, in the broadest possible manner, LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS and their respective RELATED PERSONS AND ENTITIES, of and from all CLAIMS in the action, as defined herein, which arose out of or are connected in any way with the SUBJECT PROPERTIES and/or the CITY OWNED ADJACENT LAND, and are not specifically excluded herein. Conditioned upon the promises made herein, this AGREEMENT may be pled as a full and complete defense to any action or other proceeding by which any PLAINTIFF pursues any of the CLAIMS released herein, as well as a basis for abatement of, or injunction against, such action or other proceeding.

4.2 LYON and SETTLING SUBCONTRACTORS' Releases. For and in consideration of the Release of PLAINTIFFS, as described herein, and the other representations and promises contained herein, and except as otherwise set forth herein, LYON and SETTLING SUBCONTRACTORS, on their own behalf and on behalf of their respective RELATED PERSONS AND ENTITIES, do hereby fully and finally settle, release, acquit and forever discharge, in the broadest possible manner, each other and their respective RELATED PERSONS AND ENTITIES, of all CLAIMS made by PLAINTIFFS in THE ACTION and the associated CROSS-ACTION, as defined herein, which arose out of or are connected in any way with the SUBJECT PROPERTIES, except for any claim brought in the future by an individual or entity not a named party to these proceedings. Conditioned upon fulfillment of the promises made herein, this AGREEMENT may be pled as a full and complete defense to any action or other

proceeding by which LYON or any SETTLING SUBCONTRACTOR pursues any of the CLAIMS released herein, as well as a basis for abatement of, or injunction against, such action or other proceeding.

4.3. The specific terms of the ongoing relationship and release of claims between LYON and the CITY and GHAD shall be governed by a separate agreement.

4.4 WAIVER OF CIVIL CODE SECTION 1542. PLAINTIFFS acknowledge and understand that there is a risk that, subsequent to the execution of this AGREEMENT, they may accrue, obtain, incur, suffer or sustain CLAIMS which in some conceivable way arise out of, are caused by, are connected with or related to SETTLING PARTIES, the SUBJECT PROPERTIES, and/or the CITY OWNED LAND and that such CLAIMS may be unknown and unanticipated at the time this AGREEMENT is signed, or are not presently capable of being ascertained. PLAINTIFFS further acknowledge that there is a risk that any CLAIMS as are known or should be known may become more serious than they now expect or anticipate. Nevertheless, PLAINTIFFS hereby expressly waive all rights they may have in such unknown and unexpected consequences or results, unless such rights are specifically excluded herein. PLAINTIFFS acknowledge that they have had the benefit of or opportunity to consult with counsel, understand the import of California Civil Code section 1542 and expressly waive the protection of Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the executing the release which, if known by him or her must have materially affected his or her settlement with the debtor.

PLAINTIFFS hereby specifically waive any and all rights and benefits that could accrue under this section or any successor statute, unless such rights are specifically excluded herein. SETTLING PARTIES acknowledge that this AGREEMENT would not be made without such a waiver

5. CONFIDENTIALITY AND COVENANT NOT TO PUBLISH

5.1 PLAINTIFFS, and their attorneys, experts and all those associated with them, agree to refrain from disclosing, advertising, or publicizing in any way, including but not limited to, via newspapers, magazines, jury verdicts publications, law firm marketing brochures or materials, television, radio, newsletters, the Internet, or other publications, the amounts to be paid or received separately, individually or collectively by SETTLING PARTIES, the total amount of the Settlement Payments, except as specifically set forth herein.

5.2 SETTLING PARTIES hereby acknowledge that substantial work has been performed by their legal counsel, agents, representatives, expert witnesses and/or

consultants, at the express direction of the SETTLING PARTIES, related to the prosecution and/or defense of THE ACTION and THE CROSS-ACTION, a defined herein. Such work includes, but is not limited to, tests, reports, studies, examinations, inspections and research and analyses regarding, among other things, the SUBJECT PROPERTIES. SETTLING PARTIES hereby expressly assume responsibility for an ownership of such work performed by their legal counsel, agents, representatives, expert witnesses and/or consultants, and, pursuant to the terms of this AGREEMENT, SETTLING PARTIES shall take all appropriate steps to ensure such work, as defined herein, shall remain confidential. For instance, SETTLING PARTIES shall advise their legal counsel, agents, representatives, expert witnesses and/or consultants, who have performed such work at their express direction related to the prosecution and/or defense of THE ACTION and THE CROSS-ACTION, that such work shall remain confidential.

5.3 Notwithstanding this AGREEMENT, nothing in this AGREEMENT will prohibit, narrow, or abrogate the PLAINTIFFS' obligations to comply with disclosure requirements of the State of California related to or regarding the SUBJECT PROPERTIES. However, in making any and all necessary disclosures, the PLAINTIFFS shall not reveal the monetary terms of this AGREEMENT, except PLAINTIFFS may indicate that all applicable CLAIMS relating to the original construction and repairs of the SUBJECT PROPERTIES have been fully released by them under California law and that the release runs with the land and is applicable to subsequent purchasers of the SUBJECT PROPERTIES.

5.4 LYON and SETTLING SUBCONTRACTORS agree that, except as set forth herein, they also shall not disclose the Settlement Payments provided to PLAINTIFFS pursuant to this AGREEMENT. However, LYON and SETTLING SUBCONTRACTORS may share any of the terms of this AGREEMENT with their RELATED PERSONS AND ENTITIES as needed in the ordinary course of conducting their business.

5.5 Nothing in this AGREEMENT will prohibit the explanation of settlement terms in pleading filed with the Contra Costa Superior Court, including but not limited to, motions for good faith settlement. However, SETTLING PARTIES agree that any such pleadings, declarations, and other papers filed with the Court in this regard shall be treated as confidential materials and will not be provided or referenced in any way, shape or form to anyone, including, but not limited to, newspapers, magazines, jury verdict publications, law firm marketing brochures, television, radio, newsletters, the Internet, any publication, and etc. except as required for said pleadings and proceedings or as ordered by Court. Further, to the extent that a SETTLING PARTY must file any part of this AGREEMENT with the Court, the SETTLING PARTY doing so may only file those portion of this AGREEMENT that are necessary for the motion or pleading. The CITY and GHAD as public entities must make public this AGREEMENT upon execution pursuant to California law.

5.6 Nothing in this AGREEMENT shall prohibit disclosure to third parties to the extent necessary to comply with applicable laws, or for financial planning or tax purposes to financial advisors.

6. REPRESENTATIONS

SETTLING PARTIES make the following material representations with the understanding that each of them enters into this AGREEMENT in reliance upon each of these representations and that, without these representations, none of them would enter into this AGREEMENT:

6.1 SETTLING PARTIES intend that the terms and conditions of this AGREEMENT, and the AGREEMENT as a whole, shall be binding upon them, and their RELATED PERSONS AND ENTITIES, and are intended by SETTLING PARTIES to run with the land, as to the SUBJECT PROPERTIES, pursuant to applicable California law. A memorandum of settlement or other similar document shall be executed before a notary public by PLAINTIFFS and delivered to counsel for LYON with this AGREEMENT for recordation as to each of the SUBJECT PROPERTIES, and all parties shall cooperate and take all steps necessary to ensure recordation of a memorandum of settlement. An exemplar copy of the memorandum of settlement is attached hereto and incorporated by reference as "Exhibit B".

6.2 PLAINTIFFS and/or signatories hereto represent that they own the SUBJECT PROPERTIES and that they have not sold, transferred, conveyed, or assigned any interest therein which may affect the final and full resolutions of all CLAIMS. PLAINTIFFS represent that there are no other legal or equitable owners who should sign this AGREEMENT and that all such owners have been identified and are signatories to this AGREEMENT. PLAINTIFFS represent that the SUBJECT PROPERTIES are not currently in escrow, nor is any sale related to the SUBJECT PROPERTIES pending.

6.3 PLAINTIFFS and signatories hereto represent that they have not sold, transferred, conveyed, assigned, hypothecated and/or subrogated any of the CLAIMS released herein.

6.4 PLAINTIFFS and signatories hereto represent that they have standing to sue herein as the real parties-in-interest as to THE ACTION.

6.5 SETTLING PARTIES have selected and retained their own attorneys, experts and consultants to inspect, analyze and advise them regarding the nature, extent and cause of the CLAIMS. SETTLING PARTIES acknowledge that all of the terms and provisions of this AGREEMENT have been explained to them by their legal counsel. SETTLING PARTIES further represent that they understand and accept all of the terms and provisions of this AGREEMENT voluntarily and not in reliance of any representation or promise or inducement not expressed herein.

6.6 Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter in this AGREEMENT on behalf of the SETTLING PARTY for whom he or she purports to sign.

7. AGREEMENT NOT TO PROSECUTE

PLAINTIFFS shall never commence or prosecute any action, and hereby expressly agree not to assist in any way, shape or form in the commencement or prosecution of any action against LYON, the CITY, GHAD, or SETTLING SUBCONTRACTORS, in law or equity, based upon, arising from or in any way connected to the SUBJECT PROPERTIES and/or CITY OWNED ADJACENT LAND, based upon the CLAIMS released herein, or upon said parties' acts or omissions relating to the SUBJECT PROPERTIES and/or CITY OWNED ADJACENT LAND at any time up to and including the effective date of this AGREEMENT. Pursuant to this Paragraph, in addition to the other representations made in this AGREEMENT (including but not limited to Paragraph 5) PLAINTIFFS and their RELATED PERSONS AND ENTITIES agree not to provide such assistance in the prosecution or commencement of any action against LYON or SETTLING SUBCONTRACTORS by disclosing work performed by their legal counsel, agents, representatives, expert witnesses and/or consultants, based upon, arising from or in any way connected to the SUBJECT PROPERTIES and/or CITY OWNED ADJACENT LAND and the CLAIMS related thereto, unless required by law or ordered by court.

This AGREEMENT may be pled as a full and complete defense to any action or other proceeding, as a basis for abatement of, or injunction against such action.

8. HOLD HARMLESS

8.1 PLAINTIFFS will hold harmless LYON, the CITY, and GHAD and its officers, directors, shareholders, agents, representatives, predecessors, successors, assigns, affiliated and related entities and all persons acting by, through, under or in concert with it from any loss, claim, action, expense, demand, subrogation or cause of action of any kind or character whatsoever brought by or on behalf of any past, present or future owner(s) of the SUBJECT PROPERTY relating to any released CLAIM which is the subject matter of this Agreement, unless specifically excluded herein.

8.2 PLAINTIFFS acknowledge that in consideration of the promises and agreements contained herein, LYON, and SETTLING SUBCONTRACTORS and the RELATED PARTIES AND ENTITIES bear no responsibility whatsoever as to redesign, repair, remediation, corrective work and/or maintenance performed or not performed on the SUBJECT PROPERTIES. All such responsibility is fully and completely assumed by PLAINTIFFS only, and PLAINTIFFS agree to hold LYON, the SETTLING SUBCONTRACTORS, the CITY, GHAD and their RELATED PARTIES AND ENTITIES harmless of and from any past, present or future claims related to the failure to undertake repairs, deficient for defective repairs, and/or any other claim related to or

arising out of the redesign, repair, remediation, corrective work and/or maintenance performed or not performed on the SUBJECT PROPERTIES.

9. INDEMNIFICATION FOR FAILURE TO DISCLOSE

9.1 PLAINTIFFS agree to fully comply with California law relating to the duty to disclose conditions of a residence upon the sale or transfer of same.

9.2 PLAINTIFFS further agree to hold LYON, the SETTLING SUBCONTRACTORS, and the CITY and GHAD harmless, should they be sued, for any failure and/or alleged failure of PLAINTIFFS to disclose conditions of their residences and matters raised in connection with the released CLAIMS herein, as required pursuant to California law, relating to the SUBJECT PROPERTIES.

10. WARRANTY OF AUTHORIZED SIGNATORIES

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this AGREEMENT on behalf of the party for whom he or she purports to sign.

11. PROTECTION AGAINST SUBROGATION OR SUBSEQUENT CLAIMS

PLAINTIFF represents and warrants that it has not initiated, nor concluded, nor is it aware of, nor will it make any other claims for property damage, based upon the CLAIMS released herein and involving the SUBJECT PROPERTY.

12. WARRANTY REGARDING NON-ASSIGNMENT OR TRANSFER OF CLAIMS

PLAINTIFF hereby represents and warrants that the homeowner has not subrogated their rights to any and all CLAIMS involved in THE ACTION, and it is the sole and rightful owner of all those rights, title, and interest in the settlement proceeds and every claim and other matter which it releases herein and has not heretofore assigned or otherwise transferred any interest in any claim which it may have against the parties to this AGREEMENT, any entity released or discharged pursuant to this AGREEMENT, or the settlement proceeds.

13. COMPROMISE

This AGREEMENT is the result of a compromise among the SETTLING PARTIES and shall never at any time or for any purpose be considered as an admission of liability and/or responsibility on the part of any party herein released, nor shall the payment of any sum of money in consideration for the execution of this AGREEMENT

constitute or be construed as an admission of any liability whatsoever by any party herein released, each of which continues to deny such liability and disclaim such responsibility.

14. ATTORNEY FEES

The SETTLING PARTIES acknowledge and agree that each of them will bear their own costs, expenses and attorney fees arising out of and /or connected with the CLAIMS, the negotiation, drafting, and execution of this AGREEMENT, and all matters arising out of or connected therewith except that in the event any action is brought by any party hereto to enforce this AGREEMENT, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to all other relief to which that party or those parties may be entitled, including without limitation, attorney fees and costs incurred if this Agreement must be enforced in Bankruptcy proceedings. The issue of attorney fees and costs by and between LYON and the CITY and GHAD shall be governed by separate agreement.

15. SEVERABILITY

If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall nevertheless, continue in full force and effect, without being impaired in any manner whatsoever. In addition, if any party to this AGREEMENT fails or refuses to sign said AGREEMENT, the AGREEMENT will continue to have full force and effect and will be binding upon the remaining parties to the AGREEMENT.

16. CONSTRUCTION OF AGREEMENT

This AGREEMENT is the product of negotiation and preparation by and among the SETTLING PARTIES and their respective attorneys. The SETTLING PARTIES therefore expressly acknowledge and agree that this AGREEMENT shall not be deemed prepared or drafted by one party or another, or its attorneys, and will be construed accordingly.

17. PERSONS BOUND AND BENEFITED

Except as limited and/or excluded herein, this AGREEMENT shall be binding upon and inure to the benefit of SETTLING PARTIES, any and all legal or equitable owners of the SUBJECT PROPERTY, their principals, agents, employees, attorneys, representatives, predecessors, successors in interest, beneficiaries, respective insurance carriers, heirs, successors in interest, agents, employees, servants, principals, assigns, assignors, officers, directors, stockholders, partners, representatives, parent corporations, subsidiary corporations, sister corporations, affiliate corporations, subsequent corporations, partnerships, limited partnerships, joint ventures, executors, grantors, associates, adjusters, affiliates, including but not limited to all RELATED PERSONS AND ENTITIES, as that term is defined herein.

18. INTEGRATION/MODIFICATION

18.1 This AGREEMENT constitutes the entire AGREEMENT between the SETTLING PARTIES relating to the settlement of all CLAIMS arising out of THE ACTION, THE CROSS-ACTION and the facts set forth in the recitals to this AGREEMENT. All prior or contemporaneous agreements, understandings, representations and statements, whether oral or written, and whether by a party or such party's legal counsel, are integrated into the AGREEMENT. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the subject matter of this AGREEMENT which are not fully expressed herein. Notwithstanding the above, the ongoing relationship between William Lyon Homes and the CITY and GHAD shall be governed by a separate agreement.

18.2 No modification, waiver, amendment, discharge or change of this AGREEMENT shall be valid unless it is in writing and is signed by the party against whom enforcement of such modification, waiver, amendment discharge or change is, or may be, sought.

19. GOVERNING LAW

This AGREEMENT shall be interpreted in accordance with and governed by the laws of the State of California.

20. EFFECTIVE DATE

The parties hereto deem this Agreement to be immediately effective as of the date this Agreement was entered into on

21. RIGHT TO INDEPENDENT COUNSEL.

SETTLING PARTIES acknowledge and represent that they have had the right to and benefit of consultation with independent legal counsel and expert consultants. SETTLING PARTIES further acknowledge and represent that in evaluating, finalizing and executing this AGREEMENT, they are not relying on anything other than the advice of their independent legal counsel and/or expert consultants. SETTLING PARTIES have read and understand the entirety of this AGREEMENT, and have been advised as to the legal effects of this AGREEMENT, as to, for example, their rights and obligations hereunder, and hereby willingly and voluntarily agree to every single term of this AGREEMENT.

22. EXECUTION OF AGREEMENT

This AGREEMENT may be executed in multiple counterparts, such that when the executed signature pages are taken together they shall constitute the entire

AGREEMENT. SETTling PARTIES shall execute this AGREEMENT. If a SETTling PARTY is unable to sign this AGREEMENT, due to its dissolution, insolvency, liquidation, receivership or similar disability, the SETTling PARTY's attorney of record in THE ACTION may execute this AGREEMENT on behalf of said party. If the SETTling PARTY's attorney is unable or unwilling to execute this AGREEMENT, SETTling PARTIES stipulate that the Court Clerk or other qualified individual appointed by the Court is hereby authorized to sign the AGREEMENT on behalf of said party. True photocopies of signatures shall be deemed as effective as original signatures.

23. COPY ADMISSIBLE

In any action or proceeding relating to this AGREEMENT, SETTling PARTIES stipulate that a copy of this AGREEMENT may be admissible to the same extent as the original AGREEMENT unless the exceptions set forth in California Evidence Code section 1511 are found to be applicable.

24. CAPTIONS AND INTERPRETATIONS

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this AGREEMENT or any provision hereof.

IN WITNESS THEREOF, the parties enter into and date this Agreement:

PLAINTIFFS' SIGNATURES (pages 13 through 14)

DATED: _____

LAILUMA HOSSAINI

BY: _____

ITS: _____

DATED: _____

HAMID HOSSAINI

BY: _____

ITS: _____

DATED: _____

WILLIAM J. PLAMBECK

BY: _____

ITS: _____

DATED: _____

BEVERLY J. PLAMBECK

BY: _____

ITS: _____

DATED: _____

GREGORY S. REDMOND

BY: _____

ITS: _____

DATED: _____

PHYLLIS O. REDMOND

BY: _____

ITS: _____

DATED: _____

DEBRA VANSLAMBROOK

BY: _____

ITS: _____

DATED: _____

AMIN ZAFARI

BY: _____

ITS: _____

DATED: _____

NAHIDA ZAFARI

BY: _____

ITS: _____

DATED: _____

WILLIAM LYON HOMES, INC.

BY: _____

ITS: _____

DATED: _____

CITY OF CLAYTON

BY: _____

ITS: _____

DATED: _____

OAKHURST GEOLOGICAL HAZARD
ABATEMENT DISTRICT

BY: _____

ITS: _____

DATED: _____

DMC CONCRETE, INC.

BY: _____

ITS: _____

DATED: _____

RIVERA COMPANY

BY: _____

ITS: _____

DATED: _____

MERIT CONCRETE, INC.

BY: _____

ITS: _____

Agenda Date: 7/17/12

Agenda Item: 10 (b)



STAFF REPORT

Approved:

Gary A. Napper,
City Manager

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Laura Hoffmeister, Asst. to the City Manager 

MEETING DATE: July 17, 2012

SUBJECT: Revised Master Fee Schedule for City Services and use of City Facilities and Parks

RECOMMENDATION

It is recommended the City Council adopt the attached Resolution amending the Fee Schedule for City Services and Use of Public Facilities and Parks for FY 2012-13.

BACKGROUND

The City of Clayton has established annual review of user fees to ensure that user fees are set appropriately and updated, based upon various cost and revenue considerations. The current fee schedule for use of City Facilities and Parks was established by Resolution No. 35-2011 on August 16, 2011.

Staff is recommending all existing fees be increased by the CPI (2.1%) to adjust for inflation, plus two-tenths of one percent (0.2%) to cover enhanced fee payment technology costs. Thus the total increase for all fees would be 2.3%, rounded to the nearest whole dollar. All deposits will remain unchanged as these are refundable security damage/clean up deposits. Fees that last year did not result in any increase due to rounding of the CPI have been adjusted forward with the CPI for a two year period. The youth league rental fees would remain unchanged as CPI applied would not result in any fee increase due to rounding (down). Certain other fees remain unchanged as they are set by state laws, or are currently sufficient such as the tree removal in lieu fee.

New Fees:

A reasonable accommodation permit process was recently added to the city codes to comply with ADA regulations and housing element. The Community Development Director had determined that the following fees are needed in order to cover staff costs or processing of this type of permit as follows:

Reasonable Accommodation Permit – Administrative Review: \$158

Reasonable Accommodation Permit – Planning Commission Review: Time (\$500 deposit)

FISCAL IMPACT

Adjustments to our Master Fee Schedule are consistent with public policy that user-based municipal services bear their own costs. The proposed changes would accomplish this objective and in each instance no fee is higher than the true cost to provide the service or use.

CONCLUSION

Staff affirms the proposed Master Fee Schedule closely reflects the actual direct costs related to the provision of these City services. Staff recommends approval of the revised Master Fee Schedule for City Services and Use of Public Facilities and Parks.

New fees are noted in yellow. All other fees are adjusted to the 2.3% rounded to the nearest whole dollar and are shown in the last column in Exhibit A.

Attachments:

- Resolution __-2012
- Exhibit A to Resolution __-2012

RESOLUTION NO. __-2012

A RESOLUTION AMENDING THE CITY MASTER FEE SCHEDULE FOR CITY SERVICES AND USE OF PUBLIC FACILITIES AND PARKS

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

WHEREAS, the City of Clayton has various user fees for City services and facilities that are updated annually to reflect increases in costs to provide said services; and

WHEREAS, the City staff did develop data to substantiate proposed changes to fees which would not exceed the estimated reasonable cost of providing service or using the facility for which a fee is charged; and

WHEREAS, the fees reconsidered herein are not developer fees, and thus not subject to section 66017(a) of the California Government Code, and thus will become effective upon adoption of said Resolution; and

WHEREAS, the City Council of Clayton, California does deem it necessary to set and add the following fees to the Master Fee Schedule:

Reasonable Accommodation Permit – Administrative Review: \$158

Reasonable Accommodation Permit – Planning Commission Review: Time (\$500 deposit)

WHEREAS, the City Council of Clayton, California does deem it necessary to increase all other fees by the CPI 2.1% plus two-tenths of one percent (0.2%) for recovery of costs related to enhanced technology fee payment; for a total of 2.3%, and all other deposits shall remain unchanged.

NOW THEREFORE BE IT RESOLVED that the City Council of Clayton, California does hereby set, adjust and approve the various fees for certain City services and use of public facilities and parks, as set forth in the attached Exhibit "A" as the City Master Fee Schedule.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on 17th day of July 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The City Council of Clayton, CA

Howard Geller, Mayor

ATTEST:

Laci J. Jackson, City Clerk

**CITY OF CLAYTON
FEE SCHEDULE 2011-2012**

DEPARTMENT		CPI Increase 7/2011	CPI Increase 7/2012 2.3%
City of Clayton Fee Schedule		City of Clayton Fee Schedule Update for 2012-2013	
COMMUNITY DEVELOPMENT DEPARTMENT			
Annexations			
Annexation		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
General Plan /Zoning Ordinance Amendments			
General Plan Map or Text Amendment		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
Pre- Zoning / Re-zoning		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
Zoning Ordinance Text Amendment		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
Site Plans / Development Plans			
Site Plan Review Permit - Residential		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
Site Plan Review Permit - Residential Amendment		Time - \$1,000 minimum deposit	Time - \$1,000 minimum deposit
Site Plan Review Permit - Non- Residential		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
Site Plan Review Permit - Non Residential Amendment		Time - \$2,000 minimum deposit	Time - \$2,000 minimum deposit
Development Plan		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
Subdivisions			
Tentative Subdivision Map Application		Time - \$5000 minimum deposit	Time - \$5000 minimum deposit
Lot Line Adjustment		Time - \$1000 minimum deposit	Time - \$1000 minimum deposit
Lot Merger		Time - \$2,000 minimum deposit	Time - \$2,000 minimum deposit
Parcel Maps			
Tentative Parcel Map Application		Time - \$2000 minimum deposit	Time - \$2000 minimum deposit
Environmental Review			
Environmental Impact Report		Time - \$5,000 minimum deposit	Time - \$5,000 minimum deposit
Negative Declaration with Mitigations (Mitigated Neg Dec)		Time - \$2,500 minimum deposit	Time - \$2,500 minimum deposit
Negative Declaration with out Mitigations		Time - \$1,500 minimum deposit	Time - \$1,500 minimum deposit
Mitigation Monitoring Plan		Included with Neg Dec/ Mitigated Neg Dec/EIR	Included with Neg Dec/ Mitigated Neg Dec/EIR
Categorical Exemption		no charge - unless document needs County recording	no charge - unless document needs County recording
Permits			
Home Occupation Permit - Administrative Review		\$154	\$156
Home Occupation Permit - Planning Commission Review		Time - \$500 minimum deposit	Time - \$500 minimum deposit
Use Permit - Fences Administrative Review		\$154	\$158
Use Permit - Residential - Planning Commission Review		Time - \$1000 minimum deposit	Time - \$1000 minimum deposit
Use Permit - Non- Residential - Planning Commission Review		Time - \$5000 minimum deposit	Time - \$5000 minimum deposit
Temporary Use Permit - Administrative Review		\$154	\$158
Temporary Use Permit - Planning Commission Review		Time \$500 minimum deposit	Time \$500 minimum deposit
Sign Permit - Administrative Review		\$51	\$52

Exhibit A

**CITY OF CLAYTON
FEE SCHEDULE 2011-2012**

DEPARTMENT		City of Clayton Fee Schedule		City of Clayton Fee Schedule Update for 2012-2013
Sign Permit - Planning Commission Review		Time - \$1,000 minimum deposit		Time - \$1,000 minimum deposit
Temporary Storage Permit		\$51		\$52
Second Dwelling Unit Permit- Administrative Review		\$257		\$263
Tree Removal Permit - Administrative Review without notice		\$10/tree - Minimum \$31		\$10/tree - Minimum \$32
Tree Removal Permit - Administrative Review with Notice		\$50/tree - Minimum \$103		\$51/tree - Minimum \$105
Tree Removal Permit - Planning Commission Review		Time - \$500 minimum deposit		Time - \$500 minimum deposit
Tree Replacement In-Lieu Fee		\$800 per 24" box tree (CMC:15,70,040 - F & 15,70,55)		\$800 per 24" box tree (CMC:15,70,040 - F & 15,70,55)
Building Moving Permit		Time - \$1000 minimum deposit		Time - \$1000 minimum deposit
Noise Permit - Administrative Review		\$154		\$158
Reasonable Accommodations Permit - Administrative Review				\$158
Reasonable Accommodations Permit - Planning Commission Review				Time - \$500 Minimum deposit
Outdoor Seating Permit (CMC:17,24,020 -H/Standard Policy No 3)		\$81		\$83
Miscellaneous				
Variance - Residential		Time - \$1000 minimum deposit		Time - \$1000 minimum deposit
Variance - Non - Residential		Time - \$5000 minimum deposit		Time - \$5000 minimum deposit
Appeal - Administrative Decisions		\$51		\$52
Appeal - Planning Commission Decisions - Residential		\$257		\$263
Appeal - Planning Commission Decisions - Non - Residential		\$514		\$526
Time Extension Request		Time - \$500 minimum deposit		Time - \$500 minimum deposit
Contract Administration		Time - \$1000 minimum deposit		Time - \$1000 minimum deposit
Large Family Day Care Home Permit		Time - \$500 minimum deposit		Time - \$500 minimum deposit
Pre- Application Consultation Deposit		Time - \$1000 minimum deposit		Time - \$1000 minimum deposit
Construction and Demolition (C&D) Recycling Plans				
Mgmt Plan Deposit - Single Family		\$2,000 plus \$1/sq foot over 2,000 sq feet		\$2,000 plus \$1/sq foot over 2,000 sq feet
Permit processing Fee - Single Family		\$134		\$137
Permit processing Fee -commercial		\$268		\$274
Mgmt Plan Deposit - subdivision and commercial		\$2,000 plus \$1/sq foot over 2,000 sq feet		\$2,000 plus \$1/sq foot over 2,000 sq feet
Habitat Conservation Area Compliance				
Habitat Conservation Plan/Natural CC Plan		Time - \$1000 minimum deposit		Time - \$1000 minimum deposit
CITY ENGINEERING DEPARTMENT				
Bid or Plan Sets		Actual Cost		Actual Cost
Subdivisions				
Final Map Filing Fee		\$514/map		\$526/map
Final Map Checking Fee		Time - \$2500 minimum deposit		Time - \$2500 minimum deposit
Construction Plans Checking		Time - \$2500 minimum deposit		Time - \$2500 minimum deposit

**CITY OF CLAYTON
FEE SCHEDULE 2011-2012**

DEPARTMENT	City of Clayton Fee Schedule	City of Clayton Fee Schedule Update for 2012-2013
Construction Inspection Fee - Public Improvements	9% of Bond Estimates	9% of Bond Estimates
Construction Inspection Fee - Private Improvements	9% of Bond Estimates	9% of Bond Estimates
Construction Inspection Fee - Sanitary Sewer	3% of Bond Estimates	3% of Bond Estimates
Parcel Maps		
Final Parcel map Filing Fee	\$103/map	\$105/map
Final Parcel map Plan Checking Fee	Time - \$1000 minimum deposit	Time - \$1000 minimum deposit
Construction Plan Checking Fee	Time - \$1000 minimum deposit	Time - \$1000 minimum deposit
Construction Inspection Fee - Public Improvements	9% of Bond Estimates	9% of Bond Estimates
Construction Inspection Fee - Private Improvements	9% of Bond Estimates	9% of Bond Estimates
Construction Inspection Fee - Sanitary Sewer	3% of Bond Estimates	3% of Bond Estimates
Grading		
Grading Permit Filing Fee	\$154 / permit	\$158 / permit
Grading Permit Plan Check	Time - \$1000 minimum deposit	Time - \$1000 minimum deposit
Grading Inspection	Time - \$1000 minimum deposit	Time - \$1000 minimum deposit
Minor Encroachment Permits		
Pools, driveways, minor concrete repair	\$77 / permit	\$79 / permit
Major Encroachment Permits		
Major Encroachment Permit	\$51	\$52
Major Plan Check	Time - \$2500 minimum deposit	Time - \$2500 minimum deposit
Major Inspection	Time - \$2500 minimum deposit	Time - \$2500 minimum deposit
Cash Bond Major Encroachments (may be surety if more than \$10,000)	Per City Engineer	Per City Engineer
STORMWATER INSPECTION PERMITS		
Construction permit		
Minor - project that does not disturb ground (interior remodels etc)	\$103/permit + Time - \$500 deposit	\$105/permit + Time - \$500 deposit
Standard - pools, driveways, minor concrete repairs, room additions	\$129/permit + Time - \$2000 minimum deposit	\$132/permit + Time - \$2000 minimum deposit
Major projects	Time - \$5000 minimum deposit	Time - \$5000 minimum deposit
Post construction		
Post construction Annual Verification Inspection - individual single family lot	\$165 per lot	\$169 per lot
Post construction Annual Verification Inspection - single family HOA	\$185 per HOA for up to 10 lots - \$50 each additional lot	\$189 per HOA for up to 10 lots - \$51 each additional lot
Post construction Annual Verification Inspection - Commercial	\$165/acre (with minimum of \$165)	\$169/acre (with minimum of \$165)
Documentation Compliance Review Fee - individual single family lot	\$165per lot	\$169 per lot
Documentation Compliance Review Fee - HOA	\$185 per HOA up to 10 lots, + \$50 per each addtl lot	\$189 per HOA up to 10 lots, + \$51 per each addtl lot
Documentation Compliance Review Fee - Commercial	\$165 per acre (with minimum of \$165)	\$169 per acre (with minimum of \$169)
Annual State Reporting preparation/filing Fee - individual single family lot	\$60per lot	\$61 per lot
Annual State Reporting preparation/filing Fee - single family HOA	\$115 per HOA	\$118 per HOA

**CITY OF CLAYTON
FEE SCHEDULE 2011-2012**

DEPARTMENT	City of Clayton Fee Schedule	City of Clayton Fee Schedule Update for 2012-2013
Annual State Reporting per operation/filing Fee - Commercial	\$115 per acre	\$118 per acre
POLICE DEPARTMENT		
Residential Alarm System Registration	\$28/ house	\$27/ house
Commercial Alarm System Registration Fee	\$54/commercial occupancy	\$55/commercial occupancy
Bicycle License	\$3/License	\$3/License
Vehicle Release	\$134/ cash per vehicle	\$137/ cash per vehicle
Police Reports Residents	\$26	\$27
Police Reports Non-Residents or Insurance	\$26	\$27
VIN Verification	\$36	\$37
Clearance Letters	\$26	\$27
Police Enforcement of Party Ordinance	Time (Max. \$500)	Time (Max. \$500)
Police Enforcement of DUI Involving Accident	Time - Maximum \$12,000	Time - Maximum \$12,000
Enforcement of Suspended or Revoked Licenses	Time	Time
Alcohol Beverage Permit	\$51	\$52
Booking Fees	As established by County or agreement w/ Concord	As established by County or agreement w/ Concord
False Alarm Fee	\$103 As established by City Ordinance	As established by City Ordinance
Tabacco Sales Permit	\$77	\$79
Taxicab Permit Fee - New	\$260	\$266
Taxicab Permit Fee - Renewal	\$98	\$100
Witness Fees per Gov. Code Sect. 68096-1 if City Employee subpoenaed	\$150/ day deposit + \$0.37 per mile	\$150/ day deposit + IRS reimbursement min. rate per State Code
Administrative Fee off Failure to Display Disabled Placards	\$26 per Vehicle Code 40226	\$27 per Vehicle Code 40226
Firearms Seizure and Processing Fee	\$103/violation	\$105/violation
RV Public parking Permit Fee - Bona fide guest of Clayton Resident	\$28/permit	\$27/permit
RV Public Parking Permit Fee - Clayton Resident	No Charge	No Charge
Solicitation Permit	\$213/permit	\$218/permit
Citation Sign off for correctable offense - Non Resident	\$21/citation	\$22/citation
Citation Sign off for correctable offense - Resident	no charge	no charge
Late Fee- Parking Violations	\$38/citation	\$37/citation
Suspended License	As established by City Ordinance	As established by City Ordinance
Financial Responsibility (DUI)	As established by City Ordinance	As established by City Ordinance
PUBLIC FACILITIES AND PARKS RENTAL FEES		
Library Meeting Room - Hoyer Hall		
Non profit (Non-Clayton Based)	\$43/hour (anytime)	\$44/hour (anytime)
Non- profit - Only Clayton Based	\$22/hour - \$51 max for up to 3 hours	\$23/hour - \$44 max for up to 3 hours
Resident	\$53 per hour	\$54 per hour

**CITY OF CLAYTON
FEE SCHEDULE 2011-2012**

DEPARTMENT	City of Clayton Fee Schedule	City of Clayton Fee Schedule Update for 2012-2013
Nonresident or Commercial	\$65 per hour	\$66 per hour
Deposit (for all) - clean up/damage - refundable	\$200	\$200
Endeavor Hall Meeting Room		
Non profits- Clayton based and Non Clayton based Weekdays	\$41 per hour Weekdays (Sun 5pm - Fri 5pm)	\$42 per hour Weekdays (Sun 5pm - Fri 5pm)
Clayton Based Non-Profit Only	\$103 maximum weekday rental	\$105 maximum weekday rental
Non profits- Clayton based and Non Clayton based Weekends	\$154 per hour Friday 5pm - Sunday 5pm	\$158 per hour Friday 5pm - Sunday 5pm
Resident - Weekdays	\$103 per hour Sunday 5pm - Friday 5pm	\$105 per hour Sunday 5pm - Friday 5pm
Nonresident or Commercial - Weekdays	\$123 per hour Sunday 5pm - Friday 5pm	\$128 per hour Sunday 5pm - Friday 5pm
Resident - Weekends	\$154 per hour Friday 5pm - Sunday 5pm	\$158 per hour Friday 5pm - Sunday 5pm
Nonresident or Commercial - Weekends	\$185 per hour Friday 5pm - Sunday 5pm	\$189 per hour Friday 5pm - Sunday 5pm
Deposit (all) - no alcohol or beer and wine only	\$500/reservation- clean up/damage per rental	\$500/reservation- clean up/damage per rental
Deposit (all) - hard alcohol (distilled spirits)	\$1,000/reservation- clean up/damage per rental	\$1,000/reservation- clean up/damage per rental
Alcohol Permit	\$51	\$52
Noise Permit - Administrative Review	\$154	\$157
Reservation rental time change (same date)	\$36 less than 30 days prior to the event	\$37 less than 30 days prior to the event
Reservation rental date change	\$48 less than 90 days prior to event	\$47 less than 90 days prior to event
City Hall 1st Floor Conference Room		
Non Profit (Clayton based or non clayton based non profits)	\$22 per hour	\$23 per hour
Resident	\$27 per hour	\$28 per hour
Non Resident or Commercial	\$33 per hour	\$34 per hour
Deposit (all)	\$100 per rental - clean up/damage	\$100 per rental - clean up/damage
City Hall Courtyard		
Non Profit (Clayton based or non clayton based non profits)	\$43 per hour	\$44 per hour
Resident	\$53 per hour	\$54 per hour
Non Resident or Commercial	\$65 per hour	\$66 per hour
Deposit (all)	\$100 per rental - clean up/damage	\$100 per rental - clean up/damage

**CITY OF CLAYTON
FEE SCHEDULE 2011-2012**

DEPARTMENT		City of Clayton Fee Schedule	City of Clayton Fee Schedule Update for 2012-2013
Clayton Community Park and Related Facilities			
Picnic Areas			
Picnic Area #1 - Resident (Combined with Picnic Area #2)		\$16 flat fee for up to 4 hours	\$16 flat fee for up to 4 hours
Picnic Area #1 - Non Resident or Commercial		\$22 flat fee for up to 4 hours	\$22 flat fee for up to 4 hours
Picnic Area #2 - Resident		\$16 flat fee for up to 4 hours	\$17 flat fee for up to 4 hours
Picnic Area #2 - Non Resident or Commercial		\$22 flat fee for up to 4 hours	\$23 flat fee for up to 4 hours
Picnic Area #3 - Resident		\$16 flat fee for up to 4 hours	\$17 flat fee for up to 4 hours
Picnic Area #3 - Non Resident or Commercial		\$22 flat fee for up to 4 hours	\$23 flat fee for up to 4 hours
Picnic Area #4 - Resident		\$38 flat fee for up to 4 hours	\$39 flat fee for up to 4 hours
Picnic Area #4 - Non Resident or Commercial		\$49 flat fee for up to 4 hours	\$50 flat fee for up to 4 hours
Picnic Area #5 - Resident (6 separate areas)		\$31 per table for up to 4 hours-1st 2 tables	\$32 per table for up to 4 hours-1st 2 tables
Picnic Area #5 - Non Resident or Commercial (6 separate areas)		\$5.25 flat fee per additional table - 3rd table or more-4 hours min	\$5.50 flat fee per additional table - 4 hours min
Picnic Area #6 - Resident (Large Group Area)		\$40 per table for up to 4 hours-1st 2 tables	\$41 per table for up to 4 hours-1st 2 tables
Picnic Area #6 - Non Resident or Commercial (Large Group Area)		\$6.75 flat fee per additional table - 3rd table or more - 4 hours min	\$7.00 flat fee per additional table - 4 hours min
Picnic Area #6 - Resident (Large Group Area)		\$267 per day	\$263 per day
Picnic Area #6 - Resident (Large Group Area)		\$31 per hour - 4 hour minimum required	\$32 per hour - 4 hour minimum required
Picnic Area #6 - Non Resident or Commercial (Large Group Area)		\$334 per day	\$342 per day
Picnic Area #6 - Non Resident or Commercial (Large Group Area)		\$44 per hour - 4 hour minimum required	\$45 per hour - 4 hour minimum required
Picnic Area #5 & #6 Combined - Resident		\$411 per day	\$420 per day
Picnic Area #5 & #6 Combined - Resident		\$51 per hour - 4 hour minimum required	\$52 per hour - 4 hour minimum required
Picnic Area #5 & #6 Combined - Non Resident or Commercial		\$535 per day	\$547 per day
Picnic Area #5 & #6 Combined - Non Resident or Commercial		\$67 per hour - 4 hour minimum required	\$69 per hour - 4 hour minimum required
Picnic Area #7 - Resident		\$41 flat fee for up to 4 hours	\$42 flat fee for up to 4 hours
Picnic Area #7 - Non Resident or Commercial		\$53 flat fee for up to 4 hours	\$54 flat fee for up to 4 hours
Sports Fields			
Adult Field Rental		\$31 per hour	\$32 per hour
Youth Field Rental		\$19 per hour	\$19 per hour
Field Rental change of time same date		\$36 less than 7 calendar days prior to use date	\$37 less than 7 calendar days prior to use date
Field rental change of date		\$46 less than 7 calendar days prior to use date	\$47 less than 7 calendar days prior to use date
Field rental Cancellation		no refund less than 14 days prior to use	no refund less than 14 days prior to use
Grove Park and Related Facilities			
Entire Facility Security Deposits		\$1,500 events without food or beverage	\$1,500 events without food or beverage
Entire Facility Security Deposits		\$1,800 events with food and beverage	\$1,800 events with food and beverage
Entire Facility Security Deposits		\$2,200 events closing street (ie: either Main or Center etc)	\$2,200 events closing street (ie: either Main or Center etc)
Special Event Permit/Application Process (non refundable)		\$257 events closing streets (Main or Center etc) + other permit fees:TUP/NP	\$262 events closing streets (Main or Center etc) + other permit fees TUP/NP

**CITY OF CLAYTON
FEE SCHEDULE 2011-2012**

DEPARTMENT		City of Clayton Fee Schedule	City of Clayton Fee Schedule Update for 2012-2013
Gazebo only Rental Security Deposit		\$250	\$250
Amplified Sound - damage/security deposit if using City sound equip		\$1,000	\$1,000
Amplified Sound Equipment Use Fee (Noise Permit also required)		\$22 per hour	\$23 per hour
City provided Sound Equipment Tech if needed for use of city equip		Cost	Cost
Entire Grove Park Facility			
Rental Entire Facility - Resident - Weekends		\$154 per hour	\$153 per hour
Rental Entire Facility - Resident - Weekends		\$1,234 per day	\$1,262 per day
Rental Entire Facility - Non Profit (verification reqd) - Weekends		\$154 per hour	\$158 per hour
Rental Entire Facility - Non Profit (verification reqd) - Weekends		\$1,234 per day	\$1,262 per day
Rental Entire Facility - Non Resident or Commercial - Weekends		\$185 per hour	\$189 per hour
Rental Entire Facility - Non Resident or Commercial - Weekends		\$1,480 per day	\$1,514 per day
Rental Entire Facility - Resident - Weekdays		\$103 per hour	\$105 per hour
Rental Entire Facility - Resident - Weekdays		\$822 per day	\$841 per day
Rental Entire Facility - Non Profit (verification reqd) - Weekdays		\$103 per hr	\$105 per hr
Rental Entire Facility - Non Profit (verification reqd) - Weekdays		\$822 per day	\$821 per day
Rental Entire Facility - Non Resident or Commercial - Weekdays		\$123 per hour	\$126 per hour
Rental Entire Facility - Non Resident or Commercial - Weekdays		\$987 per day	\$1,110 per day
Gazebo Only			
Rental Gazebo only - Resident - Weekends		\$108 per hour	\$110 per hour
Rental Gazebo only - Resident - Weekends		\$864 per day	\$884 per day
Rental Gazebo only - Non Profit (verification reqd) - Weekends		\$108 per hour	\$110 per hour
Rental Gazebo only - Non Profit (verification reqd) - Weekends		\$864 per day	\$884 per day
Rental Gazebo only - Non Resident or Commercial - Weekends		\$130 per hour	\$133 per hour
Rental Gazebo only - Non Resident or Commercial - Weekends		\$1,038 per day	\$1,060 per day
Rental Gazebo only - Resident - Weekdays		\$77 per hour	\$79 per hour
Rental Gazebo only - Resident - Weekdays		\$308 per day	\$315 per day
Rental Gazebo only - Non Profit (verification reqd) - Weekdays		\$77 per hour	\$79 per hour
Rental Gazebo only - Non Profit (verification reqd) - Weekdays		\$308 per day	\$315 per day
Rental Gazebo only - Non Resident or Commercial - Weekdays		\$92 per hour	\$94 per hour
Rental Gazebo only - Non Resident or Commercial - Weekdays		\$370 per day	\$379 per day
Group Picnic Area (near tot lot)			
Group Picnic Area - Resident - Weekends		\$28 per hour 4 hour minimum	\$27 per hour 4 hour minimum
Group Picnic Area - Resident - Weekends		\$180 per day	\$184 per day
Group Picnic Area - Non Profit (verification reqd) - Weekends		\$28 per hour 4 hour minimum	\$27 per hour 4 hour minimum
Group Picnic Area - Non Profit (verification reqd) - Weekends		\$180 per day	\$184 per day

CITY OF CLAYTON
FEE SCHEDULE 2011-2012

DEPARTMENT	City of Clayton Fee Schedule		City of Clayton Fee Schedule Update for 2012-2013	
Group Picnic Area - Non Resident or Commercial - Weekends	\$31 per hour 4 hour minimum		\$32 per hour 4 hour minimum	
Group Picnic Area - Non Resident or Commercial - Weekends	\$216 per day		\$221 per day	
Group Picnic Area - Resident - Weekdays	\$21 per hour 4 hour minimum		\$22 per hour 4 hour minimum	
Group Picnic Area - Resident - Weekdays	\$164 per day		\$168 per day	
Group Picnic Area - Non Profit (verification reqd) - Weekdays	\$21 per hour 4 hour minimum		\$22 per hour 4 hour minimum	
Group Picnic Area - Non Profit (verification reqd) - Weekdays	\$164 per day		\$168 per day	
Group Picnic Area - Non Resident or Commercial - Weekdays	\$25 per hour 4 hour minimum		\$26 per hour 4 hour minimum	
Group Picnic Area - Non Resident or Commercial - Weekdays	\$197 per day		\$202 per day	
Plaza Picnic Area - per table				
Plaza Picnic Area - Resident - Weekends	\$26 per hour 4 hour minimum		\$27 per hour 4 hour minimum	
Plaza Picnic Area - Resident - Weekends	\$180 per day		\$184 per day	
Plaza Picnic Area - Non Profit (verification reqd) - Weekends	\$26 per hour 4 hour minimum		\$27 per hour 4 hour minimum	
Plaza Picnic Area - Non Profit (verification reqd) - Weekends	\$180 per day		\$184 per day	
Plaza Picnic Area - Non Resident or Commercial - Weekends	\$31 per hour 4 hour minimum		\$32 per hour 4 hour minimum	
Plaza Picnic Area - Non Resident or Commercial - Weekends	\$216 per day		\$221 per day	
Plaza Picnic Area - Resident - Weekdays	\$21 per hour 4 hour minimum		\$22 per hour 4 hour minimum	
Plaza Picnic Area - Resident - Weekdays	\$164 per day		\$168 per day	
Plaza Area - Non Profit (verification reqd) - Weekdays	\$21 per hour 4 hour minimum		\$22 per hour 4 hour minimum	
Plaza Picnic Area - Non Profit (verification reqd) - Weekdays	\$164 per day		\$168 per day	
Plaza Picnic Area - Non Resident or Commercial - Weekdays	\$25 per hour 4 hour minimum		\$26 per hour 4 hour minimum	
Plaza Picnic Area - Non Resident or Commercial - Weekdays	\$197 per day		\$202 per day	
FOUNTAIN OPERATION WITH GYSERS				
	\$333 per 48 hour event		\$341 per 48 hour event	
LIABILITY INSURANCE PURCHASED THRU CITY'S 3rd PARTY CARRIER				
Special Event Liability Insurance purchased thru City's 3rd party carrier	Insurance cost per schedule rates by Insurance provider		insurance cost per schedule rates by insurance provider	
Special Event Liability Insurance Administrative Fee	\$31 when purchasing insurance thru City 3rd party carrier		\$32 when purchasing insurance thru City 3rd party carrier	
ADMINISTRATIVE FEES				
Document Copying (10 pages or less)	no charge		no charge	
Document Copying (more than 10 pages)	\$0.10		\$0.10	
Trail Maps	\$2.00		\$2.00	
Audio Recordings of Meetings	\$21 refundable deposit if using city provided flash drive		\$22 refundable deposit if using city provided flash drive	
Printed documents (ie. general plan, budget, zoning ord, etc)	Cost		Cost	

CITY OF CLAYTON
FEE SCHEDULE 2011-2012

DEPARTMENT		City of Clayton Fee Schedule	City of Clayton Fee Schedule Update for 2012-2013
Video Recordings of Meetings	Cost		
FPPC Document Copying	\$ 10/page (per State Law)		\$ 10/page (per State Law)
Notary Public Fee -	\$10/document (per State law)		\$10/document (per State law)
Business License initial registration fee - New Business	\$58.00		\$59.00
Business License renewal registration - all Businesses including exempt	\$26.00		\$27.00
Return check service charge	\$25/check return (per state law)		\$25/check return (per state law)
Late Payment Charges for Administrative Fines	10% of original fine for every 30 days or portion thereof. Not to exceed 100% of the original fine.		
Street Closure Fee	\$103		\$105
Administrative penalty for City issued permits after the fact (encroachment permit, tree removal permit, etc) are double the original permit fee			
Code Enforcement non-compliance re-inspection after the first inspection (in addition to any citation fines)	\$30.00		\$31.00
NOTES			
Time means the cost per hour for an employee as determined each July. The determination is based upon salary, benefits, overhead and overtime.			
Time also means City Engineer billing (plus 15%), as well as costs of other contracts and expenses.			
Audio recordings are kept for 30 calendar days after the minutes are approved.			
Cost: means the cost of materials, labor and supplies.			
Deposits: Deposits are required upon submittal of an application. A minimum deposit is stipulated by these fees. At his/her discretion the City Manager can reduce the required deposit. Also if in the judgement of staff a minimum deposit is not sufficient the required deposit may be increased. If, after a deposit is made, more funds are needed the applicant will be notified when about 30% of the deposit remains.			
If a development project requires multiple applications, only a single deposit shall be required. In such cases, the amount of the deposit shall be the largest single deposit required by any of the applications, or an amount determined by the City Manager, not to exceed the sum of the deposits.			
All fixed-cost development application fees are refundable based upon the City amount of staff work completed on the process of the application and subject to approval by the City Manager.			
Excel/city staff/hour/fee schedule			

FEE SCHEDULE 2011-2012

[illegible]



Agenda Date: 7/17/12

Agenda Item: 10 (c)

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: CITY MANAGER

DATE: 17 JULY 2012

SUBJECT: CONSIDER A RESOLUTION, AS THE CLAYTON SUCCESSOR AGENCY, TO APPROVE AND ADOPT A 3RD RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS), PURSUANT TO THE DISSOLUTION ACT

RECOMMENDATION

It is recommended the City Council, serving as the Successor Agency and Successor Housing Agency of the former Clayton Redevelopment Agency, adopt the prepared Resolution approving a 3RD Recognized Obligation Payment Schedule" (ROPS) in accordance with the California Supreme Court-ruled constitutionality of ABx1 26 (the "Dissolution Act").

BACKGROUND

On 11 August 2011, the California Supreme Court agreed to review a petition challenging the constitutionality of ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Redevelopment Program Act"). The Court's order also stayed specified portions of these Redevelopment Restructuring Acts, indefinitely postponing certain provisions' implementation and effectiveness. During that period of suspension, the Clayton Redevelopment Agency was still required to prepare a list of contractual and indebtedness obligations of the Agency and to adopt and submit the "schedule" by 28 August 2011. Our Agency complied with this requirement by adopting RDA Resolution No. 03-2011 at a regular public meeting on 16 August 2011. Pursuant to the regulations available at that time, the Agency's EOPS was only effective through 31 December 2011.

On 29 December 2011 the California Supreme Court ruled in its decision on this controversial subject that the State of California did indeed have the authority to terminate the existing redevelopment agencies in the state but did not have the constitutional authority (under Prop 22) to enact a voluntary redevelopment program (ABx1 27), which program instituted "pay to play" provisions for agencies to continue to operate if they each "paid" pre-designated amounts of money to the state in FY 2011-12 and each year thereafter.

Since the Court's decision shifted the termination date of all redevelopment agencies one additional month to 01 February 2012, the Board of Directors of the former Clayton Redevelopment Agency did, on 17 January 2012, amend and re-adopt its Enforceable Obligation Payment Schedule (EOPS) to add the additional full month of January 2012 to the table of current and future debts and obligations of the Clayton Redevelopment Agency. In this manner, reviewing regulatory and other public taxing entities were placed on notice of the Agency's continuing fiduciary responsibilities to be paid from January 2012 through June 2012.

On 21 February 2012 and on 17 April 2012, the Clayton City Council, acting in its capacity as the governing body of the Successor Agency for the former Clayton Redevelopment Agency, did adopt separate Resolutions approving its 1st Recognized Enforceable Obligation Payment Schedule (ROPS), to address the funding cycle for the remainder of the fiscal year, namely 01 February 2012 through 30 June 2012, and its 2nd ROPS covering the time period of 01 July 2012 through 31 December 2012. The 1st and 2nd ROPS were subsequently approved by the Oversight Board at its inaugural meeting, but not approved as submitted by the California Department of Finance (DOF). The DOF disallowed several obligations listed in each ROPS, most notably a \$475,000 principal loan payment due the City of Clayton for the real property deeded at no cost by the former Clayton Redevelopment Agency in 1999 to the Contra Costa County Fire Protection District (now improved as Fire Station No. 11 on Center Street), and a \$501,899 statutory pass-through payment due the City of Clayton for the years 1987 through 2009 known as "2% Election" monies that were never transmitted to the City by the County Auditor-Controller's Office. Combined, the City of Clayton was denied \$976,899 in loan repayments by the denial actions of DOF.

Under the law, "enforceable obligations" of a redevelopment agency include the following financial arrangements (the ROPS of a city or county):

- Bonds
- Loans
- Payments required by state or federal government
- Obligations to employees
- Judgments or settlements
- Binding and legally enforceable agreements entered into before AB1x 26
- Contracts for RDA administration, Successor Agency administration, and Oversight Board administration

RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS)

Included herein as Attachment 1 is the 3rd Recognized Obligation Payment Schedule (ROPS) in the amount of \$381,378 prepared by the City's Finance Manager. It essentially mirrors the previously-adopted 2nd ROPS as our 6-month fiscal template for continued receipt of tax increment revenues during this funding cycle. The monies are issued by the County Auditor-Controller to our City's newly-established "Redevelopment Obligation Retirement Fund." As its name implies, this newly-formed Fund replaces the former Redevelopment Agency's Funds (3) and functions as the repository for sufficient tax increment revenues in the amounts identified and approved in subsequent ROPS to effectively "retire" all former Clayton Redevelopment Agency debts and contractual

obligations over a multi-year period. Once all identified and certified debts and obligations have been satisfied, the Successor Agency is then dissolved.

AB 1484 (DISSOLUTION TRAILER BILL)

As with most complex pieces of legislation enacted in a vacuum, the actual implementation of ABx1 26 by former redevelopment agencies, cities, county auditor-controllers and the California Department of Finance (DOF) created a maelstrom of confusion and capricious actions. Striving to obtain any and all uncommitted tax increment revenues for the state held by successor agencies, the DOF inflicted a host of ill will and disputed judgments in its role of blessing a ROPS tendered by each Successor Agency and approved by its Oversight Board. As noted above, Clayton was dumbfounded when the DOF summarily rejected two previous loans by the City to its Redevelopment Agency amounting to almost \$1 million. Our predicament was not isolated however and various trailer bills emerged in May and June 2012 aiming to provide clarity and equity in the adjudication of successor agency bonded indebtedness and contractual obligations.

Unsurprisingly, the DOF authored its own version of a “clean-up” bill in the form of AB 1484 that actually increased the amount of authority the DOF and its staff could exercise over successor agencies and oversight boards. AB 1484 was approved by the California Legislature on June 27th and swiftly signed into law by Governor Brown. While the new legislation does contain some favorable language for successor agencies on the forefront of inter-agency loan repayments starting in FY 2013-14, it carries out a host of continual draconian measures by the state to “claw-back” previous redevelopment agency expenses paid during the limbo-land time period of July 2011 through December 2011, and it gives the DOF unchecked license to overturn local decisions on ROPS approvals.

Major provisions of AB 1484 include the following:

1. A successor agency must make three payments in FY 2012-13:
 - a. July 12th. Remittance of monies for disallowed obligations (as determined by the DOF and Auditor-Controller), specifically for expenses made under one's EOPS. For Clayton, this arbitrary calculation necessitated an abrupt check sent within 72 hours to the County in the amount of \$1,547,505.09 (transmitted under protest).
 - b. November 28th. Remittance of Low-Moderate Income Housing Fund monies.
 - c. April 10th. All remaining unencumbered cash.
2. New audit by October 1, 2012 retained and paid for by the Successor Agency (out of its administration monies, meaning no new monies for an unfunded mandate) of the successor agency's books involving the Low-Moderate Income Housing Fund, audit of cash assets, and audit of cash transfers to public agencies and private parties. Note this “new audit” is on top of the audit ordered and performed by the state on all redevelopment agencies during February-June 2012!

3. A potential civil penalty of 10% of the amount owed plus 1.5% of the amount owed for each month that a successor agency does not pay in full its July 12th ordered remittance (ref. no. 1 above).
4. DOF may eliminate or modify any item on an Oversight Board-approved ROPS. An auditor-controller may only distribute property tax monies to a successor agency in accordance with DOF changes made to a ROPS (note: essentially eviscerates the role of the multi-agency represented oversight boards).
5. A county auditor-controller can object to an item on a ROPS or to the funding source listed for an item on the ROPS with such objections sent to DOF to resolve.

Viewed in its totality, AB 1484 is the upshot of the degree of distrust that has been created between the state of California, through its bloodhound DOF, and the local public entities attempting to abide by an ever-changing maze of state laws and dictates, all designed to maximize the return of former redevelopment agency funds to other public taxing entities so as to offset the state's general fund allocations to those entities. If this mission of the state causes parent cities and counties (of former redevelopment agencies) to forfeit significant loans or require obligations to be paid by an entity's general fund, such is merely the continuation of previous heists by a state tottering on bankruptcy. The DOF has now been anointed as czar over former redevelopment agency assets.

Attachments: 3rd ROPS Resolution [4 pp.]

1. 3rd Recognized Obligation Payment Schedule (ROPS) [1 pp.]

RESOLUTION NO. - 2012

**A RESOLUTION OF THE CITY OF CLAYTON, CALIFORNIA,
ACTING AS THE SUCCESSOR AGENCY TO THE FORMER
CLAYTON REDEVELOPMENT AGENCY, APPROVING AND
ADOPTING ITS 3RD RECOGNIZED OBLIGATION PAYMENT
SCHEDULE (ROPS) FOR THE TIME PERIOD OF JANUARY 1, 2013
THROUGH JUNE 30, 2013, PURSUANT TO SECTION 31471(h) AND
34177(l)(1) OF THE CALIFORNIA REDEVELOPMENT LAW**

**THE CITY COUNCIL (AS SUCCESSOR AGENCY)
City of Clayton, California**

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City of Clayton (the "City") adopted in accordance with the California Community Redevelopment Law, City Ordinance No. 243 on 20 July 1987 adopting the Redevelopment Plan for the Clayton Redevelopment Project Area (the "Redevelopment Plan"), as amended from time to time; and

WHEREAS, the Redevelopment Agency of the City of Clayton (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to said Redevelopment Law; and

WHEREAS, Assembly Bill X1 26 (the "Dissolution Act") and Assembly Bill X1 27 (the "Alternative Redevelopment Program Act") were enacted by the State of California on June 28, 2011, to significantly modify the Community Redevelopment Law and to end the existence of or modify continued operation of redevelopment agencies throughout the state (Health & Safety Code §33000, et seq.; the "Redevelopment Law"); and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of these Redevelopment Restructuring Acts; and

WHEREAS, on December 29, 2011, the California Supreme Court ruled that the Dissolution Act is largely constitutional and the Alternative Redevelopment Program Act is unconstitutional; and

WHEREAS, the Court's decision means that all California redevelopment agencies, including the Clayton Redevelopment Agency, are now terminated and have been automatically dissolved on February 1, 2012 pursuant to the Dissolution Act; and

WHEREAS, on 17 January 2012 by Resolution No. 03-2012, the Clayton City Council did exercise its priority right and took action to become the Successor Agency and the Successor Housing Agency of the former Clayton Redevelopment Agency; and

WHEREAS, on 21 February 2012 by Resolution No. 06-2012, the Clayton City Council serving in its duly-authorized capacity as the Successor Agency of the former Clayton Redevelopment Agency, did at a regular public meeting approve the 1st Recognized Obligation Payment Schedule (ROPS) of the Successor Agency and Successor Housing Agency prior to the 01 March 2012 deadline, setting forth the minimum payment amounts and due dates of payments required by enforceable obligations with said 1st ROPS covering the time period from 01 February 2012 through 30 June 2012; and

WHEREAS, pursuant to Section 34177(l)(1) of the Redevelopment Law, each Successor Agency is further required to periodically prepare a six-month Recognized Obligation Payment Schedule (ROPS) covering the time increment from July-December of each year and then again for January-June of each year until such time the enforceable obligations of its former redevelopment agency have been fully retired or serviced; and

WHEREAS, in accordance with that requirement, the City Council on 17 April 2012 did adopt the 2nd ROPS for the Successor Agency for the City of Clayton to cover the fiscal time period from 01 July 2012 through 31 December 2012 and noted the recognized enforceable obligations accordingly; and

WHEREAS, on 27 June 2012 the California Legislature adopted and the Governor signed Assembly Bill 1484 which set further statutory language and laws administering and managing the operations and obligation payments of successor agencies in California, including the requirement that a 3rd ROPS for each Successor Agency covering the time period of 01 January 2013 through 30 June 2013 must be adopted by the Successor Agency, approved by its Oversight Board and submitted electronically to the California Department of Finance (DOF) by 01 September 2012; and

WHEREAS, in order to comply with that requirement in a timely fashion, City staff has duly prepared the 3rd ROPS for the Successor Agency for the City of Clayton for the specified time period, a copy of which is attached hereto and labeled as "Attachment 1"; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4), the approval of the ROPS is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a project, but instead consists of the continuation of an existing governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program because it merely lists enforceable obligations previously entered into and approved by the former Clayton Redevelopment Agency; and

WHEREAS, the Clayton City Council has reviewed and duly considered the Staff Report, the proposed 3rd Recognized Obligation Payment Schedule (ROPS), plus documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California, serving as the Successor Agency, does hereby find the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED that the City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this action and Resolution are exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa, California in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED that the City Council does hereby approve and adopt the 3rd Recognized Obligation Payment Schedule (ROPS), attached hereto as "Attachment 1" and incorporated herein as if fully set forth in this Resolution.

BE IT FURTHER RESOLVED that the City Council authorizes and directs its City Manager or the City Manager's designee to: (1) post the 3rd Recognized Obligation Payments Schedule (Attachment 1) on the City's website; (2) designate a City representative to whom all questions related to the 3rd Recognized Obligation Payment Schedule can be directed; (3) notify, by mail or electronic means, the County Auditor-Controller, the State Department of Finance, and the State Controller of the Successor Agency's action to adopt the 3rd Recognized Obligation Payment Schedule (ROPS) and to provide those persons with the internet website location of the posted schedule and the contact information for the City's designated contact; and (4) to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Recognized Obligation Payment Schedule on behalf of the Successor Agency and City.

BE IT FURTHER RESOLVED that if any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Resolution or of Attachment 1, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective, such decision shall not effect the validity or effectiveness of the remaining portions of this Resolution, Attachment 1 or any part thereof. The City Council, acting as the Successor Agency, hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Resolution or of Attachment 1 irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Resolution and of Attachment 1 are declared to be severable.

AND BE IT FURTHER RESOLVED that this Resolution shall and does take immediate effect upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Clayton, California at a regular public meeting thereof held on the 17th day of July 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA
serving as the Clayton Successor Agency

Howard Geller, Mayor

ATTEST:

Laci J. Jackson, Clerk

#

I certify that the foregoing is a true and correct copy of the original Resolution on file in the office of the City Clerk of and for the City of Clayton.

Laci J. Jackson, City Clerk

Clayton Redevelopment Agency
All

Name of Redevelopment Agency:
Project Area(s)

3rd RECOGNIZED OBLIGATION PAYMENT SCHEDULE (Jan-June 2013)
Per AB 26 - Section 34167 and 34169

Project Name / Debt Obligation	Payee	Description	Funding Source	Total Outstanding Debt or Obligation	PAYMENTS BY MONTH 2013						Total
					Jan	Feb	Mar	Apr	May	June	
1) RDA contractual subsidy entered on 10/1/2001	Diamond Terrace Investors	Sr. Housing Facility Loan - Final Payment	RDA Retirement Trust	200,000							
2) 1986 Tax Allocation Bonds Series A	US Bank	Bonds issued to fund non-housing projects	RDA Retirement Trust	317,075							
3) 1989 Tax Allocation Bonds	US Bank	Bonds issued to fund non-housing projects	RDA Retirement Trust	6,555,813							
4) CCCo Fire Station Land Loan	City of Clayton	Fire Station Land Loan Principal	RDA Retirement Trust	475,000							
5) RDA Loan entered into on 5/19/10	Clayton RDA LMI Housing	Intra-Fund Loan for S.E.R.A.F. payment	RDA Retirement Trust	582,412	12,342	12,342	12,342	12,342	12,342	12,342	74,052
6) Contract for Consulting Services	Thales Consulting	RDA State Controller's Report 2010/11-2011/12	RDA Retirement Trust	3,600							
7) Contract for Consulting Services	Cropper Accountancy	RDA Audit 2010-11	RDA Retirement Trust	12,372							
8) Contract for Consulting Services	NBS Local Govt Solution	Arbitrage Reporting	RDA Retirement Trust	8,700							
9) Contract for Consulting Services	US Bank	Paying Agent Fee	RDA Retirement Trust	16,085	5,365						
10) Contract for Consulting Services	Ranney Planning	Housing Element higher density codes (EIR)	RDA Retirement Trust	35,294							
11) Contract for Consulting Services	Grandsumner Turner Bank	Legal advice	RDA Retirement Trust	45,000	1,000						
12) Successor Agency functions	City of Clayton	Expenses for Successor Agency operation	RDA Retirement Trust	750,000	20,833	1,000	1,000				
13) 2% Election Payments 1987-2009	City of Clayton	2% Election payments unpaid per Section 33676	RDA Retirement Trust	501,899	20,833	20,833	20,833	20,833	20,834	20,834	125,000
14) Statutory Payments	County	Property Tax Administration Fees	RDA Retirement Trust	106,000							
24)											
Totals - This Page				9,719,259	39,540	155,136	34,175	33,175	33,176	86,176	381,378
Grand total - All Pages				9,719,259	39,540	155,136	34,175	33,175	33,176	86,176	381,378

OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT

Agenda Date: 7/17/12

7/18/12

NEWS RELEASE

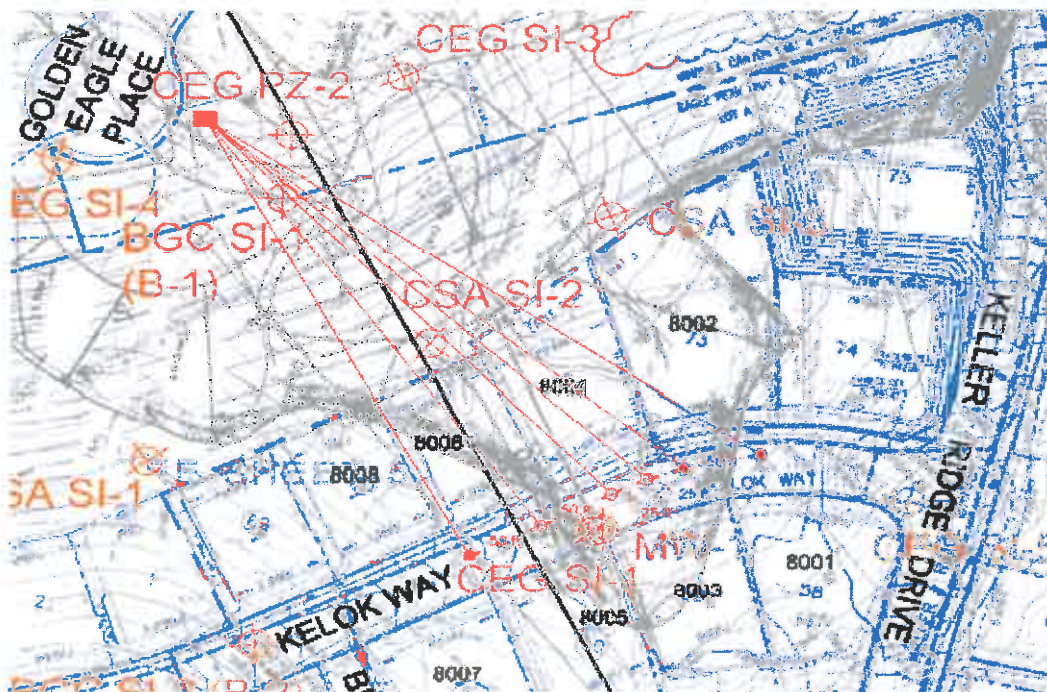
Agenda Item: 3 (a)

In 2003, the Oakhurst Geological Hazard Abatement District (GHAD) began monitoring land movement (a slow-moving landslide) in a large open space slope between North Valley Park (at the intersection of Keller Ridge Drive and Golden Eagle Place) and the homes on the north side of Kelok Way.

Since the report issued by the GHAD to affected property owners in 2006, numerous lawsuits were filed by several homeowners in this area against Lyon Homes (successor to the original builder – Presley Homes), the City of Clayton and the GHAD, relating to this movement. While a variety of options and alternatives were considered and evaluated by the various litigation parties, insurance companies and retained experts, the most practical remedy (based upon a consensus of the geotechnical soils experts hired by the various parties) is to install six, 110' deep, 2' diameter dewatering wells in the pavement on Kelok Way just west of Keller Ridge Drive (see map below). Horizontal drains will then be drilled into the bottom of the wells from an existing drainage box near the cul-de-sac on Golden Eagle Place. It is envisioned these wells will remove, or greatly reduce, the water pressure that is causing the soil movement. It is the consensus of the experts that this remedial work will increase safety factors sufficient to arrest or significantly slow the soil movement.

It is estimated the cost of this field work will be approximately \$750,000. All of this work is being paid from a portion of a litigation settlement fund created by the various parties in the lawsuit. The work is expected to commence before Thanksgiving and be complete before Christmas, depending on the weather and field conditions.

Questions regarding this work may be directed to GHAD District Manager, Rick Angrisani, at (925) 363-7433.



**MINUTES
REGULAR MEETING
OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT**

Agenda Date: 7/17/12

Agenda Item: 3 (b)

June 19, 2012

1. **CALL TO ORDER AND ROLL CALL** – the meeting was called to order by Chairman Stratford at 8:50 p.m. in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA Boardmembers present: Chairman Stratford, Vice Chairman Medrano, Boardmembers Geller, Pierce, and Shuey. Staff present: City Manager Napper, General Legal Counsel Subramanian, and Secretary Jackson.
2. **CLOSED SESSION** – None.
3. **CONSENT CALENDAR**- It was moved by Boardmember Pierce, seconded by Boardmember Shuey, to approve the Consent Calendar as submitted (Passed; 5-0 vote).
 - (a) Approved the Oakhurst Geological Hazard Abatement District Board minutes for its regular meeting of March 6, 2012.
4. **PUBLIC HEARINGS** - None.
5. **ACTION ITEMS**
 - (a) Presentation and consideration of the proposed Oakhurst Geological Hazard Abatement District (GHAD) Budget for Fiscal Year 2012-2013.

The City Manager presented the proposed FY 2012-13 budget noting it is the same services as last year but subject to an allowed 2.1% increase in CPI for the real property assessments. These assessments are the sole source of revenue for the District. He stated the District will continue the same operations yet insufficient revenue to perform any hazard abatement projects or maintenance.

No public comments were received.

It was moved by Vice Chairman Medrano, seconded by Boardmember Pierce to adopt Resolution 01-2012 approving the District's Budget for FY 2012-2013, which action also sets July 17, 2012 as the Public Hearing date on the proposed GHAD real property assessments for FY 2012-2013 (Passed; 5-0 vote).

6. **BOARD ITEMS** – None.
7. **ADJOURN**- on call by Chairman Stratford the meeting adjourned at 8:53 p.m.

Respectfully submitted,

Laci J. Jackson, Secretary

Approved by Board of Directors
Geological Hazard Abatement District

Hank Stratford, Chairman



Agenda Date: 7/17/12
Agenda Item: 3(c)

GHAD STAFF REPORT

TO: HONORABLE CHAIRPERSON AND BOARD MEMBERS

FROM: RICK ANGRISANI, DISTRICT MANAGER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING TWO SETTLEMENT AGREEMENTS RESOLVING NUMEROUS LAWSUITS IN THE OAKHURST COUNTRY CLUB DEVELOPMENT

RECOMMENDATION

Approve the attached Resolution approving two settlement agreements and authorizing the Chairman to execute the agreements on behalf of the Oakhurst Geological Hazard Abatement District (GHAD).

BACKGROUND

The Board, seated as the City Council, has earlier received the details of these two settlement agreements. For purpose of this recommended action, it is assumed the Clayton City Council adopted a Resolution approving the agreements and authorizing the Mayor to execute the agreements on behalf of the City of Clayton.

As the GHAD is a party in both of these agreements, the Board must also adopt its own Resolution approving the agreements and authorizing the Chairman to execute them on behalf of the GHAD.

FISCAL IMPACT

As explained earlier during the City Council meeting, there will be no fiscal impact to the GHAD. Further, it will end the payment of attorney fees and staff time currently being expended on these issues.

CONCLUSION

Based upon the above, Staff recommends the Board of Directors adopt the attached Resolution approving the two settlement agreements and authorizing the Chairman to execute the agreements on behalf of the GHAD.

Attachments: 1. Settlement Agreement and Partial Release of All Claims
 2. Settlement Agreement, Release, and Covenant Not To Sue

RESOLUTION NO. - 2012

**A RESOLUTION APPROVING TWO SETTLEMENT AGREEMENTS RELATING
TO NUMEROUS LAWSUITS CONCERNING CONSTRUCTION DEFECTS AND
LAND MOVEMENT IN THE OAKHURST COUNTRY CLUB DEVELOPMENT**

**THE BOARD OF DIRECTORS
Oakhurst Geological Hazard Abatement District
City of Clayton, California**

WHEREAS, since 2005, numerous lawsuits alleging damages caused by construction defects and land movement in City-owned open space have been filed by property owners in the Oakhurst Country Club development against the project developer, Presley Homes (now William Lyon Homes), the City, the Oakhurst Geological Hazard Abatement District (GHAD), and various contractors (the Parties); and

WHEREAS, two settlement agreements ("Agreements") entitled "Settlement Agreement and Partial Release of All Claims" and "Settlement Agreement, Release, and Covenant Not To Sue", each Agreement attached hereto and labeled as Attachment 1 and 2, respectively, have been negotiated and tentatively agreed to by all of the Parties; and

WHEREAS, the Agreements resolve the outstanding lawsuits and provide for the installation of dewatering wells in Kelok Way in order to stabilize the slope movement in the City-owned open space north of Kelok Way; and

WHEREAS, City staff and legal counsels have recommended approval of the Agreements;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Oakhurst Geological Hazard Abatement District does hereby adopt this Resolution approving the Agreements as noted and described above, and does hereby authorize the Chairman to execute each Agreement on behalf of the GHAD.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting thereof held on the 17th day of July, 2012 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE BOARD OF DIRECTORS OF GHAD

ATTEST:

HANK STRATFORD, Chairman

Laci Jackson, City Clerk

#

I hereby certify that the foregoing resolution was duly and regularly passed by the Board of Directors of the Oakhurst Geological Hazard Abatement District at its regular public meeting held on July 17, 2012.

Laci J. Jackson, Secretary

**SETTLEMENT AGREEMENT AND
PARTIAL RELEASE OF ALL CLAIMS**

I

INTRODUCTION

This Settlement Agreement (the "Agreement") is entered into by and between the CITY OF CLAYTON (hereinafter "CITY") and OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (hereinafter "GHAD") and THE PRESLEY COMPANIES, PRESLEY HOMES and WILLIAM LYON HOMES, INC. (hereinafter "LYON"). Collectively, the above parties are referred to as "the Settling Parties."

For valuable consideration as between the Settling Parties herein, this Agreement is incorporated into, modifies and controls the Settlement Agreement and Release of All Claims in the matter of *Lorna Belskey, et al. v. The Presley Companies, et al.*, Contra Costa County Superior Court Case No. C05-00837. This Settlement Agreement applies to the following cases:

1. **Daniel Katzman, et al., Plaintiffs v. City of Clayton, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C07-00707.
2. **Andrew Brown, et al., Plaintiffs v. The Presley Company, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C07-01461.
3. **Glade Gaffney, an individual, Plaintiff v. City of Clayton, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C07-02677.
4. **Francis Achim, et al., Plaintiffs v. The Presley Company, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C08-01079. The Achims are proceeding in pro per.
5. **Alan R. Brooks, et al., Plaintiffs v. The Presley Company, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C08-00442. All plaintiffs, except Nancy Robinson Beaver, have dismissed their Complaints with prejudice.
6. **Lorna Belskey, et al., Plaintiffs v. The Presley Companies, et al., Defendants**, and related cross-actions, Contra Costa Superior Court Case No. C05-00837. Currently, five Plaintiffs (homes) remain.
7. **Robert Sheffield, et al., Plaintiffs v. William Lyon Homes, Inc., Defendants**, Contra Costa Superior Court Case No. C07-00694.

II

THE PARTIES

The following are the parties to this Agreement and shall hereinafter be referred to as the "Settling Parties":

1. The CITY OF CLAYTON including, but not limited to, its City Council members, City Manager, employees, attorneys, experts, agents and representatives;
2. The OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT including, but not limited to, its Board members, District Manager, employees, attorneys, experts, agents and representatives;
3. WILLIAM LYON HOMES, INC., THE PRESLEY COMPANIES, PRESLEY HOMES including, but not limited to, their predecessor or successor owners or entities, past, present and future parent companies, subsidiaries, divisions, subdivisions, affiliates, related companies, general partners, limited partners, partnerships, partners, joint ventures, shareholders, investors, owners, directors, officers, employees, attorneys, experts, consultants, assigns, agents and representatives. This Agreement does not apply to any insurers of the above-named entities related to LYON.

III

THE CLAIMS

The claims herein shall refer, except as otherwise set forth in this Agreement, to any and all claims or causes of action that were brought, related to the development, planning, improvement, design, construction, maintenance and ownership of all common areas, open spaces, lots and any Plaintiffs' homes related to the above-named seven lawsuits in the Oakhurst Development. In the seven above-referenced actions, LYON and the CITY/GHAD have Cross-Complaints against one another for various causes of action, including equitable indemnity, contribution, breach of contract and express indemnity. The Settling Parties wish to resolve these claims, with such limitations as are set forth below.

IV

MODIFICATIONS TO THE OVERALL BELSKEY v. PRESLEY HOMES SETTLEMENT

LYON and the CITY/GHAD agree to the following terms modifying any global Settlement Agreement between all of the parties in the above-named actions.

A. The CITY/GHAD will contribute TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) toward the BELSKEY Plaintiffs' claims payable to the BELSKEY Plaintiffs and their counsel of record. This money is solely for the alleged property damage to the Plaintiffs' homes and real property. This money will not be used for any hillside repairs.

B. The CITY/GHAD and LYON do not release each other or their respective insurers from any future liability. The CITY/GHAD and LYON agree to reserve any and all arguments and defenses concerning the interpretation of the 2003 Settlement Agreement between LYON and the CITY, the Oakhurst Country Club Development Agreement, any and all Subdivision Agreements and related Addendums and Amendments including whether or not these Agreements remain valid. Neither LYON nor the CITY/GHAD waive or release any factual or legal arguments concerning the above-referenced documents, including that the documents have expired.

C. LYON and the CITY/GHAD agree to mutually waive all claims against each other to recover past, present and future attorneys' fees and costs incurred relating to the ACHIM, BROOKS, BELSKEY, BROWN, KATZMAN, GAFFNEY and SHEFFIELD actions.

D. LYON and the CITY/GHAD agree to "stand down" on the ACHIM and BROOKS actions. LYON will take the lead in the defense of both these actions. LYON agrees to indemnify, but not defend, the CITY and GHAD for the ACHIM and BROOKS actions. The indemnity will apply except where there is a determination by a finder of fact that the liability to the ACHIMS and NANCY ROBINSON BEAVER Plaintiffs for their property damage was the "sole negligence" of the CITY/GHAD. The CITY and GHAD agree to bear their own attorneys' fees and costs for the ACHIM and BROOKS matters.

E. Lyon and the CITY/GHAD agree that all arguments and defenses as to the interpretation of the the Oakhurst Development Agreement, all Subdivision Agreements, the 2003 Settlement Agreement and Release and related written agreements between LYON and the CITY/GHAD shall remain unaffected by this Agreement.

F. Upon full funding by all settling parties to the BELSKEY settlement, GHAD will contract with Engineered Soil Repairs, Inc. (ESR) or another qualified contractor for the repairs/remediation of the "Katzman slide." The ESR contract is a fixed price contract to perform work on the hillside for a total of SIX HUNDRED THIRTY-FIVE THOUSAND FOUR HUNDRED EIGHTY DOLLARS (\$635,480.00), plus an additional cost of THIRTEEN THOUSAND THREE HUNDRED NINETY-THREE DOLLARS (\$13,393.00) if it is determined that the project is a "prevailing wage" project. Neither the CITY/GHAD nor LYON shall be responsible for any contract overages. In the event that ESR cannot or will not sign a contract for the work acceptable to the CITY or GHAD, GHAD will put out the repair work to bid using the Contract Documents prepared by Stevens, Ferrone & Bailey. The total amount of money being contributed by LYON and/or its subcontractors for the hillside repairs is SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00). In addition to the ESR (or other qualified contractor) contract price, additional fees and expenses out of the SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00) shall include expert fees paid to Stevens, Ferrone & Bailey for inspections and/or any other fees and costs associated and/or performed with the repairs including any required inspections by the CITY or GHAD. Upon full funding by all settling parties to the BELSKEY settlement, GHAD will contract with Stevens, Ferrone & Bailey. The invoices of Stevens, Ferrone & Bailey will be reviewed by the GHAD District Manager whose time will be compensated out of the SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00) in an amount NOT TO EXCEED \$5,000. ESR or

another qualified contractor has agreed or will agree to pay all permitting and required GHAD inspection/bond fees. Any money not used out of the SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$725,000.00) will be split between LYON HOMES and the CITY/GHAD on an 80/20 basis with eighty percent (80%) going back to LYON HOMES and twenty percent (20%) going to the CITY/GHAD. ESR or another qualified contractor has agreed or will agree to defend and indemnify LYON HOMES, the CITY and GHAD. In addition, neither LYON nor the CITY/GHAD shall be responsible for any additional costs above the fixed price contract work.

V

MISCELLANEOUS

A. LYON and the CITY/GHAD agree that they are not relying on any representations made by the other in agreeing to the settlement other than what is included in this Release Agreement. LYON HOMES and the CITY/GHAD further represent that they understand that they are dismissing their respective cross complaints against each other voluntarily and not in reliance of any representation or promise or inducement not expressed herein.

B. This AGREEMENT is the result of a compromise among the SETTLING PARTIES and shall never at any time or for any purpose be considered as an admission of liability and/or responsibility on the part of any party herein released as to this agreement, nor shall the payment of any sum of money in consideration for the execution of this AGREEMENT constitute or be construed as an admission of any liability whatsoever by any party herein released, each of which continues to deny such liability and disclaim such responsibility.

C. This Agreement and the terms of this Agreement are contractual and not a mere recital. Each Party has carefully read and understands the contents of this Agreement and signs the same as the undersigned's own free act.

D. This Agreement shall bind and be binding upon the heirs, executors, administrators and assigns of each Party.

E. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be wholly or partially illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions of this Agreement shall not be affected thereby. Said illegal, unenforceable or invalid part, term or provision shall be deemed not to be a part of this Agreement.

F. This Agreement may be signed in counterparts which, when taken together, shall constitute the same Agreement. This document sets forth the entire Agreement between the Parties hereto. It supersedes any and all prior agreements (except as noted herein) or understandings, written or oral, among the Parties pertaining to the specific subject matter (the Belskey Settlement) of this Agreement.

G. This Agreement shall be effective as of the date it is fully executed by all of the undersigned (the "Effective Date").

H. This Agreement is the product of arms length negotiations prepared by and among the Parties and their counsel. All Parties expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one Party or another. No presumption of drafting or interpretation based on drafting for or against the Parties shall apply.

I. This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California, without reference to choice of law rules.

WILLIAM LYON HOMES, INC.

Dated: _____, 2012.

By _____
Print Name: _____
Title: _____

CITY OF CLAYTON

Dated: _____, 2012.

By _____
Howard Geller, Mayor

OAKHURST GEOLOGICAL HAZARD
ABATEMENT DISTRICT

Dated: _____, 2012.

By _____
Hank Stratford, Chairman

SETTLEMENT AGREEMENT, RELEASE, AND COVENANT NOT TO SUE

INTRODUCTION

This Settlement Agreement, Release and Covenant Not to Sue ("AGREEMENT") was effectively entered into on the 7th day of September 2011, by and between Plaintiffs Lailuma and Hamid Hossaini, William J. and Beverly J. Plambeck, Gregory S. and Phyllis O. Redmond, Debra Vanslambrook, and Amin and Nahida Zafari, and all other legal or equitable owners of the properties and all Related Persons or Entities, as defined herein, whether or not named as plaintiffs herein (herein collectively referred to as "PLAINTIFFS"), and Presley Homes, The Presley Companies and William Lyon Homes, Inc. (herein collectively referred to as "LYON"), DMC Concrete, Inc., Merit Concrete, Inc., Rivera Company, City of Clayton, and Oakhurst Geological Hazard Abatement District and all other Related Person or Entities, as defined herein.

1. DEFINITIONS

The following definitions shall apply in this AGREEMENT:

1.1 "AGREEMENT" shall mean and refer to this Settlement Agreement, Release and Covenant Not to Sue.

1.2 "PLAINTIFFS" shall mean and refer to Lailuma and Hamid Hossaini, William J. and Beverly J. Plambeck, Gregory S. and Phyllis O. Redmond, Debra Vanslambrook, and Amin and Nahida Zafari and all other current legal or equitable owners of the properties and all related person or entities whether or not named as plaintiffs herein.

1.3 "CITY" shall mean and refer to the City of Clayton.

1.4 "GHAD" shall mean and refer to the Oakhurst Geological Hazard Abatement District.

1.5 "SETTLING SUBCONTRACTORS" shall mean and refer to DMC Concrete, Inc., Merit Concrete, Inc., and Rivera Company, and all who are Related Persons.

1.6 "SETTLING PARTIES" shall mean and refer to PLAINTIFFS, LYON, DMC Concrete, Inc., Merit Concrete, Inc., Rivera Company, CITY, and GHAD.

1.7 "THE ACTION" shall mean and refer to the case filed individually by PLAINTIFFS, on or about April 25, 2005, against LYON and others, and more particularly described as follows: *Lorna Belskey, et al. v. The Presley Companies, et al.*, bearing the Contra Costa County Superior Court Case Number MSC05-00837.

1.8 “THE CROSS-ACTION” shall mean and refer to any and all cross-complaints filed in THE ACTION by any party.

1.9 “SUBJECT PROPERTIES” shall mean and refer to all right, title and interest that PLAINTIFFS have in the five (5) single-family homes, including the real property and improvements thereon located at the Falcon Ridge subdivision at the Oakhurst Country Club located in Clayton, California. Specifically, “SUBJECT PROPERTIES” are described with particularity in Exhibit “A” attached hereto and incorporated by reference.

1.10 “CITY OWNED ADJACENT LAND” shall mean and refer to the hillside slopes owned by the City and adjacent to the SUBJECT PROPERTIES. The CITY OWNED ADJACENT LAND includes primarily tract 7261, and peripherally tracts 7264 and 7263.

1.11 “RELATED PERSONS AND ENTITIES” as it pertains to LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS shall mean and refer to any and all of their past, present and future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, stockholders, directors, officers, officials, employees, lenders, mortgage holders, predecessors, partners, joint venturers, legal representatives, agents, experts, consultants, heirs, administrators, trusts, trustees, trust beneficiaries, creditors, assignees, and each of their predecessors, successors, and assigns as to this case only and not as to any future third party claims related to the SUBJECT PROPERTIES.

1.12 “RELATED PERSONS AND ENTITIES” as it pertains to the PLAINTIFFS shall mean and refer to any and all legal and equitable owners of the SUBJECT PROPERTIES and their legal representatives, insurers, lenders, mortgage holders, agents, experts, consultants, heirs, trusts, trustees, trust beneficiaries, creditors, assignees, lessees, tenants, residents of the SUBJECT PROPERTIES, administrators and conservators, and each of their predecessors, successors and assigns.

1.13 “CLAIM” or “CLAIMS” shall mean and refer to any and all claims, demands, liabilities, causes of action of any kind, arising out of the matters alleged in the ACTION, including but not limited to strict liability, breach of implied warranty, breach of contract, negligence per se, breach of express warranty, negligence, trespass, inverse condemnation, nuisance, and all losses and damages, whether economic or non-economic, including, but not limited to, losses and damages associated with patent or latent defects, loss of compensation, property damage, indemnity, loss of use, loss of services, attorney’s fees, expert’s fees, repair costs, investigative costs, relocation costs, diminution in value claims, and any other actionable omissions, conduct or damages of any kind and nature whatsoever, whether subrogated or non-subrogated, whether in tort, contract or extracontractual, at law or in equity, actual or contingent, foreseen or unforeseen, known or unknown, past or future

1.14 "CLAIM" or "CLAIMS" specifically excludes from this Settlement Agreement: (1) Any and all CLAIMS as that term is defined herein which LYON and its respective RELATED PERSONS AND ENTITIES have or may have against any party, person, or entity other than PLAINTIFFS, SETTLING SUBCONTRACTORS and their respective RELATED PERSONS AND ENTITIES; (2) Any and all CLAIMS as that term is defined herein which LYON and its respective RELATED PERSONS AND ENTITIES have or may have pursuant to their status as named or additional insureds to the insurance policies issued to any individual or entity; (3) any and all claims for personal injury or bodily injury, which PLAINTIFFS have not alleged in the present ACTION; (4) any and all future damages arising out the maintenance of the hillside slopes adjacent to the SUBJECT PROPERTIES that are owned by the CITY and maintained by the GHAD and/or any repairs performed in the future to the hillside slopes that are unrelated to the CLAIMS released herein which are caused by the negligent acts or omissions of the CITY and GHAD occurring after the date of this Agreement.

1.15 Section 1.14 above does not apply as between LYON and the CITY and GHAD and all issues concerning claims by and between LYON and the CITY and GHAD shall be governed by a separate agreement.

2. RECITALS

2.1 On or about April 25, 2005, PLAINTIFFS filed THE ACTION against LYON claiming damages for strict liability, breach of implied warranty, breach of contract, negligence per se, breach of express warranty, negligence, and nuisance, with claims of alleged defects in the design, construction, grading and repair of the SUBJECT PROPERTIES and all component parts of the SUBJECT PROPERTIES. PLAINTIFFS also claimed damages against the CITY and GHAD for inverse condemnation and nuisance regarding the CITY OWNED ADJACENT LAND.

2.2 On or around June 30, 2005, LYON filed THE CROSS-ACTION against certain subcontractors whose work was implicated in THE ACTION and/or tendered claims to them or their representatives. Pursuant to THE CROSS-ACTION, LYON sought indemnification and contribution from THE SETTLING SUBCONTRACTORS, as well as the CITY and GHAD. The CITY and GHAD filed a CROSS ACTION against LYON seeking, among other things, indemnification.

2.3 On or about September 7, 2011, a settlement was reached between PLAINTIFFS, LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS for a total of \$1,325,000. \$725,000 of the settlement funds will be used by GHAD to perform a dewatering repair of the hillside. No settlement funds from the CITY or GHAD shall be used for hillside repairs. GHAD agrees to be the contracting party for the hillside repair and the construction management oversight contracts.

2.4 The SETTLING PARTIES desire and intend by this AGREEMENT to now settle, finally and completely, all claims, demands, actions, causes of action and obligations, known or unknown, relating to drainage, grading, foundation, concrete,

geotechnical and all below-ground soils, including allegations of faulty soil compaction, adjacent landslides, faulty existing underlying soils and expansive soils resulting in soil movement and damage to the structures, concrete slabs, flatwork and foundation defects including any and all resulting damages associated with and arising from the ACTION or CROSS ACTION. All issues by and between LYON and the CITY and GHAD shall be governed by a separate agreement.

2.5 Upon approval of this Agreement and full funding of the settlement by all SETTLING PARTIES, GHAD will contract with Engineered Soil Repair, Inc. ("ESR") or another qualified contractor to install dewatering wells on CITY OWNED ADJACENT LAND. Upon approval of this Agreement and full funding by all SETTLING PARTIES, GHAD will retain Steven, Ferrone & Bailey Engineering Company, Inc. to inspect, manage and supervise the construction.

2.6 This AGREEMENT does not modify, diminish, or release the CITY or GHAD from any duty or obligation to maintain the CITY OWNED ADJACENT LAND.

3. PAYMENT AND ASSIGNMENT

3.1 Settlement Payments. The total amount to be collectively paid to PLAINTIFFS by LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS, pursuant to the settlement reached between SETTLING PARTIES is \$600,000.00. The remaining payments (excluding all funds from the CITY and GHAD) are to be used for payment of the hillside repairs and construction management oversight expenses or costs.

3.2 The settlement contributions are broken down as follows:

LYON	\$1,000,000
CITY and GHAD	\$250,000
DMC Concrete	\$25,000
Merit Concrete	\$25,000
Rivera Company	\$25,000

3.3 ASSIGNMENT. In exchange for the monetary contribution of LYON, PLAINTIFFS agree to assign to LYON any all claims they may have against any NON-SETTLING PARTY, known or unknown, including, but not limited to equitable and implied indemnity rights.

3.4 In exchange for the settlement amount described above, PLAINTIFFS shall dismiss any and all CLAIMS in THE ACTION and/or arising from or related to the

SUBJECT PROPERTIES, with prejudice, as to LYON, the SETTLING SUBCONTRACTORS, the CITY, and GHAD.

3.5 All Parties agree that the settlement amount described above was made in good faith in accord with Code of Civil Procedure sections 877 and 877.6.

3.6 All Settlement Payments due PLAINTIFFS shall be forwarded to plaintiffs' counsel by December 1, 2011 for SETTLING PARTIES. Timing of settlement payments by LYON and/or LYON's carriers is governed by a separate agreement between PLAINTIFFS and LYON. Settlement checks shall be made payable to the "Milstein Adelman Client Trust Account" (Federal Tax ID No. 95-4598207) and delivered to PLAINTIFFS' counsel.

3.7 Each party shall be responsible to pay only their contribution to the total settlement amount and shall not be responsible or liable for any other party's settlement contribution.

4. RELEASES

4.1 PLAINTIFFS' Release. For and in consideration of the settlement amount as described in Paragraph 3 of this AGREEMENT, and the other representations and promises contained herein, and except as otherwise set forth herein, PLAINTIFFS, individually and collectively, and on behalf of their RELATED PERSONS AND ENTITIES, do hereby fully and finally settle, release, acquit and forever discharge, in the broadest possible manner, LYON, the CITY, GHAD, and the SETTLING SUBCONTRACTORS and their respective RELATED PERSONS AND ENTITIES, of and from all CLAIMS in the action, as defined herein, which arose out of or are connected in any way with the SUBJECT PROPERTIES and/or the CITY OWNED ADJACENT LAND, and are not specifically excluded herein. Conditioned upon the promises made herein, this AGREEMENT may be pled as a full and complete defense to any action or other proceeding by which any PLAINTIFF pursues any of the CLAIMS released herein, as well as a basis for abatement of, or injunction against, such action or other proceeding.

4.2 LYON and SETTLING SUBCONTRACTORS' Releases. For and in consideration of the Release of PLAINTIFFS, as described herein, and the other representations and promises contained herein, and except as otherwise set forth herein, LYON and SETTLING SUBCONTRACTORS, on their own behalf and on behalf of their respective RELATED PERSONS AND ENTITIES, do hereby fully and finally settle, release, acquit and forever discharge, in the broadest possible manner, each other and their respective RELATED PERSONS AND ENTITIES, of all CLAIMS made by PLAINTIFFS in THE ACTION and the associated CROSS-ACTION, as defined herein, which arose out of or are connected in any way with the SUBJECT PROPERTIES, except for any claim brought in the future by an individual or entity not a named party to these proceedings. Conditioned upon fulfillment of the promises made herein, this AGREEMENT may be pled as a full and complete defense to any action or other

proceeding by which LYON or any SETTLING SUBCONTRACTOR pursues any of the CLAIMS released herein, as well as a basis for abatement of, or injunction against, such action or other proceeding.

4.3. The specific terms of the ongoing relationship and release of claims between LYON and the CITY and GHAD shall be governed by a separate agreement.

4.4 **WAIVER OF CIVIL CODE SECTION 1542.** PLAINTIFFS acknowledge and understand that there is a risk that, subsequent to the execution of this AGREEMENT, they may accrue, obtain, incur, suffer or sustain CLAIMS which in some conceivable way arise out of, are caused by, are connected with or related to SETTLING PARTIES, the SUBJECT PROPERTIES, and/or the CITY OWNED LAND and that such CLAIMS may be unknown and unanticipated at the time this AGREEMENT is signed, or are not presently capable of being ascertained. PLAINTIFFS further acknowledge that there is a risk that any CLAIMS as are known or should be known may become more serious than they now expect or anticipate. Nevertheless, PLAINTIFFS hereby expressly waive all rights they may have in such unknown and unexpected consequences or results, unless such rights are specifically excluded herein. **PLAINTIFFS acknowledge that they have had the benefit of or opportunity to consult with counsel, understand the import of California Civil Code section 1542 and expressly waive the protection of Civil Code section 1542,** which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the executing the release which, if known by him or her must have materially affected his or her settlement with the debtor.

PLAINTIFFS hereby specifically waive any and all rights and benefits that could accrue under this section or any successor statute, unless such rights are specifically excluded herein. SETTLING PARTIES acknowledge that this AGREEMENT would not be made without such a waiver

5. CONFIDENTIALITY AND COVENANT NOT TO PUBLISH

5.1 PLAINTIFFS, and their attorneys, experts and all those associated with them, agree to refrain from disclosing, advertising, or publicizing in any way, including but not limited to, via newspapers, magazines, jury verdicts publications, law firm marketing brochures or materials, television, radio, newsletters, the Internet, or other publications, the amounts to be paid or received separately, individually or collectively by SETTLING PARTIES, the total amount of the Settlement Payments, except as specifically set forth herein.

5.2 SETTLING PARTIES hereby acknowledge that substantial work has been performed by their legal counsel, agents, representatives, expert witnesses and/or

consultants, at the express direction of the SETTLING PARTIES, related to the prosecution and/or defense of THE ACTION and THE CROSS-ACTION, a defined herein. Such work includes, but is not limited to, tests, reports, studies, examinations, inspections and research and analyses regarding, among other things, the SUBJECT PROPERTIES. SETTLING PARTIES hereby expressly assume responsibility for an ownership of such work performed by their legal counsel, agents, representatives, expert witnesses and/or consultants, and, pursuant to the terms of this AGREEMENT, SETTLING PARTIES shall take all appropriate steps to ensure such work, as defined herein, shall remain confidential. For instance, SETTLING PARTIES shall advise their legal counsel, agents, representatives, expert witnesses and/or consultants, who have performed such work at their express direction related to the prosecution and/or defense of THE ACTION and THE CROSS-ACTION, that such work shall remain confidential.

5.3 Notwithstanding this AGREEMENT, nothing in this AGREEMENT will prohibit, narrow, or abrogate the PLAINTIFFS' obligations to comply with disclosure requirements of the State of California related to or regarding the SUBJECT PROPERTIES. However, in making any and all necessary disclosures, the PLAINTIFFS shall not reveal the monetary terms of this AGREEMENT, except PLAINTIFFS may indicate that all applicable CLAIMS relating to the original construction and repairs of the SUBJECT PROPERTIES have been fully released by them under California law and that the release runs with the land and is applicable to subsequent purchasers of the SUBJECT PROPERTIES.

5.4 LYON and SETTLING SUBCONTRACTORS agree that, except as set forth herein, they also shall not disclose the Settlement Payments provided to PLAINTIFFS pursuant to this AGREEMENT. However, LYON and SETTLING SUBCONTRACTORS may share any of the terms of this AGREEMENT with their RELATED PERSONS AND ENTITIES as needed in the ordinary course of conducting their business.

5.5 Nothing in this AGREEMENT will prohibit the explanation of settlement terms in pleading filed with the Contra Costa Superior Court, including but not limited to, motions for good faith settlement. However, SETTLING PARTIES agree that any such pleadings, declarations, and other papers filed with the Court in this regard shall be treated as confidential materials and will not be provided or referenced in any way, shape or form to anyone, including, but not limited to, newspapers, magazines, jury verdict publications, law firm marketing brochures, television, radio, newsletters, the Internet, any publication, and etc. except as required for said pleadings and proceedings or as ordered by Court. Further, to the extent that a SETTLING PARTY must file any part of this AGREEMENT with the Court, the SETTLING PARTY doing so may only file those portion of this AGREEMENT that are necessary for the motion or pleading. The CITY and GHAD as public entities must make public this AGREEMENT upon execution pursuant to California law.

5.6 Nothing in this AGREEMENT shall prohibit disclosure to third parties to the extent necessary to comply with applicable laws, or for financial planning or tax purposes to financial advisors.

6. REPRESENTATIONS

SETTLING PARTIES make the following material representations with the understanding that each of them enters into this AGREEMENT in reliance upon each of these representations and that, without these representations, none of them would enter into this AGREEMENT:

6.1 SETTLING PARTIES intend that the terms and conditions of this AGREEMENT, and the AGREEMENT as a whole, shall be binding upon them, and their RELATED PERSONS AND ENTITIES, and are intended by SETTLING PARTIES to run with the land, as to the SUBJECT PROPERTIES, pursuant to applicable California law. A memorandum of settlement or other similar document shall be executed before a notary public by PLAINTIFFS and delivered to counsel for LYON with this AGREEMENT for recordation as to each of the SUBJECT PROPERTIES, and all parties shall cooperate and take all steps necessary to ensure recordation of a memorandum of settlement. An exemplar copy of the memorandum of settlement is attached hereto and incorporated by reference as "Exhibit B".

6.2 PLAINTIFFS and/or signatories hereto represent that they own the SUBJECT PROPERTIES and that they have not sold, transferred, conveyed, or assigned any interest therein which may affect the final and full resolutions of all CLAIMS. PLAINTIFFS represent that there are no other legal or equitable owners who should sign this AGREEMENT and that all such owners have been identified and are signatories to this AGREEMENT. PLAINTIFFS represent that the SUBJECT PROPERTIES are not currently in escrow, nor is any sale related to the SUBJECT PROPERTIES pending.

6.3 PLAINTIFFS and signatories hereto represent that they have not sold, transferred, conveyed, assigned, hypothecated and/or subrogated any of the CLAIMS released herein.

6.4 PLAINTIFFS and signatories hereto represent that they have standing to sue herein as the real parties-in-interest as to THE ACTION.

6.5 SETTLING PARTIES have selected and retained their own attorneys, experts and consultants to inspect, analyze and advise them regarding the nature, extent and cause of the CLAIMS. SETTLING PARTIES acknowledge that all of the terms and provisions of this AGREEMENT have been explained to them by their legal counsel. SETTLING PARTIES further represent that they understand and accept all of the terms and provisions of this AGREEMENT voluntarily and not in reliance of any representation or promise or inducement not expressed herein.

6.6 Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter in this AGREEMENT on behalf of the SETTLING PARTY for whom he or she purports to sign.

7. AGREEMENT NOT TO PROSECUTE

PLAINTIFFS shall never commence or prosecute any action, and hereby expressly agree not to assist in any way, shape or form in the commencement or prosecution of any action against LYON, the CITY, GHAD, or SETTLING SUBCONTRACTORS, in law or equity, based upon, arising from or in any way connected to the SUBJECT PROPERTIES and/or CITY OWNED ADJACENT LAND, based upon the CLAIMS released herein, or upon said parties' acts or omissions relating to the SUBJECT PROPERTIES and/or CITY OWNED ADJACENT LAND at any time up to and including the effective date of this AGREEMENT. Pursuant to this Paragraph, in addition to the other representations made in this AGREEMENT (including but not limited to Paragraph 5) PLAINTIFFS and their RELATED PERSONS AND ENTITIES agree not to provide such assistance in the prosecution or commencement of any action against LYON or SETTLING SUBCONTRACTORS by disclosing work performed by their legal counsel, agents, representatives, expert witnesses and/or consultants, based upon, arising from or in any way connected to the SUBJECT PROPERTIES and/or CITY OWNED ADJACENT LAND and the CLAIMS related thereto, unless required by law or ordered by court.

This AGREEMENT may be pled as a full and complete defense to any action or other proceeding, as a basis for abatement of, or injunction against such action.

8. HOLD HARMLESS

8.1 PLAINTIFFS will hold harmless LYON, the CITY, and GHAD and its officers, directors, shareholders, agents, representatives, predecessors, successors, assigns, affiliated and related entities and all persons acting by, through, under or in concert with it from any loss, claim, action, expense, demand, subrogation or cause of action of any kind or character whatsoever brought by or on behalf of any past, present or future owner(s) of the SUBJECT PROPERTY relating to any released CLAIM which is the subject matter of this Agreement, unless specifically excluded herein.

8.2 PLAINTIFFS acknowledge that in consideration of the promises and agreements contained herein, LYON, and SETTLING SUBCONTRACTORS and the RELATED PARTIES AND ENTITIES bear no responsibility whatsoever as to redesign, repair, remediation, corrective work and/or maintenance performed or not performed on the SUBJECT PROPERTIES. All such responsibility is fully and completely assumed by PLAINTIFFS only, and PLAINTIFFS agree to hold LYON, the SETTLING SUBCONTRACTORS, the CITY, GHAD and their RELATED PARTIES AND ENTITIES harmless of and from any past, present or future claims related to the failure to undertake repairs, deficient for defective repairs, and/or any other claim related to or

arising out of the redesign, repair, remediation, corrective work and/or maintenance performed or not performed on the SUBJECT PROPERTIES.

9. INDEMNIFICATION FOR FAILURE TO DISCLOSE

9.1 PLAINTIFFS agree to fully comply with California law relating to the duty to disclose conditions of a residence upon the sale or transfer of same.

9.2 PLAINTIFFS further agree to hold LYON, the SETTLING SUBCONTRACTORS, and the CITY and GHAD harmless, should they be sued, for any failure and/or alleged failure of PLAINTIFFS to disclose conditions of their residences and matters raised in connection with the released CLAIMS herein, as required pursuant to California law, relating to the SUBJECT PROPERTIES.

10. WARRANTY OF AUTHORIZED SIGNATORIES

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this AGREEMENT on behalf of the party for whom he or she purports to sign.

11. PROTECTION AGAINST SUBROGATION OR SUBSEQUENT CLAIMS

PLAINTIFF represents and warrants that it has not initiated, nor concluded, nor is it aware of, nor will it make any other claims for property damage, based upon the CLAIMS released herein and involving the SUBJECT PROPERTY.

12. WARRANTY REGARDING NON-ASSIGNMENT OR TRANSFER OF CLAIMS

PLAINTIFF hereby represents and warrants that the homeowner has not subrogated their rights to any and all CLAIMS involved in THE ACTION, and it is the sole and rightful owner of all those rights, title, and interest in the settlement proceeds and every claim and other matter which it releases herein and has not heretofore assigned or otherwise transferred any interest in any claim which it may have against the parties to this AGREEMENT, any entity released or discharged pursuant to this AGREEMENT, or the settlement proceeds.

13. COMPROMISE

This AGREEMENT is the result of a compromise among the SETTLING PARTIES and shall never at any time or for any purpose be considered as an admission of liability and/or responsibility on the part of any party herein released, nor shall the payment of any sum of money in consideration for the execution of this AGREEMENT

constitute or be construed as an admission of any liability whatsoever by any party herein released, each of which continues to deny such liability and disclaim such responsibility.

14. ATTORNEY FEES

The SETTLING PARTIES acknowledge and agree that each of them will bear their own costs, expenses and attorney fees arising out of and /or connected with the CLAIMS, the negotiation, drafting, and execution of this AGREEMENT, and all matters arising out of or connected therewith except that in the event any action is brought by any party hereto to enforce this AGREEMENT, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to all other relief to which that party or those parties may be entitled, including without limitation, attorney fees and costs incurred if this Agreement must be enforced in Bankruptcy proceedings. The issue of attorney fees and costs by and between LYON and the CITY and GHAD shall be governed by separate agreement.

15. SEVERABILITY

If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall nevertheless, continue in full force and effect, without being impaired in any manner whatsoever. In addition, if any party to this AGREEMENT fails or refuses to sign said AGREEMENT, the AGREEMENT will continue to have full force and effect and will be binding upon the remaining parties to the AGREEMENT.

16. CONSTRUCTION OF AGREEMENT

This AGREEMENT is the product of negotiation and preparation by and among the SETTLING PARTIES and their respective attorneys. The SETTLING PARTIES therefore expressly acknowledge and agree that this AGREEMENT shall not be deemed prepared or drafted by one party or another, or its attorneys, and will be construed accordingly.

17. PERSONS BOUND AND BENEFITED

Except as limited and/or excluded herein, this AGREEMENT shall be binding upon and inure to the benefit of SETTLING PARTIES, any and all legal or equitable owners of the SUBJECT PROPERTY, their principals, agents, employees, attorneys, representatives, predecessors, successors in interest, beneficiaries, respective insurance carriers, heirs, successors in interest, agents, employees, servants, principals, assigns, assignors, officers, directors, stockholders, partners, representatives, parent corporations, subsidiary corporations, sister corporations, affiliate corporations, subsequent corporations, partnerships, limited partnerships, joint ventures, executors, grantors, associates, adjusters, affiliates, including but not limited to all RELATED PERSONS AND ENTITIES, as that term is defined herein.

18. INTEGRATION/MODIFICATION

18.1 This AGREEMENT constitutes the entire AGREEMENT between the SETTLING PARTIES relating to the settlement of all CLAIMS arising out of THE ACTION, THE CROSS-ACTION and the facts set forth in the recitals to this AGREEMENT. All prior or contemporaneous agreements, understandings, representations and statements, whether oral or written, and whether by a party or such party's legal counsel, are integrated into the AGREEMENT. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the subject matter of this AGREEMENT which are not fully expressed herein. Notwithstanding the above, the ongoing relationship between William Lyon Homes and the CITY and GHAD shall be governed by a separate agreement.

18.2 No modification, waiver, amendment, discharge or change of this AGREEMENT shall be valid unless it is in writing and is signed by the party against whom enforcement of such modification, waiver, amendment discharge or change is, or may be, sought.

19. GOVERNING LAW

This AGREEMENT shall be interpreted in accordance with and governed by the laws of the State of California.

20. EFFECTIVE DATE

The parties hereto deem this Agreement to be immediately effective as of the date this Agreement was entered into on

21. RIGHT TO INDEPENDENT COUNSEL.

SETTLING PARTIES acknowledge and represent that they have had the right to and benefit of consultation with independent legal counsel and expert consultants. SETTLING PARTIES further acknowledge and represent that in evaluating, finalizing and executing this AGREEMENT, they are not relying on anything other than the advice of their independent legal counsel and/or expert consultants. SETTLING PARTIES have read and understand the entirety of this AGREEMENT, and have been advised as to the legal effects of this AGREEMENT, as to, for example, their rights and obligations hereunder, and hereby willingly and voluntarily agree to every single term of this AGREEMENT.

22. EXECUTION OF AGREEMENT

This AGREEMENT may be executed in multiple counterparts, such that when the executed signature pages are taken together they shall constitute the entire

AGREEMENT. SETTling PARTIES shall execute this AGREEMENT. If a SETTling PARTY is unable to sign this AGREEMENT, due to its dissolution, insolvency, liquidation, receivership or similar disability, the SETTling PARTY's attorney of record in THE ACTION may execute this AGREEMENT on behalf of said party. If the SETTling PARTY's attorney is unable or unwilling to execute this AGREEMENT, SETTling PARTIES stipulate that the Court Clerk or other qualified individual appointed by the Court is hereby authorized to sign the AGREEMENT on behalf of said party. True photocopies of signatures shall be deemed as effective as original signatures.

23. COPY ADMISSIBLE

In any action or proceeding relating to this AGREEMENT, SETTling PARTIES stipulate that a copy of this AGREEMENT may be admissible to the same extent as the original AGREEMENT unless the exceptions set forth in California Evidence Code section 1511 are found to be applicable.

24. CAPTIONS AND INTERPRETATIONS

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this AGREEMENT or any provision hereof.

IN WITNESS THEREOF, the parties enter into and date this Agreement:

PLAINTIFFS' SIGNATURES (pages 13 through 14)

DATED: _____

LAILUMA HOSSAINI

BY: _____

ITS: _____

DATED: _____

HAMID HOSSAINI

BY: _____

ITS: _____

DATED: _____

WILLIAM J. PLAMBECK

BY: _____

ITS: _____

DATED: _____

BEVERLY J. PLAMBECK

BY: _____

ITS: _____

DATED: _____

GREGORY S. REDMOND

BY: _____

ITS: _____

DATED: _____

PHYLLIS O. REDMOND

BY: _____

ITS: _____

DATED: _____

DEBRA VANSLAMBROOK

BY: _____

ITS: _____

DATED: _____

AMIN ZAFARI

BY: _____

ITS: _____

DATED: _____

NAHIDA ZAFARI

BY: _____

ITS: _____

DATED: _____

WILLIAM LYON HOMES, INC.

BY: _____

ITS: _____

DATED: _____

CITY OF CLAYTON

BY: _____

ITS: _____

DATED: _____

OAKHURST GEOLOGICAL HAZARD
ABATEMENT DISTRICT

BY: _____

ITS: _____

DATED: _____

DMC CONCRETE, INC.

BY: _____

ITS: _____

DATED: _____

RIVERA COMPANY

BY: _____

ITS: _____

DATED: _____

MERIT CONCRETE, INC.

BY: _____

ITS: _____



Agenda Date: 7/17/12
Agenda Item: 3(d)

GHAD STAFF REPORT

TO: HONORABLE CHAIRPERSON AND BOARDMEMBERS

FROM: RICK ANGRISANI, DISTRICT MANAGER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION AWARDING A CONTRACT TO ENGINEERED SOIL REPAIRS, INC. FOR THE CONSTRUCTION OF THE KELOK WAY DEWATERING WELLS PROJECT IN AN AMOUNT NOT TO EXCEED \$648,873.00 AND TO BE PAID FROM THE KATZMAN LITIGATION SETTLEMENT AGREEMENT FUNDS.

RECOMMENDATION

Approve resolution awarding the contract subject to receipt of the Settlement Agreement funds.

BACKGROUND

Beginning in 2003, the GHAD began monitoring land movement in a large open space slope between North Valley Park (at the intersection of Keller Ridge Drive and Golden Eagle Place) and the homes on the north side of Kelok Way.

Since that time, numerous lawsuits have been filed against Lyon Homes, the City and the GHAD, by property owners throughout the Oakhurst Development regarding land movement and construction dispute issues. Most of the lawsuits regarding construction disputes have been settled and a settlement agreement has now been reached by all parties involved with this particular area of movement.

The settlement agreement calls for the deposit of specified funds into a Settlement Fund from which funds will be distributed as spelled out in the agreement. One condition of the settlement agreement calls for the construction of six deep dewatering wells in Kelok Way which are to be drained into the existing storm drain on Golden Eagle Place (see attached plan sheet). This work is to be paid for out of the Settlement Fund and the parties have agreed that the contractor shall be Engineered Soil RepairS, Inc., who has proposed to construct the well system for a not-to-exceed fee of \$648,873.00.

CEQA CONSIDERATIONS

The California Environmental Quality Act ("CEQA") requires an evaluation of potential environmental impacts caused by most construction projects. However, the Act does provide for exemptions based upon certain categories of work and for emergency work.

Date: July 17, 2012

Page 2 of 2

This project falls under several categorical exemptions. Section 15301 of the CEQA Guidelines exempts projects which involve the operation, repair, maintenance, and minor alteration of existing public facilities. The key consideration is whether the project involves negligible or no expansion of an existing use. Obviously, there is no expansion of an existing use and, therefore, this project would qualify for this exemption. In addition, Section 15304 of the CEQA Guidelines exempts minor public or private alterations in the condition of land, water, and or vegetation which do not involve the removal of healthy, mature, scenic trees. Since there will only be some very minor vegetation removal (no trees) to allow for the installation of the horizontal drains, this project would fall under this exemption.

Finally, Section 15269 of the CEQA Guidelines exempts certain emergency projects from the CEQA requirements. Specifically, since the current land movement has an unacceptable probability of evolving into a destructive landslide, possibly during the upcoming rainy season, this project would fall under Section 15269 (c) of the Guidelines which exempts specific actions necessary to prevent or mitigate and emergency.

FISCAL IMPACT

Since the cost of this contract is being funding from contributions provided by the lawsuit participants, there will be no immediate impact on the GHAD's fiscal condition. However, once completed, the wells will require ongoing inspections and water level measurements both of which will be the GHAD's sole responsibility. At this time, it is estimated that this ongoing monitoring will entail an annual expenditure of approximately \$5,000.

Even with the minimal work currently undertaken by the GHAD, this recurring expense will have an significant impact on the District's \$33,000± annual assessment revenue. However, it is significantly less than the cost of the dewatering wells, trial defense expenses, and potential damages awarded in an adverse trial judgment.

CONCLUSION

Based upon the above, staff recommends the Board approve this resolution awarding this construction contract to Engineered Soil Repairs, Inc. in the amount \$648,873.00, subject to receipt of the Settlement Agreement funds.

Attachments: Plan Sheet
 Resolution
 Contract [29 pp.]

GHAD RESOLUTION NO. -2012

**A RESOLUTION AWARDDING A CONTRACT TO ENGINEERED SOIL REPAIRS,
INC. FOR THE KELOK WAY DEWATERING WELLS PROJECT IN AN AMOUNT
NOT TO EXCEED \$648,873.00.**

**THE BOARD OF DIRECTORS
Oakhurst Geological Hazard Abatement District
Clayton, California**

WHEREAS, for several years, there has been ongoing land movement occurring in the open space slope between North Valley Park (at the intersection of Keller Ridge Drive and Golden Eagle Place) and the homes on the north side of Kelok Way; and

WHEREAS, numerous lawsuits have been filed by several homeowners potentially affected by said land movement; and

WHEREAS, a settlement agreement has been reached by all parties in the lawsuits which includes the construction of six dewatering wells in Kelok Way, as designed by the firm of Stevens, Ferrone & Bailey Engineering Company, Inc., all of which will be drained to an existing storm drain in Golden Eagle Place; and

WHEREAS, the settlement agreement includes the payment of specified proceeds from the various parties in the lawsuit into a Settlement Funds account; and

WHEREAS, it has been agreed by all parties that a portion of the Settlement Funds are to be used for the construction of the dewatering wells by a specific contractor, Engineered Soil Repairs, Inc. ("ESR"); and

WHEREAS, ESR has agreed to construct the dewatering wells for a not-to-exceed cost of \$648,873.00; and

WHEREAS, based upon the evidence presented, the project is exempt from the requirements of the California Environmental Quality Act as provided below:

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. The Board of Directors hereby finds, based upon the entirety of the evidence before it, that the project is categorically exempt from the requirements of the California Environmental Quality Act, as per State CEQA Guidelines Section 15304 (Minor Alterations to Land and Water), and Section 15301 (Existing Facilities). Further, the Board of Directors also finds that the project is exempt per CEQA Guidelines Section 15269 (Emergency Project), as the project is being undertaken on an urgent basis to prevent a hillside from sliding onto, among other areas, a public right of way, and this would be accomplished by dewatering the hillside via wells.
2. The Board of Directors further finds that substantial evidence supports the determination that none of the exceptions to categorical exemptions listed in State CEQA Guidelines

Section 15300.2 apply to the proposed project, and that the project is still categorically and statutorily exempt.

3. The Board of Directors hereby awards a construction contract to Engineered Soil Repairs, Inc. for the construction of the Kelok Way Dewatering Wells in the amount of \$648,873.00 and authorizes the District Manager to execute the contract on behalf of the GHAD upon receipt of the Settlement Agreement funds.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting thereof held on 17th day of July 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE BOARD OF DIRECTORS OF GHAD

Hank Stratford, Chairman

ATTEST:

Laci J. Jackson, Secretary

I hereby certify that the foregoing resolution was duly and regularly passed by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting held on July 17, 2012.

Laci J. Jackson, Secretary

**CONSTRUCTION CONTRACT BY AND BETWEEN THE
OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT AND
ENGINEERED SOIL REPAIRS, INC.
KELOK WAY DEWATERING WELLS PROJECT**

This CONTRACT is made and entered into this ____ day of _____, 2012 ("Execution Date") by and between OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT, hereinafter called "District," and ENGINEERED SOIL REPAIRS, INC. (ESR), hereinafter called "Contractor" for the Kelok Way Dewatering Wells Project ("Project"). The District and Contractor, for the considerations stated herein, agree as follows:

1. RELATIONSHIP OF PARTIES.

- 1.1 The Contractor's relationship with the District is that of an independent contractor whose involvement in the Project is to act solely in the capacity of a California licensed contractor and not as an agent, fiduciary, partner, member or subsidiary of, or otherwise affiliated with the District. Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, Contractor represents herein it does possess the proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. The Contractor and any subcontractors shall be appropriately licensed in accordance with this Contract and the above-cited law prior to the Execution Date of the Contract.
- 1.2 The Contractor shall supervise and direct the Project using Contractor's best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Project. Contractor expressly acknowledges that the District shall not be responsible for the Contractor's work. Contractor assumes entire responsibility for the acts and omissions of its agents or employees, subcontractors, suppliers, any of their agents or employees, or any other persons performing any of the Project on behalf of Contractor and agrees that the District shall not be responsible for any such acts or omissions. Contractor agrees that neither District, its Board of Directors, its General Manager, nor the District's Engineer will be responsible for Contractor's failure to carry out the Project in strict accordance with the Contract Documents.

2. CONTRACT DOCUMENTS.

The complete contract includes all of the following documents, whether or not attached hereto (hereinafter referred to as the "Contract Documents"): the Contract, Plans and Specifications, the Bond(s), executed in connection herewith, Certificates of Insurance, Special Conditions, and all official papers and documents relating to the work to be performed hereunder, and all modifications incorporated in these documents before their execution. Any and all obligations of District and Contractor are fully set forth and described herein.

3. SCOPE OF WORK.

The Project involves performing all work and furnishing all labor, materials, and equipment, as provided by the Contract Documents, for the installation of dewatering wells for Kelok Way, as further described in the plans and specifications.

- 3.1 **Project Phasing.** The Contractor acknowledges that the Project is subject to strict budgetary requirements in accordance with the agreed upon Contract Price. The parties have agreed that the Project will proceed in phases in order to assist the District in assuring the budget is strictly adhered to and that the total Project cost never exceeds the Contract Price due to any Change Order(s) as described in Section 11 below. Accordingly, the agreed upon components/phases, and the corresponding schedule of values for each are as shown in Exhibit D attached hereto.
- 3.2 **Notice to Proceed.** Prior to commencing work in any phase, the Contractor shall obtain a written notice to proceed from the District. No compensation for work in any phase shall be due to the Contractor, unless and until the District issues such written notice to proceed. The District reserves the right to not proceed with any phase, if the total cost of the Project will exceed the Contract Price set forth below. If the District decides not to issue such a notice(s) to proceed, it may then terminate any future phases and/or the remainder of the Contract for convenience in accordance with Section 18 below. However, at no time will the Contractor be entitled to any compensation and/or termination expenses for any phase of the Project work for which a notice to proceed has not been issued.

4. CONTRACT PRICE.

The District shall pay to the Contractor as full compensation for the performance of the Contract including any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, a fixed fee sum of Six Hundred Forty-Eight Thousand Eight Hundred Seventy-Three Dollars (\$648,873.00) ("Contract Price"). As described above, the Contract work shall proceed in phases, and the District reserves the right to not proceed with any phase if changes or adjustments to the Contractor pursuant to Section 11 herein result in the possibility of the Project cost exceeding the Contract Price.

5. PAYMENT.

- 5.1 The District shall make monthly progress payments following receipt of an undisputed and properly submitted invoice from Contractor. All invoices shall be submitted directly to Mr. Rick Angrisani, P.E., City Engineer with a complete copy to Mr. Ken Ferrone of Stevens, Ferrone & Bailey Engineering Company, Inc. The District shall coordinate review and approval of such invoices with its consultant, and the District, and/or Mr. Ferrone shall inform Contractor of any disputed and/or incomplete invoice. Public Contract Code Section 9203 prohibits progress payments in excess of ninety five (95%) of the percentage of actual work completed plus a like percentage of the value of material delivered and unused. Therefore, District must withhold at least five percent (5%) of each progress payment and the total Contract Price until final completion and acceptance of the Project. After fifty percent (50%) of the Project has been completed and District finds that satisfactory progress is being made, the District may make any of the remaining progress payments in full for actual work completed.
- 5.2 The period covered by each invoice shall be one calendar month ending on the last day of the month. The Contractor shall submit with each invoice the Contractor's conditional waiver of lien for the entire amount covered by such

invoice, as well as a valid unconditional waiver of lien from the Contractor and all subcontractors and materialmen for all work and materials included in any prior invoices for which payment has been received. Waivers of lien shall be in the forms prescribed by Civil Code Section 3262.

- 5.3 Provided that Contractor has complied with its obligations under this Section 5, payments shall be made by the District on account of materials or equipment not incorporated into the Project but delivered to the Project site and suitably stored by Contractor or stored off-Project site under the control and prior approval of the District. Such payments shall only be considered upon submission by Contractor of satisfactory evidence that it has acquired title to same, that the material or equipment will be utilized in the Project and that the material is satisfactorily stored, protected and insured, and that such other procedures are in place satisfactory to District to protect District's interests. The District shall have the right to pre-approve, in its sole discretion, the amount of material and equipment that may be stored on the Project site at any given time.
- 5.4 The Contractor shall, after the full completion of the Project, submit an application for the remaining unpaid balance of the Contract Price ("Final Payment Application"). All prior progress estimates shall be subject to correction in the Final Payment Application. Unless otherwise required by law, the remaining balance of the Contract Price ("Final Payment"), if unencumbered, shall be paid no later than sixty (60) days after the date of recordation of the notice of completion for the Project. Final Payment shall constitute a waiver of all claims against the District and the Engineer arising from this Contract. Prior to Final Payment, the Contractor shall submit a final waiver of lien pursuant to Section 5.2 for the Project, together with releases of lien from any of its subcontractor or materialmen.
- 5.5 No payment (final or otherwise) made under or in connection with this Contract shall be conclusive evidence of the performance of the Project or of this Contract, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Contractor from any of its obligations under this Contract; nor shall entrance onto or use of the Project site by the District constitute acceptance of the Project or any part thereof.

6. PAYMENTS WITHHELD

- 6.1 In addition to amounts which the District may retain under other provisions of the Contract Documents, the District may withhold payments due to Contractor as may be necessary to cover: (a) stop notice claims; (b) defective work not remedied; (c) failure of Contractor to make proper payments to its subcontractors or suppliers; (d) completion of the Project if there exists a reasonable doubt that the Project can be completed for the balance then unpaid; (e) damage to another contractor or third party caused by Contractor; (f) amounts which may be due to District for claims against Contractor; (g) Project site clean up; (h) failure of the Contractor to comply with requirements of the Contract Documents; (i) disputed amounts in the invoices; and (j) legally permitted penalties.

- 6.2 Upon completion of this Contract, the District may reduce the Final Payment to reflect costs charged to the Contractor, backcharges or payments withheld pursuant to the Contract Documents.
- 6.3 If any claim or stop notice is made or filed against the District or the Project by any person claiming that the Contractor or any of its subcontractors or suppliers has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Project, or if at any time there shall be evidence of such nonpayment or of any claim or stop notice for which, if established, the District might become liable and which is chargeable to the Contractor, the District may, in its discretion, allow the Contractor to file a bond with the District in an amount equal to one hundred twenty five percent (125%) of the claim stated in the stop notice pursuant to Civil Code Section 3196 and the District shall release the Final Payment to the Contractor. If the District does not permit the Contractor to post a bond under Civil Code Section 3196, the District shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or stop notice action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the District therefor. The Contractor shall indemnify and hold the District harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection with the Contractor's failure to timely and properly make payments to its subcontractors and suppliers. The District shall have the right to apply and charge against the Contractor as much of the amount retained as may be required for the foregoing purposes. If the amount is insufficient therefor, the Contractor shall be liable for the difference and pay the same to the District within ten (10) days of delivery to Contractor of District's written notice of the difference and the amount due.

7. SUBSTITUTE OF SECURITY.

Pursuant to Public Contract Code Section 22300, Contractor may substitute securities for any money withheld by District to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the District, with the State or federally chartered bank as the escrow agent, who shall return such securities to the Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the District, which provides that no portion of the securities shall be paid to the Contractor until the District has certified to the escrow agent, in writing, that the contract has been satisfactorily completed.

8. TIME FOR COMPLETION.

The Project shall be completed within one hundred twenty (120) calendar days from the date set forth in the District's notice to proceed for the commencement of work ("Construction Term"). Work shall commence on the Project no later than twenty-one (21) calendar days from the date set forth in the District's notice to proceed. Time is of the essence for each and every task for this Project. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Project.

9. EXTENSION OF TIME

- 9.1 If the Contractor is delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Project by: (i) any negligent act or omission of the District, Engineer, other contractors, or employees, subcontractors, agents or consultants of any of the above; (ii) changes ordered in the Project; (iii) damage caused by Force Majeure, Acts of God and unavoidable casualties such as fire, earthquake, flood, acts of terror; (iv) inclement weather; (v) governmental directive, order, or extraordinary conditions arising out of war or government regulations; or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Contractor, its officers, agents, employees, subcontractors or suppliers, then the Contractor shall be entitled to an extension of Construction Term for a reasonable period of time as agreed to by the parties. Notwithstanding the above, the Contractor shall not be entitled to any such extension of time unless the Contractor (1) notifies the District in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty eight (48) hours of the commencement thereof and (2) demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof.
- 9.2 Damages caused by unreasonable District delay, including delays caused by items that are the responsibility of the District pursuant to Government Code Section 4215, shall be based on actual costs only. No proportions or formulas shall be used to calculate any delay damages.

10. LIQUIDATED DAMAGES.

In accordance with Government Code section 53069.85, if the Contractor fails to complete the Project within the Construction Term, then determining the resulting damages, including consequential damages, would be impracticable or extremely difficult, because of the nature of the Project. Therefore, the parties agree that, in the event of such a delay, Contractor shall pay One Thousand Dollars (\$1,000.00) to the District, as liquidated damages, for each calendar day beyond the Construction Term in which the Project is not completed and accepted by the District.

11. CHANGES IN THE SCOPE OF WORK

- 11.1 District Changes. The District reserves the right, from time to time, to make changes, additions and/or omissions in the Project as it may deem necessary, upon written order to the Contractor ("Change Order"). All such changes in the Project shall be authorized by Change Order, executed by the District, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith with any adjustment in the Contract Price or revision to the Construction Term as authorized by the District and agreed to by the Contractor, subject to the full and final settlement of all costs (direct, indirect and overhead) related to the Project. If the Contractor disagrees with the adjustment authorized by the District, the Contractor may dispute the adjustment pursuant to the provisions of Contract Documents. However, the Contractor shall proceed with the Change Order work as directed by the District in a timely manner.

11.2 Contractor Changes. Except and only to the extent provided herein, by signing the Contract, the Contractor agrees:

- a. That only Change Orders expressly permitted pursuant to this Section 11 may be approved by the District. Unless otherwise agreed by the District, the Contractor shall only be entitled to a Change Order for concealed or unknown conditions, if any, which may be encountered in performing the Contract, but only to the extent such conditions are not described in the Contract Documents, and/or cannot reasonably be identified by the Contractor based on the Contract Documents and the Contractor's inspection of the Project site; and
- b. That the Contractor's Contract Price for the Contract was made with full knowledge of the Change Order requirements of this Contract.
- c. Contractor shall not be entitled to perform any Change Order work nor receive any compensation for such Change Order work without the prior written approval of the District.

11.3 The only other grounds for which a Contractor may make a Change Order request for an adjustment to the Contract Price or Construction Term shall be:

- a. Fire; or
- b. Strikes, boycotts, or other like obstructive actions by employees or labor organizations; or
- c. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or
- d. An error or omission in the Contract Documents caused by the District.

11.4 All Contractor requests for changes pursuant to the above shall be presented in writing to the District within 24 hours of discovery of such conditions by the Contractor so that the District's Representative can review. Contractor shall not be entitled to any adjustment of the Construction Term or Contract Price pursuant to these provisions unless such change is explicitly approved and authorized by the District in writing before the expense is incurred. No work shall be allowed to lag pending such potential adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been performed unless a written Change Order has been issued or timely written notice of a claim has been made by the Contractor. Contractor shall not be entitled to claim or to bring suit for damages, whether for loss of profits or otherwise, on account of any omission of any item or portion of the Project under the executed Change Order.

12. UTILITIES

12.1 If the work involves utilities, this Contract shall provide for the removal, relocation and protection of utilities according to Government Code section 4215. As used in this Section, the word "utility" shall be understood to include tracks, overhead or underground wires, cables, pipelines, conduits, ducts, sewers

or storm drains. As used in this Section, the term "construction interference" shall be understood to include any utility or service connection within the limits of excavation or over excavation required for the work under the Contract as shown or as ordered by District or any utility or service connection located in the space which will be required by any of the work under the Contract.

- 12.2 In the event a utility or service connection is required to be disturbed or removed to permit construction of a pipeline or other structure under the Contract, such disturbance or removal shall be done only with the approval of District and following notification to the owner of the interfering utility or service connection. Any such utility or service connection removed or otherwise disturbed shall be constructed as promptly as possible in its original or other authorized location in a condition at least as good as prior to such removal or disturbance, subject to the inspection of the owner of same. The Contractor's responsibility under this Section to remove or replace utilities or service connections shall apply even in the event such damage or destruction occurs after backfilling or is not discovered until after completion of backfilling. The owner of the utility or service connection shall be notified immediately after damage or destruction occurs or is discovered.
- 12.3 During the performance of the work under this Contract, the owner of any utility affected by the work shall have the right to enter when necessary upon any portion of the work for the purpose of maintaining service and of making changes in or repairs to said utility.
- 12.4 The Plans and Specifications show the approximate positions of known utilities in the immediate vicinity of the work, but District does not guarantee that all existing utilities are shown. Contractor, before commencing any excavation, shall ascertain, from records or otherwise, the existence, horizontal and vertical position, and ownership of all existing facilities and service connections. If Contractor discovers any utility in the line of the work which is not shown on the plans, it shall immediately notify District of the existence of same. District will not be liable for any consequences arising as a result of a service connection being incorrectly located in the field by the agency having jurisdiction over said service connection.
- 12.5 Except as required by law, the costs involved in removing, relocating, protecting, supporting, repairing, maintaining or replacing any utility or service connection shall be borne by Contractor.
- 12.6 Contractor shall not be assessed liquidated damages for failure to complete the work on time to the extent that such delay was caused by failure of District or of the agency having jurisdiction over the utility to authorize or otherwise provide for the removal, relocation, protection, support, repair, maintenance or replacement of a main or trunkline utility facility..
- 12.7 District reserves the right, upon determination of the actual position of existing utilities and service connections, to make changes in alignment or grade of the District's pipelines when, by so doing, the necessity for relocation of existing utilities or service connections will be avoided. Such changes will be ordered in writing by District. Where applicable, adjustment in the Contract price will be on

the basis of the unit prices stated in the Bidding Schedule. Where unit prices in the Bidding Schedule are not applicable, adjustment in Contract price will be in accordance with the General Provisions.

- 12.8 In all cases the public utility shall have the sole discretion to perform repairs or relocation work or to permit Contractor to perform the same at a reasonable price.

13. MATERIALS AND EQUIPMENT.

Contractor agrees to perform the work and to furnish all tools, equipment, apparatus, facilities, labor and material necessary to perform and complete, in a good workmanlike manner, all parts of the work as called for in a manner designated in and in strict conformance with the Plans and Specifications. It is understood and agreed that said tools, equipment, apparatus, facilities, labor and material shall be furnished and said work performed and completed as required in said plan and specifications under the direction and supervision of, and subject to the approval of the District's authorized representative.

14. PUBLIC SAFETY.

During the performance of the work, Contractor shall take all the necessary precautions and place proper guards for the prevention of accidents; shall indemnify and hold harmless the District and the Board, its officers, agents and employees from all damages and costs which may be incurred by reason of injury to person or property resulting from the Contractor or his agents acts or omissions in the performance of this Contract, construction of the Project, or from any improper materials used in its construction.

15. INSURANCE.

15.1 Commercial General Liability

15.1.1 Contractor shall take out and maintain, during the Construction Term and any extensions thereof, if applicable, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the District.

15.1.2 Coverage for Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).

15.1.3 Commercial General Liability Insurance must include coverage for the following:

- (a) Bodily Injury and Property Damage
- (b) Personal Injury/Advertising Injury
- (c) Premises/Operations Liability
- (d) Products/Completed Operations Liability

- (e) Contractual Liability with respect to this Contract
- (f) Broad Form Property Damage
- (g) Independent Contractor Coverage

15.2 Automobile Liability.

15.2.1 At all times during the Construction Term and any extensions thereof, if applicable, Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the District.

15.2.2 Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).

15.2.3 The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the District.

15.3 Workers' Compensation/Employer's Liability

15.3.1 At all times during the Construction Term, Contractor shall maintain workers' compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.

15.3.2 Contractor hereby agrees to accept exclusive liability for, and shall hold District, District's officers, directors, employees and agents harmless from, all payroll taxes for contributions to unemployment insurances or old age pensions, or annuities, measured by wages, salaries or other remuneration paid to employees of Said Contractor of any subcontractors.

15.3.3 The workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District.

15.3.4 Before beginning work, Contractor shall furnish to the District satisfactory proof that he/she has taken out for the period covered by the work under this Contract, full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Contract, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Contractor shall require all subcontractors to obtain and maintain, for the period covered by the work under this Contract, worker's compensation of the same type and limits as specified in this section.

15.3.5 By executing this Contract, Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

This Contract and the execution hereof shall serve as Contractor’s Workers Compensation Certificate pursuant to Labor Code section 1861.

15.4 The following insurance limits are required for the Contract:

Combined Single Limit	
Commercial General Liability	<u>\$2,000,000</u> per occurrence / <u>\$5,000,000</u> aggregate for bodily injury, personal injury and property damage
Automobile Liability	<u>\$1,000,000</u> per occurrence for bodily injury and property damage
Employer’s Liability	<u>\$1,000,000</u> per occurrence

15.5 Evidence Required

15.5.1 Prior to execution of the Contract, Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer’s equivalent) signed by the insurer’s representative and Certificate of Insurance (Accord Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

15.5.2 Insurance certificates shall be attached hereto as Exhibit “B.”

15.5.3 Contractor’s obligation to indemnify (Section 28 infra) shall not be restricted to insurance proceeds, if any, received by the Indemnitees.

15.6 Policy Provisions Required

15.6.1 Carrier(s) shall be admitted California insurers and have an A.M. Best rating of not less than an A-:VII. All policies shall contain a provision for 30 days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier “will endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates.

- 15.6.2 All policies shall contain a provision stating that Contractor's policies are primary insurance and that the insurance of the District or any named insureds shall not be called upon to contribute to any loss.
- 15.6.3 All such policies shall name the District, the board, its officials, officers, employees, agents and designated volunteers as Additional Insureds under the policy.
- 15.6.4 The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, and agents for losses paid under the terms of the insurance policies provided pursuant to this Contract.

16. BONDS.

Contractor shall provide the District with a payment bond in an amount not less than fifty percent (50%) of the fixed fee Contract Price and a performance bond in an amount not less than one hundred percent (100%) of the fixed fee Contract Price. These bonds shall be submitted on the prescribed bond forms, attached hereto and incorporated herein as Exhibit "C." These bonds must be executed by an admitted surety approved to conduct business in the State of California. (Civil Code of Procedure, § 995.120.) The Contractor shall be responsible for paying fifty percent (50%) of the costs associated with acquiring the bonds. The District shall pay the remaining fifty percent (50%) of the costs associated with acquiring the bonds out of the money contributed by LYON, up to a maximum contribution of \$ 4,200. However, the Parties may, by separate mutual written agreement agree to an alternative method/manner for acquiring the performance bond, or other performance security deemed acceptable by the District.

17. ASSIGNMENT OF CONTRACT.

Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract, or of his/her right, title of interest in or to the same or any part thereof without previous consent in writing from District's authorized representative.

18. SUSPENSION/TERMINATION OF CONTRACT:

- 18.1 If Contractor fails to commence work as provided in the Contract, or fails to make delivery of materials promptly as ordered, or to maintain the rate of delivery or progress of the work in such manner as in the opinion of District's authorized representative will ensure a full compliance with the Contract within the time limit, or if in the opinion of District's authorized representative, Contractor is not carrying out the provisions of the Contract in their true intent and meaning, written notice will be served on Contractor and its surety to provide, within a specified time to be fixed by District's authorized representative, for satisfactory compliance with the Contract. If Contractor neglects or refuses to comply with such notice within the time therein fixed, he/she shall not thereafter exercise any rights under said Contract or be entitled to receive any of the benefits thereof, except as hereinafter provided, and District's authorized representative may with the approval of the Board of Directors perform any part of the work or purchase any or all of the material included in

the contract or required for the completion thereof, or take possession of all or any part of the machinery, tools, appliances, materials and supplies used in the work covered by the contract or that have been delivered by or on account of Contractor for use in connection therewith, and the same may be used either directly by District or by other parties for it, in the completion of the work.

18.2 District has the right to terminate or abandon any portion or all of the work under this Contract by giving ten (10) calendar days written notice to Contractor and its surety. In such event, District shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Except as limited by Section 3 above, District shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by District and Contractor of the portion of such task completed but not paid prior to said termination. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

18.3 Contractor may terminate its obligation to provide further services under this Contract upon thirty (30) calendar days' written notice to District only in the event of substantial failure by District to perform in accordance with the terms of this Contract through no fault of Contractor.

19. SUBCONTRACTS.

Contractor shall comply with Sections 4100 to 4113 inclusive of the Public Contract Code of California, if applicable, relating to subcontracting work.

20. PERMITS AND LICENSES.

Contractor shall comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of public health and safety, obtaining all necessary permits and licenses for the construction of the project, pay all fees and post all deposits or bonds required by law.

21. BRAND NAME OR EQUAL.

21.1 Pursuant to Public Contract Code Section 3400(b), the District may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

- 21.2 Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, the District may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with the Contractor.
- 21.3 The District has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from the Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the District in a timely fashion will result in the rejection of the proposed substitution.
- 21.4 The Contractor shall bear all of the District's costs associated with the review of substitution requests. The Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the special conditions adopted for the Project (if any) to review any findings made pursuant to Public Contract Code section 3400.

22. DISCREPANCIES AND OMISSIONS.

Any discrepancies or omissions found in the Contract Documents shall be reported to District immediately. District will clarify discrepancies or omissions, in writing, within a reasonable time. In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order: (1) Addenda, if applicable; (2) Contract; (3) Special Conditions; and (4) Plans and Specifications. Figure dimensions on drawings shall take precedence over scale dimensions, detailed drawings shall take precedence over general drawings.

23. GUARANTEE OF PROJECT.

District requires Contractor to specifically guarantee its work for one (1) year from the date of acceptance. Contractor's guarantee pursuant to this Section 23 shall in no way impair or limit the

District's rights and remedies, pursuant to federal, state or local law or this Contract, in regards to construction defects or damages.

24. COMPLIANCE WITH PROVISION OF LAW RELATIVE TO PUBLIC CONTRACTS.

It is stipulated and part of the contract that District is a California Public Agency, subject to all laws of the State applicable to public contracts which include, but are not limited to, the payment of the prevailing wages, hours of labor, apprentice employment, debarment of contractors and retention of payroll records. Contractor may be subject to penalties for noncompliance.

25. LABOR CODE PROVISIONS.

It shall be mandatory upon the Contractor herein and upon all subcontractors under Contractor to comply with all applicable provisions of the Labor Code of the State of California relative to contracts for public works. It shall be the sole responsibility of the Contractor to determine whether any volunteer labor is subject to the Labor Code provisions set forth herein and, to this end, Contractor shall defend, with legal counsel of the District's choosing, and indemnify the District to the fullest extent provided by law for any failure to comply with applicable Labor Code provisions, including but not limited to, those Labor Code provisions applicable to volunteer labor. To this end, to the extent applicable, Contractor shall comply with the following provisions:

- 25.1 Prevailing Wages: District has copies of the general prevailing wage rate per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract on file at the principal office of the District at the office of the District Manager located at 5375 Clayton Road, Concord, CA, 94521, and which shall be posted at each job site. Contractor shall, as a penalty to District, forfeit not more than \$50 for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by Contractor or by any subcontractors under Contractor, where prevailing wages are applicable. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor.
- 25.2 Eight Hour Law. Eight hours labor shall constitute a legal day's hours per day, and forty hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to District \$50.00 for each calendar day during which such worker is required, or permitted to work more than eight hours in any one day or forty hours in any one calendar week in violation of the provisions of the California Labor Code.
- 25.3 Payroll Records: Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey man, apprentice, worker, or other employee employed by him or her in connection with the public work. The

payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to District, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner of the California Department of Industrial Relations. If Contractor is found to have violated the provisions of law regarding wages on the Project with the intent to defraud, he/she shall be ineligible to bid on any public project contracts for a period of one to three years, as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on the Contractor.

25.4 Ineligible Contractors/Subcontractors/Debarment: Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

25.5 Apprentice: Attention is called to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under Contractor.

26. NOTICE OF THIRD PARTY CLAIMS.

Pursuant to Public Contract Code Section 9201, the District shall provide the Contractor with timely notification of the receipt of any third-party claim relating to the Contract. The District is entitled to recover its reasonable costs incurred in providing such notification.

27. DISPUTES.

27.1 Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor performed during the completion of this contract, said dispute shall be decided by District's authorized agent and the decision of the latter shall be final and conclusive, subject to the approval of the Board of Directors of the District.

27.2 The parties to this Contract are subject to the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of the Public Contract Code (as amended by the Statutes of 1990, Chapter 1414, effective January 1, 1991), which requires compliance with the following procedures to resolve any claim by the contractor of \$375,000 or less regarding an extension of time, a change order, extra work, or any other disputed amount.

27.3 All claims shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

27.4 For claims of less than fifty thousand dollars (\$50,000), District shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims District may have against the claimant.

27.4.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement to District and the claimant.

27.4.2 District's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

27.4.3 If the claimant disputes District's written response, or District fails to respond within the time prescribed, the claimant may so notify District, in writing, either within 15 days of receipt of District's response or within 15 days of District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, District shall schedule a meeting and confer conference within 30 days for settlement of the dispute.

27.4.4 If following the meeting and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference. If after the foregoing procedures are completed a civil action is filed, the action shall be subject to the mediation and arbitration provisions required by Section 20104.4 of the Public Contract Code.

28. INDEMNIFICATION.

Contractor ESR shall defend, hold harmless and indemnify WILLIAM LYON HOMES, INC., the CITY and OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (District), and their officers, employees and agents, from and against any and all actions, damages, claims and penalties arising from personal injury or death, damage to property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the work by ESR (including its subcontractors, agents or employees) whether or not such liabilities are caused in part by a party indemnified hereunder. The foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design, or (ii) the

active, proven negligence of WILLIAM LYON HOMES, INC., the CITY or GHAD. The provisions of this section shall survive any expiration or termination of the Contract.

Until the completion and final acceptance by the CITY and GHAD of all work under this Contract, the work shall be under ESR's responsible care and charge. ESR shall rebuild, repair, restore and make good all injuries, damages, re-erections and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the work, except as otherwise stipulated.

In furtherance to, but not in limitation of the indemnity provisions in this Contract, Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and hold harmless as provided in this Contract shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under workers' compensation laws.

29. GENERAL CONTRACT PROVISIONS.

- 29.1 Contract Interpretation. In interpreting this Contract, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Contract or any provision thereof.
- 29.2 Governing Law. This Contract shall be construed in accordance with and be governed by the laws of the State of California. Venue shall be in Contra Costa County, California.
- 29.3 Notices. Notice to the Parties in connection with this Contract shall be given personally or by certified mail, return receipt requested, addressed as follows:

TO DISTRICT:	TO CONTRACTOR:
Oakhurst Geological Hazard Abatement District 6000 Heritage Trail Clayton, CA 94517 ATTN: District Manager	Engineered Soil Repairs, Inc. ATTN: William Gibson 1267 Springbrook Road Walnut Creek, CA 94597 Telephone: (925) 210-2150

Notice shall be effective at the time of delivery.

- 29.4 Binding Effect. This Contract shall inure to the benefit of and shall be binding upon Contractor and Authority and their respective successors and assigns.
- 29.5 Severability. In the event any provision of this Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

- 29.6 Amendments. The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.
- 29.7 Integrated Contract. This Contract and the Contract Documents embodies the entire agreement between the Parties pertaining to the matters described herein. Each party acknowledges that no party, agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Contract, that induced the other party to sign this document. No modification of this Contract shall be valid unless agreed to in writing by the Parties. This Contract may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures, when received, shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, this Contract is executed by each Party's authorized representative.

OAKHURST GEOLOGICAL
HAZARD ABATEMENT DISTRICT

ENGINEERED SOIL REPAIRS, INC.

By:_____

By:_____

Printed Name:_____

Printed Name:_____

Its:_____

Its:_____

Date:_____

Date:_____

EXHIBIT “A”
PLANS AND SPECIFICATIONS

EXHIBIT “B”
INSURANCE CERTIFICATES

EXHIBIT "C"

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Oakhurst Geologic Hazard Abatement District (hereinafter designated as the "District"), has awarded to _____ (hereinafter designated as the "Principal") a contract for the work described as follows: Kelok Way Dewatering Wells (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as surety, are held and firmly bound unto the District in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond,

nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the Civil Code, and has not been paid the full amount of his claim and that surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 200_.

Contractor/Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged, \$ _____.

(The above must be filled in by corporate surety.)

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

My Commission expires _____.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Oakhurst Geologic Hazard Abatement District (hereinafter designated as the "District"), has awarded to _____ (hereinafter designated as the "Principal") a contract for the work described as follows: Kelok Way Dewatering Wells (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the District in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation. As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the District's option:

(1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

(2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

(3) Permit the District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the District, when declaring the Contractor in default, notifies Surety of the District's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 200_.

Contractor/Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged, \$ _____.

(The above must be filled in by corporate surety.)

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

My Commission expires _____.

EXHIBIT "D"

PROJECT PHASING AND COSTS BY PHASE

As stated in Section 3.1, "Project Phasing", of the agreement, the [parties agree that the Project will proceed in phases in order to assist the District in assuring the budget is strictly adhered to and that the total Project cost never exceeds the Contract Price due to a Change Order(s) as described in Section 11.

It is agreed that the phases and their corresponding schedule of values for each shall be as follows:

Phase 1 – mobilization and installation of Dewatering Wells Nos. 1 and 2 (note: identity of each well to be determined by the Contractor and Ken Ferrone of Stevens, Ferrone & Bailey Engineering Company, Inc. prior to commencement of work)

Schedule of values for Phase 1:

Mobilization:	\$XXXXX.XX
Materials:	\$XXXXX.XX
Installation:	<u>\$XXXXX.XX</u>
Total Phase 1 Cost:	\$XXXXX.XX

Phase 2 – installation of Dewatering Wells Nos. 3 and 4:

Schedule of values for Phase 2:

Materials:	\$XXXXX.XX
Installation:	<u>\$XXXXX.XX</u>
Total Phase 2 Cost:	\$XXXXX.XX

Phase 3 –installation of Dewatering Wells Nos. 5 and 6

Schedule of values for Phase 3:

Materials:	\$XXXXX.XX
Installation:	<u>\$XXXXX.XX</u>
Total Phase 3 Cost:	\$XXXXX.XX

Phase 4 – mobilization and installation of horizontal drains to Dewatering Wells Nos. 1 and 2

Schedule of values for Phase 4:

Mobilization:	\$XXXXX.XX
Materials:	\$XXXXX.XX
Installation:	<u>\$XXXXX.XX</u>
Total Phase 4 Cost:	\$XXXXX.XX

Phase 5 –installation of horizontal drains to Dewatering Wells Nos. 3 and 4

Schedule of values for Phase 5:

Materials:	\$XXXXX.XX
Installation:	<u>\$XXXXX.XX</u>
Total Phase 5 Cost:	\$XXXXX.XX

Phase 6 – installation of horizontal drains to Dewatering Wells Nos. 5 and 6

Schedule of values for Phase 6:

Materials:	\$xxxxx.xx
Installation:	<u>\$xxxxx.xx</u>
Total Phase 6 Cost:	\$xxxxx.xx

Phase 7 – construction of drainage box, connection to storm drain, project clean-up and closeout

Schedule of values for Phase 7:

Drainage Box:	\$xxxxx.xx
Storm Drain Connection	\$xxxxx.xx
Materials:	\$xxxxx.xx
Project Closeout:	<u>\$xxxxx.xx</u>
Total Phase 7 Cost:	\$xxxxx.xx

Total Project Cost (Ph. 1 – 7): \$xxxxx.xx

The District shall issue a Notice to Proceed within 7 calendar days of completion of a previous phase. Failure of the District to timely issue a Notice to Proceed shall allow the Contractor the opportunity to request additional funds for any actual demobilization and re-mobilization costs it may incur. Commencement of work per each Notice to Proceed may be subject to the completion of specified tasks for the previous phase. Any delays in commencement of the new phase due to the completion of the specified tasks in the Notice to Proceed, shall not entitle the Contractor to any additional remuneration for any demobilization and/or re-mobilization costs it may incur.

The District may, but shall not be obligated to, authorize more than one phase at a time if so requested by the Contractor.

Should the work be terminated for any reason, the District shall only be responsible for cost of materials used or delivered to the job site for a phase which has received a Notice to Proceed from the District. Any unused materials shall be delivered to the City's Corporation Yard by the Contractor at no cost to the District prior to final payment by the District.



Agenda Date: 7/17/12
Agenda Item: 3(2)

GHAD STAFF REPORT

TO: HONORABLE CHAIRPERSON AND BOARDMEMBERS

FROM: RICK ANGRISANI, DISTRICT MANAGER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION AWARDING A CONTRACT TO STEVENS, FERRONE & BAILEY ENGINEERING COMPANY INC. FOR INSPECTION-RELATED SERVICES ON THE KELOK WAY DEWATERING WELLS PROJECT IN AN AMOUNT NOT TO EXCEED \$30,000 FROM THE KATZMAN LITIGATION SETTLEMENT AGREEMENT FUNDS.

RECOMMENDATION

Approve resolution awarding the contract with condition that the contract not be executed by GHAD until actual receipt of the \$30,000 in Settlement Agreement funds for this purpose.

BACKGROUND

As discussed in the preceding agenda item, a settlement agreement has been reached between the parties in the various lawsuits related to the land movement below Kelok Way. This agreement called for the installation of six dewatering wells in Kelok Way by the agreed-upon contractor, Engineered Soil Repairs, Inc. Funding for the work is being provided by contributions from the various parties in the lawsuit and not from GHAD funds.

The agreement also calls for, and funds, the submitted contract with Stevens Ferrone & Bailey Engineering Company, Inc. ("SFB") for the provision of inspection-related services during the installation of the dewatering wells. SFB, having prepared the design concept and construction plans, will perform such inspections and verifications as needed to insure that all of the work is accomplished in accordance with their plans and specifications.

FISCAL IMPACT

Since the cost of this contract is being funding from contributions provided by the lawsuit participants, there will be no impact on the GHAD's fiscal condition.

CONCLUSION

Based upon the above, staff recommends the Board approve the attached resolution awarding this contract to SFB subject to receipt of the Settlement Agreement funds.

Attachments: Contract [15 pp.]

GHAD RESOLUTION NO. -2012

**A RESOLUTION AWARDED A CONTRACT TO STEVENS, FERRONE & BAILEY
ENGINEERING COMPANY, INC. FOR INSPECTION-RELATED SERVICES DURING
THE CONSTRUCTION OF THE KELOK WAY DEWATERING WELLS PROJECT IN
AN AMOUNT NOT TO EXCEED \$30,000.00.**

**THE BOARD OF DIRECTORS
Oakhurst Geological Hazard Abatement District
Clayton, California**

WHEREAS, for several years, there has been ongoing land movement occurring in the open space slope between North Valley Park (at the intersection of Keller Ridge Drive and Golden Eagle Place) and the homes on the north side of Kelok Way; and

WHEREAS, numerous lawsuits have been filed by several homeowners potentially affected by said land movement; and

WHEREAS, a settlement agreement has been reached by all parties in the lawsuits which includes the construction of six dewatering wells in Kelok Way, as designed by the firm of Stevens, Ferrone & Bailey Engineering Company, Inc., all of which will be drained to an existing storm drain in Golden Eagle Place; and

WHEREAS, the settlement agreement includes the payment of specified proceeds from the various parties in the lawsuit into a Settlement Funds account; and

WHEREAS, it has been agreed by all parties that a portion of the Settlement Funds are to be used for inspection-related services necessary during the construction of the dewatering wells; and

WHEREAS, Stevens, Ferrone & Bailey Engineering Company, Inc. has agreed to provide such inspection-related services for a not-to-exceed cost of \$30,000.00;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. The Board of Directors hereby awards a professional consulting services contract to Stevens, Ferrone & Bailey Engineering Company, Inc. for the provision of inspection-related service during the construction of the Kelok Way Dewatering Wells in the amount of \$30,000.00 and authorizes the District Manager to execute the contract on behalf of the GHAD upon receipt of the Settlement Agreement funds.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting thereof held on 17th day of July 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE BOARD OF DIRECTORS OF GHAD

Hank Stratford, Chairman

ATTEST:

Laci J. Jackson, Secretary

I hereby certify that the foregoing resolution was duly and regularly passed by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting held on July 17, 2012.

Laci J. Jackson, Secretary

**PROFESSIONAL CONSULTANT SERVICES AGREEMENT BY AND BETWEEN THE
OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT AND
STEVENS, FERRONE & BAILEY ENGINEERING COMPANY, INC.**

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 2012, by and between the OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 6000 Heritage Trail, Clayton, California 94517 ("District") and STEVENS, FERRONE & BAILEY ENGINEERING COMPANY, INC., with its principal place of business at 1600 Willow Pass Court, Concord, CA 94520 ("Consultant"). District and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional engineering consulting services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional engineering consulting services to public clients, is licensed in the State of California, and is familiar with the plans of District.

2.2 Project.

District desires to engage Consultant to render such professional engineering consulting services for the Kelok Way Dewatering Project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering consulting services necessary for the Project ("Services"). Generally, the Services to be provided are all inspection-related services of the Kelok Way Dewatering Project to be performed by Engineered Soil Repairs, Inc. (ESR). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The Term of this Agreement shall commence on the date of execution of this Agreement by the Parties through December 1, 2012 or upon filing of a Notice of Completion upon acceptance of the work by the District Board of Directors, whichever is comes later, unless earlier terminated as provided herein. The District shall have the unilateral

option, at its sole discretion, to renew this Agreement automatically for no more than three (3) additional one-month terms. Consultant shall complete the Services within the Term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor: Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of District and shall at all times be under Consultant's exclusive direction and control. Neither District, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement. Consultant represents that it has the professional and technical education, licenses and personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, District shall respond to Consultant's submittals in a timely manner.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of District.

3.2.4 Substitution of Key Personnel. Consultant has represented to District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence as necessary. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the District. The key personnel for performance of this Agreement are as follows: Ken Ferrone.

3.2.5 District's Representative. The District hereby designates Rick Angrisani, District Manager, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("District's Representative"). The District Manager shall be authorized to act on District's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the District Manager, District's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Ken

Ferrone, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, according to the applicable standard of care, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline at the location of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold District, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the District that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(a) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, and shall be no less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence.

(c) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(d) **Professional Liability:** Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement. If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the District for approval.

(A) The policy or policies of insurance required by Section 3.2.10.2(a), Commercial General Liability shall be endorsed to provide the following:

- (1) **Additional Insured:** The District, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

- (2) **Cancellation:** Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of

cancellation has been served upon the District except ten (10) days shall be allowed for non-payment of premium.

(B) The policy or policies of insurance required by Section 3.2.10.2(b) Automobile Liability, and Section 3.2.10.2(d) Professional Liability, shall be endorsed to provide the following:

- (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the District except ten (10) days shall be allowed for non-payment of premium.

(C) The policy or policies of insurance required by Section 3.2.10.2(c), Workers' Compensation, shall be endorsed to provide the following:

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the District except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the District and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the District. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the District evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the District. The District shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement. In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the District as an Additional Insured to the Subconsultant's policies. Consultant shall provide to District satisfactory evidence as required under Section 3.2.10.1 of this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation for such Services shall not exceed the amount of THIRTY THOUSAND DOLLARS (\$30,000.00) without written approval of the District Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement. Consultant expressly understands and agrees that all payment for services rendered under this Agreement will not be paid by the District but from funds derived from a settlement agreement for the purpose of funding the Services set forth in this Agreement and held in escrow by Greve, Clifford, Wengel & Paras, LLP.

3.3.2 Payment of Compensation. Consultant shall submit to District a monthly invoice which indicates work completed and hours of Services rendered by Consultant. Consultant shall submit one copy of said invoice to the District Manager, as well as provide a complete electronic copy of said invoice to Mr. John D. Broghammer at John@gcwp.com. The

invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. District shall, within 30 days of receiving such invoice, review the invoice and cause to be paid from special settlement litigation funds all non-disputed and approved charges thereon. If the District disputes any of Consultant's fees, the District shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District, or included in Exhibit "B" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, the District Manager may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of or anticipated to be in excess of \$10,000.00 must be approved by the District's Board of Directors.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. District shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the District, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof,

at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, District may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Stevens, Ferrone & Bailey Engineering Company, Inc.
1600 Willow Pass Court
Concord, CA 94520
ATTN: Ken Ferrone, Vice President

District: Oakhurst Geological Hazard Abatement District
6000 Heritage Trail
Clayton, CA 94517
ATTN: Rick Angrisani, District Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that District is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the District. District shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of District, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of District.

3.5.3.3 Confidential Information. The District shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the District's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the District shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give District written notice of Consultant's objection to the District's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the District, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. District shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with District's choice of legal counsel), and hold District harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that District release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the District, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services or this Agreement. Consultant's obligation to indemnify shall include without limitation the payment of all consequential damages, expert

witness fees and attorneys fees and other related costs and expenses, to the extent arising out of the negligence, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents; however, Consultant shall not be obligated to indemnify the District in any manner whatsoever for the District's own negligence, errors or omissions or willful misconduct. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 District's Right to Employ Other Consultants. District reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**OAKHURST GEOLOGICAL HAZARD
ABATEMENT DISTRICT**

By: _____
Rick Angrisani, District Manager

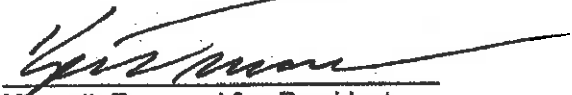
Attest:

By: _____
Laci Jackson, Board Secretary

Approved as to Form:

By: _____
Malathy Subramanian, General Counsel

**STEVENS, FERRONE & BAILEY
ENGINEERING COMPANY, INC.**

By: 
Kenneth Ferrone, Vice President

(If Corporation, TWO SIGNATURES, President OR Vice President
AND Secretary OR Treasurer REQUIRED)

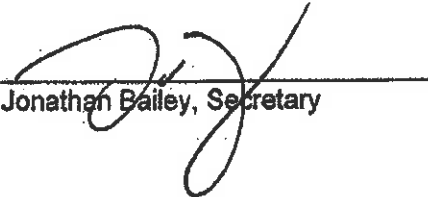
By: 
Jonathan Bailey, Secretary

EXHIBIT "A"
SCOPE OF SERVICES

1.0 SCOPE OF SERVICES

The purpose of our services will be to inspect, observe, and monitor ESR compliance with the approved plans and specifications, and to document quality assurance and plan and specification conformance for the District. Under no circumstances is it our intent to superintend, supervise, or direct ESR, their employees, or ESR's subcontractors. Nor are we responsible for the contractors' accomplishments or safety practices. Our field representatives would be on-site only to provide the District with a continuing source of professional advice, opinions, and recommendations based upon the results of our work.

We propose to perform the following scope of services in order to inspect, observe, and document the Kelok Way Dewatering Wells project. We will consult with the District and provide recommendations on an as-needed basis, answer RFI's, perform material approval reviews and recommendations, and provide field interpretation of the plans and specifications. Documentation will include as-built information (and documentation of any changes to the plans and specifications, if necessary) such as photographs, measurements, installation details, RFI responses, material approvals, and daily reports. Inspections will include inspecting the materials used in the construction for conformance with the plans and specifications, and inspecting the means and methods used by ESR to construct the improvements shown on the plans and specifications. Construction discrepancies with the plans and specifications noted by our staff will be brought to the immediate attention of the general contractor (ESR) and the District's designated representative. Discrepancies and remedial measures approved by SFB and District will also be documented. Reports will be forwarded to the District on a regular basis. Generally, our staff will be assigned the following tasks in order to accomplish the scope of work described above:

Field

Soil Technician

- Perform part-time inspection, observation, and documentation during the drilling and construction of the 6 well holes;
- Perform part-time inspection, observation, and documentation during the directional drilling of the 6 outlet pipes;
- Perform part-time inspection, observation, and documentation of the construction of the new outlet pipe collector box;
- Inspect the means and methods used by ESR to construct the project;
- Prepare daily field observation and inspection reports; and
- Discuss project with contractor's onsite personnel.

Geotechnical Engineer

- Monitor field inspection, observation, and documentation services;
- Perform initial inspection work during critical stages of the construction, such as initial construction of the wells and directionally drilled outlet pipes;
- Provide on-site consultations as needed; and
- Provide field interpretation of the plans and specifications.

Office

Geotechnical Engineer & Senior Engineer/Engineering Geologist

- Provide supplemental engineering if needed;
- Provide consultations as needed;
- Answer RFI's, and review and respond to material submittals; and
- Prepare final report summarizing the construction and presenting all as-built documentation.

Technical Support

- Aid in preparation of final report.

EXHIBIT "B"
COMPENSATION

Consultant's compensation for all Services provided pursuant to this Agreement shall not exceed \$30,000, and shall be billed to the District based on a time and materials basis in accordance with the following rate schedule:

<u>PERSONNEL HOURLY RATE SCHEDULE</u>	<u>Dollar (\$)</u>
Professional Employees Principal Engineer	225.00
Senior Engineer/Engineering Geologist	225.00
Geotechnical Engineer	185.00
Certified Engineering Geologist	165.00
Professional Engineer	145.00
Technician Supervisor	115.00
Storm Water Specialist	115.00
Technical Inspectors Soil Technician - Straight Time	98.00
Special Inspector - Straight Time	98.00
Special Inspector - Welding, Straight Time	98.00
Technical Staff CADD Operator	100.00
Laboratory Technician	98.00
Technical Support	80.00

Other Charges:

- Engineering technicians are union members (Operating Engineers Local Union #3). Engineering technicians are charged overtime rates (1.5 x straight time) for hours worked outside of project work hours on Monday through Friday and within project work hours on Saturdays; double time rates apply for hours outside of project work hours on Saturday and within project work hours on Sundays and holidays; triple time rates apply for hours worked outside of project hours on Sundays and holidays.
- Testing equipment and company vehicles are billed at \$15.00 per hour of field time.
- Outside consultant fees, overnight delivery and messenger charges, computer programs, permits, additional insurance, fares, shipping, rented equipment and other similar project-related costs including out-sourced reproduction, drilling and analytical laboratory services, special testing equipment, travel expenses, meals and lodging are billed at cost plus 15 percent.
- Per labor laws, some professional staff is paid overtime and will be billed accordingly.
- Mileage is billed for professional staff and technicians/inspectors at \$0.85 per mile measured round trip from the office to the project (not applicable when a Technician/Inspector is dispatched in a company truck with testing equipment), or from home to project, whichever distance is shorter.
- In lieu of charging for miscellaneous costs such as individual additional report and letter copies (both color & black and white), telephone and cell phone time, photos and associated equipment, standard overnight deliveries, facsimiles, pdf document preparation, computer time, commonly used software programs, and email generation and protection systems, an additional 5 percent fee on the invoice amount will be charged.



Agenda Date:

7/17/12

Agenda Item:

4(a)

GHAD STAFF REPORT

TO: HONORABLE CHAIRPERSON AND BOARDMEMBERS

FROM: RICK ANGRISANI, DISTRICT MANAGER

DATE: JULY 17, 2012

SUBJECT: CONSIDERATION OF A RESOLUTION ORDERING IMPROVEMENTS AND CONFIRMING ASSESSMENTS FOR FY 2012-13

RECOMMENDATION

Approve the attached Resolution.

BACKGROUND

The District's 2012-13 Budget, approved at the Board's June 19th meeting, recommended increasing assessments by the allowable 2.10% increase in the annual Consumer Price Index (CPI).

Tonight, the Board will hold the required public hearing to hear any comments or protests from its affected citizens. Upon completion of public testimony, the Board may close the public hearing and consider action on this Resolution.

FISCAL IMPACT

If this Resolution is not approved, the Oakhurst Geological Hazard Abatement District (GHAD) will not be able to fund any maintenance or monitoring work in the coming year, as the District has no other source of revenues other than this \$34,685.34 annual assessment paid by real property owners. Further, no increase in assessment revenues (beyond the allowable CPI increase) can occur without property owners' affirmative vote.

CONCLUSION

Based upon the above, staff recommends the Board approve this Resolution ordering improvements and confirming assessments within the GHAD for FY 2012-13.

Attachments: Resolution confirming Assessments [3 pp.]
Notice of Assessment mailed [2 pp.]
District Budget

GHAD RESOLUTION NO. -2012

**A RESOLUTION ORDERING IMPROVEMENTS AND CONFIRMING
ASSESSMENTS FOR FISCAL YEAR 2012-13**

**THE BOARD OF DIRECTORS
Oakhurst Geological Hazard Abatement District
Clayton, California**

WHEREAS, by adoption of Resolution No. 01-2012 the Board of Directors of the Oakhurst Geological Hazard Abatement District (GHAD) approved the District's Budget, declared its intention to levy and collect assessments for fiscal year 2012-13, and set a public hearing thereon for July 17, 2012, at the regular meeting place of the Board of Directors; and

WHEREAS, notice of said hearing and the adoption of Resolution No. 01-2011 was duly given as required by the provisions of Division 17, Chapter 6 of the Public Resources Code (Section 26650 et seq.); and

WHEREAS, all owners of property to be assessed within the District were given written notice by first class mail of the proposed assessments in accordance with Public Resources Code Section 26652; and

WHEREAS, on July 17, 2012, the Board of Directors held a public hearing 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;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. The Board of Directors hereby orders the improvements as set forth in the District's Budget, dated June 19, 2012, and confirms the assessments as recommended by the District Manager.
2. The GHAD consists of a portion of the City of Clayton as shown on the boundary map on file with the District's Secretary.
3. A benefit allocation has been determined by the District Manager, upon consultation with the firm of Leptien, Cronin and Cooper that establishes three areas and three categories of benefit. The Areas are as follows:

Area 1 Lower 6000's, Duets, lower Townhouses

Area 2 Upper 6000's and 8000's, upper Townhouses

Area 3 10000's.

The three categories are as follows:

- a. Single family homes, regardless of lot size, will be the basic unit of benefit, all lots in the same area to be charged equally.
- b. Duet parcels to be charged 75% of the basic unit due to increased density.
- c. Townhouse parcels to be charged 50% of the basic unit due to increased density.

The actual assessments for each lot in the listed subdivisions shall be:

<u>GHAD AREA</u>	<u>SUBD</u>	<u># UNITS</u>	<u>TYPE</u>	<u>\$ ASSESS PER LOT</u>	<u>TOTAL \$</u>
I	6990	92	sfd	\$19.12	\$1,759.04
I	7065	108	duets	\$14.34	\$1,548.72
I	7066	117	multi-family	\$9.58	\$1,120.86
I	7303	52	multi-family	\$9.58	\$498.16
I	7311	118	duets	\$14.34	\$1,692.12
I	7768	55	sfd	\$19.12	\$1,051.60
I	7769	53	sfd	\$19.12	\$1,013.36
II	7256	70	sfd	\$25.50	\$1,785.00
II	7257	60	sfd	\$25.50	\$1,530.00
II	7260	75	sfd	\$25.50	\$1,912.50
II	7261	70	sfd	\$25.50	\$1,785.00
II	7262	99	sfd	\$25.50	\$2,524.50
II	7263	101	sfd	\$25.50	\$2,575.50
II	7264	102	sfd	\$25.50	\$2,601.00
II	7766	35	sfd	\$25.50	\$892.50
II	7766	60	multi-family	\$12.78	\$766.80
II	7767	76	multi-family	\$12.78	\$971.28
III	7249	69	sfd	\$61.40	\$4,236.60
III	7255	72	sfd	\$61.40	\$4,420.80

4. The Board of Directors declares this Resolution to be, and the same shall constitute, the levy of an assessment for the fiscal year 2012-13 as hereinabove referred to.
5. The Board directs the Secretary immediately to have recorded a notice of assessment, as provided for in Section 3114 of the Street and Highways Code.
6. The Board also directs that the assessments are payable in the same manner as general taxes and hereby directs the Secretary to file the boundary map and assessment list, or certified copy thereof, together with a certified copy of this resolution, with the County Auditor.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting thereof held on 17th day of July 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE BOARD OF DIRECTORS OF GHAD

Hank Stratford, Chairman

ATTEST:

Laci J. Jackson, Secretary

I hereby certify that the foregoing resolution was duly and regularly passed by the Board of Directors of the Oakhurst Geologic Hazard Abatement District at a regular public meeting held on July 17, 2012.

Laci J. Jackson, Secretary

NOTICE OF PUBLIC HEARING ON THE LEVYING OF ASSESSMENTS ON PROPERTY IN THE OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT PURSUANT TO PUBLIC RESOURCES CODE SECTION 26652.

KNOW ALL INTERESTED PARTIES BY THIS NOTICE THAT:

1. The District Manager did present on June 19, 2012, to the Board of Directors, his report dated June 19, 2012, indicating a total budget for FY 2012-13 of \$31,385.00 and recommending the assessments shown on the attached table to pay for the obligations of the Oakhurst Geological Hazard Abatement District ("District") during the 2012-13 fiscal year.

2. The Board of Directors accepted and approved the report on June 19, 2012, by adopting GHAD Resolution No. 01-2012, which set forth, among other things:

- a. The Board's intent to levy and collect a per unit assessment in accordance with the recommendations of the District Manager as specified to pay for the obligations of said District during the 2012-13 fiscal year.
- b. The date of 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 date, time and place for hearing protests against the levying of said assessments in the District for the cost of operating in fiscal year 2012-13.

3. The per unit assessments for the 2011-12 fiscal year were as shown on the attached table. The proposed per unit assessments, representing an increase of less than the latest annual increase in the San Francisco, All Items, All Urban Consumers Index (2.10%; April '11 – April '12) and therefore within the formula limits previously approved by ballot, do not constitute an increase in assessments.

4. A general description of the items to be maintained and operated in the District and paid for by the assessment is as follows: open space areas and Geological hazard mitigation devices and improvements.

5. All interested parties may obtain further particulars concerning the proposed per unit assessments in the District and a description and map of the boundaries of the District by referring to GHAD Resolution 01-2012, and the report of June 19, 2012, which are on file with the Secretary in the Clayton City Office. In addition, interested parties may contact the District Manager directly by phone at (925) 363-7433 or in person at 5375 Clayton Road, Concord, California, or view the reports at www.ci.clayton.ca.us.

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 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 Secretary, Oakhurst Geological Hazard Abatement District, City of Clayton, 6000 Heritage Trail, Clayton, California, 94517, at or before the time set for public hearing.

LACI J. JACKSON

Secretary

Oakhurst Geological Hazard Abatement District

DATED: June 20, 2012

**OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT
PROPOSED ANNUAL ASSESSMENTS
FISCAL YEAR 2012/13**

GHAD AREA	SUBD. NAME	SUBD. #	# UNITS	TYPE	PROPOSED ASSESS.	2011-2012 ASSESS.	ANNUAL \$ INCREASE
I	Windmill Canyon I	6990	92	6,000 sf	\$19.12	\$18.72	0.40
I	Black Diamond I	7065	108	Duets	\$14.34	\$14.04	0.30
I	Chaparral Springs I	7066	117	Multi-family	\$9.58	\$9.38	0.20
I	Chaparral Springs II	7303	52	Multi-family	\$9.58	\$9.38	0.20
I	Black Diamond II	7311	118	Duets	\$14.34	\$14.04	0.30
I	Oak Hollow IIA	7768	55	5,000 sf	\$19.12	\$18.72	0.40
I	Oak Hollow IIB	7769	53	5,000 sf	\$19.12	\$18.72	0.40
II	Eagle Peak I	7256	70	8,000 sf	\$25.50	\$24.98	0.52
II	Eagle Peak II	7257	60	8,000 sf	\$25.50	\$24.98	0.52
II	Falcon Ridge I	7260	75	8,000 sf	\$25.50	\$24.98	0.52
II	Falcon Ridge II	7261	70	8,000 sf	\$25.50	\$24.98	0.52
II	Windmill Canyon II	7262	99	6,000 sf	\$25.50	\$24.98	0.52
II	Windmill Canyon III	7263	101	6,000 sf	\$25.50	\$24.98	0.52
II	Windmill Canyon IV/Ironwood	7264	102	6,000 sf	\$25.50	\$24.98	0.52
II	Oak Hollow I	7766	35	5,000 sf	\$25.50	\$24.98	0.52
II	Diablo Ridge I	7766	60	Multi-family	\$12.78	\$12.52	0.26
II	Diablo Ridge II	7767	76	Multi-family	\$12.78	\$12.52	0.26
III	Peacock Creek I	7249	69	10,000 sf	\$61.40	\$60.14	1.26
III	Peacock Creek II	7255	72	10,000 sf	\$61.40	\$60.14	1.26

GHAD BUDGET REPORT

DATE: JUNE 19, 2012

TO: BOARD OF DIRECTORS

FROM: RICK ANGRISANI, DISTRICT MANAGER

RE: FISCAL YEAR 2012-13

BACKGROUND

In April 2000, the property owners within the Oakhurst Geological Hazard Abatement District (GHAD) approved, by ballot, assessments to cover the routine maintenance and operations needs of the District. The ballot measure also allowed increases in the annual assessment not to exceed the CPI. These annual assessments are the only source of revenues to the District as it is solely funded by the private property owners within the District. Without real property owners' approval, the District cannot create or mandate additional revenues to fund hazard abatement or prevention services.

As reported last year, due to the minimal income from assessments, the District has ceased monitoring of slope below Pebble Beach Drive near Inverness Way. It is anticipated that the ongoing movement of the slope below Kelok Way will be addressed this year by the installation of deep dewatering wells in Kelok Way. This work is being funded by various parties (primarily Lyon Homes) as part of a settlement agreement in the various lawsuits filed throughout Oakhurst.

As mentioned above, numerous lawsuits have been filed by affected private property owners against the builder (Lyon), the City and the GHAD. While there is little likelihood the GHAD will be found liable for any damages, legal defense costs have been a drain on the GHAD's limited resources. In addition, the potential exposure and defense costs for the property owner lawsuits have caused a significant surcharge in the City's and the District's liability insurance rates. As we began doing last year, the cost of the insurance surcharge has been included in the District's budget.

The GHAD's fund balance (reserves) is expected to have a surplus of \$3,994 at the end of FY 2011-12, and there is approximately \$118,998 in remaining funds from the Presley lawsuit settlement. We currently anticipate being able to fund the District's operations with the proposed assessments and to increase the fund balance (reserves) to \$7,424.34.

It was, of course, intended that the remaining Presley lawsuit settlement funds be used to rehabilitate the street pavement in the Keller Ridge area once the ongoing movement ceased. However, having no other reserves and no interest by the property owners in raising the annual assessments, the District has no choice but to use these funds to cover any of the District's funding shortfalls in excess of the fund balance that may occur for as long as possible.

FY 2012-13 BUDGET

This Budget proposes to continue funding just the routine operations, along with the ongoing monitoring and legal defense costs, of the District through the allowable annual assessments. The year to year increase allowable per the most current CPI is 2.10% (April 2011 to April 2012, San Francisco, All Items, All Urban Consumers Index).

Following is the recommended budget for the GHAD for FY 2012-13:

EXPENSES

Postage	\$700.00
Legal Notices	95.00
Insurance Premium Surcharge (transfer to General Fund)	13,435.00
County Collections Charge	987.00
Engineering Services	5,000.00
Legal Services	5,000.00
Administration (transfer to General Fund)	<u>6,168.00</u>
TOTAL EXPENSES	\$31,385.00

INCOME

Property Assessments	\$34,685.34
Interest on Funds	<u>130.00</u>
TOTAL INCOME	\$34,815.34
Excess Income to GHAD Fund Balance	\$ 3,430.34

FY 2012-13 PROPERTY ASSESSMENTS

As stated above, the annual assessment will be the same as last year except for an increase consistent with the increase in the CPI. Exhibit A explains the methodology of the assessments and provides a summary of the proposed assessment for this year.

EXHIBIT A

OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT

METHOD OF ASSESSMENT

A Geological hazard abatement district is essentially a benefit assessment district. Therefore, the assessments must be apportioned to individual parcels according to the benefit received.

Based upon discussions with the City's consultant, Randy Leptien of Leptien, Cronin & Cooper, the various areas and types of development in Oakhurst require that the assessments be broken down by area as well as type of unit. The areas have been broken down to reflect, as much as possible, units with an equal amount of risk and benefit.

The total development has been divided into three areas for assessment:

Area 1	Lower 6000's, lower 5000's, Duets, and Townhouses
Area 2	Upper 6000's, upper 5000's, 8,000's, condominiums
Area 3	10000's

After reviewing the needs of each area and the benefits of the District to each area, we have assigned each area the following share of the District's costs (including reserves);

Area 1	25%
Area 2	50%
Area 3	25%

As will be noted, the number of units in each area is not considered a factor and the amount of assessment per unit will vary greatly from area to area. Since there are different types of housing mixed in Areas 1 and 2, we have assigned different assessment units to each type of housing as follows:

Single Family (regardless of size)	1.00
Duets	0.75
Multi-family	0.50

District Boundaries

As of FY 1999-00, the District was complete and consisted of 200 single family homes, 226 duets, and 169 townhouses in Area 1; 612 single family homes and 136 condos in Area 2; and 141 single family homes in Area 3.

Summary of Assessments

AREA I 2012-13 ASSESSMENT				Total =	\$8,683.86	
Subarea	# Units	Type	Factor	Ass. Units	12/13 Asses	Total
Tr. 6990	92	sfd	1.00	92.00	\$19.12	\$1,759.04
Tr. 7065	108	duets	0.75	81.00	\$14.34	\$1,548.72
Tr. 7066	117	multifamily	0.50	58.50	\$9.58	\$1,120.86
Tr. 7303	52	multifamily	0.50	26.00	\$9.58	\$498.16
Tr. 7311	118	duets	0.75	88.50	\$14.34	\$1,692.12
Tr. 7768	55	sfd	1.00	55.00	\$19.12	\$1,051.60
Tr. 7769	53	sfd	1.00	53.00	\$19.12	\$1,013.36
Subtotals	595			454.00		\$8,683.86
AREA II 2012-13 ASSESSMENT				Total =	\$17,344.08	
Subarea	# Units	Type	Factor	Ass. Units	12/13 Asses	Total
Tr. 7256	70	sfd	1.00	70.00	\$25.50	\$1,785.00
Tr. 7257	60	sfd	1.00	60.00	\$25.50	\$1,530.00
Tr. 7260	75	sfd	1.00	75.00	\$25.50	\$1,912.50
Tr. 7261	70	sfd	1.00	70.00	\$25.50	\$1,785.00
Tr. 7262	99	sfd	1.00	99.00	\$25.50	\$2,524.50
Tr. 7263	101	sfd	1.00	101.00	\$25.50	\$2,575.50
Tr. 7264	102	sfd	1.00	102.00	\$25.50	\$2,601.00
Tr. 7766	35	sfd	1.00	35.00	\$25.50	\$892.50
Tr. 7766	60	multifamily	0.50	30.00	\$12.78	\$766.80
Tr. 7767	76	multifamily	0.50	38.00	\$12.78	\$971.28
Subtotals	748			680.00		\$17,344.08
AREA III 2012-13 ASSESSMENT				Total =	\$8,657.40	
Subarea	# Units	Type	Factor	Ass. Units	12/13 Asses	Total
Tr. 7249	69	sfd	1.00	69.00	\$61.40	\$4,236.60
Tr. 7255	72	sfd	1.00	72.00	\$61.40	\$4,420.80
Subtotals	141			141.00		\$8,657.40
Grand Totals	1,484			1,275.00		\$34,685.34