



AGENDA

JOINT AND REGULAR MEETINGS

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CLAYTON CITY COUNCIL and CLAYTON PLANNING COMMISSION

TUESDAY, November 5, 2013

5:30 P.M.

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

Mayor: Julie K. Pierce
Vice Mayor: Hank Stratford

Council Members

Jim Diaz
Howard Geller
David T. Shuey

- 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.

*** JOINT MEETING***
CITY COUNCIL AND PLANNING COMMISSION

5:30 P.M.

1. **CALL TO ORDER THE CITY COUNCIL** – Mayor Pierce.
CALL TO ORDER THE PLANNING COMMISSION - Chairman Gregg Manning.
2. **PLEDGE OF ALLEGIANCE** – led by Mayor Pierce.
3. **PUBLIC COMMENT ON NON-AGENDA ITEMS**
Citizens may address the City Council or Planning Commission on items within their jurisdiction, (which are not on the agenda) by completing a speaker card available on the Lobby table and submitting it 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 by the Mayor, 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 or Commission 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 as each item is considered by the City Council.
4. **PUBLIC WORKSHOP**
 - (a) Joint Study Session to discuss and provide general instructions to staff and its consultant on the City's Housing Element Update, as required by State law.
(Community Development Director & Jennifer Gastelum, Project Manager, PMC)
([View Here](#))
Staff recommendation: Provide guidance and conceptual directions to staff regarding content and preferred housing policies for preparation of a Housing Element in compliance with State law and regional housing needs allocations (RHNA). No permanent action to be taken or directed.
5. **Adjourn the Planning Commission Meeting** - Chairman Gregg Manning.

7:00 P.M. -City Council Regular Meeting

6. 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 meetings of October 1 and October 15, 2013, and the special meeting of November 27, 2012. ([View Here](#))
- (b) Approve Financial Demands and Obligations of the City. ([View Here](#))
- (c) Adopt a Resolution approving the 3rd Amendment to the Stormwater Utility Area Agreement between the Contra Costa County Flood Control and Water Conservation District and the City of Clayton. ([View Here](#))
- (d) Adopt a Resolution approving a one (1) year Memorandum of Agreement with the City's Miscellaneous Employees Unit effective 01 July 2013. ([View Here](#))
- (e) Approve multi-year lease with Konica Minolta Business Systems for replacement of the existing City Hall copier machine. ([View Here](#))
- (f) Approve authorization for City application to the County Board of Supervisors for \$29,000 in County Park Dedication Funds to replace three (3) sport scoreboards at Clayton Community Park, and allocate \$7,500 in Deferred Maintenance funds. ([View Here](#))

7. RECOGNITIONS AND PRESENTATIONS

- (a) Certificates of Recognition to "Do The Right Thing" public school students chosen for exemplifying the character trait of "Respect".

8. REPORTS

- (a) Planning Commission – Vice Chairman Dan Richardson.
- (b) Trails and Landscaping Committee – Chairman Larry Casagrande.
- (c) City Manager/Staff
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.
- (e) Other

9. 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.

10. PUBLIC HEARINGS - None.

11. ACTION ITEMS

- (a) Presentation and acceptance of the Trails and Landscaping Committee's FY 2012-13 Annual Report for the Citywide Landscape Maintenance District. (TLC Chairman Larry Casagrande) ([View Here](#))

Staff recommendation: Following presentation of the TLC's Annual Report and any public comments, that Council by motion accept the Trails and Landscaping Committee's Annual Report for FY 2012-13.

- (b) Second Reading and Adoption of proposed City-initiated Ordinance No. 451 amending Chapters 1.14, 1.18, 1.20, 8.08 and 17.72 of the *Clayton Municipal Code* concerning code enforcement procedures and regulations. ([View Here](#)) (Community Development Director)

Staff recommendations: **1)** Receive the staff report; **2)** Receive public comments; **3)** Following Council discussion or any amendments to the proposed Ordinance, approve a motion to have the City Clerk read Ordinance No. 451 by title and number only and waive further reading; and **4)** By motion, adopt Ordinance No. 451 with findings the action does not constitute a project under CEQA.

- (c) City Council determination of the date, time, location and agenda topics for its 5th annual Town Hall Meeting with the Clayton business community and commercial property owners. ([View Here](#)) (City Manager)

Staff recommendation: Following agenda and date discussion and opportunity for public comment, that Council by motion call for a Special Meeting to be held on a set date, time, and location for its annual roundtable study session with the Clayton business community.

- (d) Discussion of a Council Member's proposal for the City to hire a commercial real estate broker to list and market for sale the City's recently-purchased 1.67 acre vacant real property located on Main Street (APN 118-560-010). ([View Here](#)) (Councilmember Geller)

Staff recommendations: Following Council discussion and opportunity for public comments, that Council provide policy direction to staff.

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

13. **CLOSED SESSIONS**

- (a) *Government Code Section 54957.6, Conference with Labor Negotiator*
Instructions to City-designated labor negotiator: City Manager.
 - 1. Employee Organization: Clayton Police Officers' Association (CPOA).
- (b) *Government Code Section 54957, Public Employee Annual Performance Evaluation*
Position Title: City Manager
- (c) *Government Code Section 54957.6, Conference with Labor Negotiator*
Instructions to City-designated Representative: Julie K. Pierce, Mayor
Unrepresented City Employee: Gary Napper, City Manager

Reports out from Closed Session: Mayor Pierce.

14. **ADJOURNMENT**– the next regularly scheduled City Council meeting is November 19, 2013.

#

City of Clayton 2014-2022 HOUSING ELEMENT UPDATE

Agenda Date: 11-5-13

Agenda Item: 4a

Planning
Commission/
City Council
Workshop

November 5, 2013

CITY OF CLAYTON



AGENDA

- Welcome and Introductions
- Housing Element Overview
- Regional Housing Needs Allocation (RHNA)
- Review of current Housing Element implementation
- Housing Needs Assessment
- Schedule
- Comments/Questions

MEETING GOALS

- Provide an overview of the purpose, schedule, and requirements for the Housing Element update
- Provide background information on the Housing Element update process
- Report initial housing needs findings
- Identify and plan for the future housing needs of the community

HOUSING ELEMENT REQUIREMENTS

- One of seven mandated General Plan elements
- Existing and projected housing needs of all economic segments of the community
- 4 or 8 year update timeframe (2014-2022)
- Review by California Department of Housing and Community Development (HCD)

IMPORTANCE OF COMPLIANCE

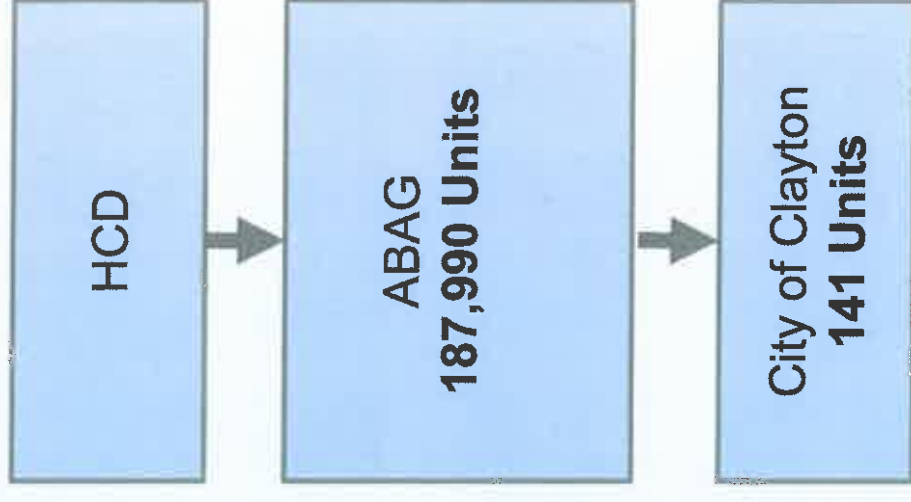
- Maintain local discretion over affordable housing projects
- Legal responsibility
 - Must be certified for adequate General Plan
- Access to State funding resources
- Fiscal obligation
 - Could have to pay legal fees, including plaintiff's fees, if challenged

STATE LAW REQUIREMENTS

- **SB 812 (2010):** Persons with developmental disabilities housing needs
- **SB 375 (2008):** Rezoning and update schedule
- **SB 2 (2007):** Emergency shelters, transitional and supportive housing
- **AB 2634 (2006):** Extremely low-income housing needs
- **AB 2511 (2006):** Anti-NIMBY and no net loss requirement

REGIONAL HOUSING NEEDS ALLOCATION (RHNA)

- State law requires HCD to determine total regional housing needs
- ABAG allocates the regional number among its jurisdictions
- Allocation is distributed among 5 standard income categories



2014-2022 RHNA

Income Category	Income Range	Number of Units	Percentage of Total
Extremely Low-Income	<\$28,050	25	18%
Very Low-Income	\$28,051 - \$46,750	26	18%
Low-Income	\$46,751 - \$66,250	25	18%
Moderate-Income	\$66,251 - \$112,200	31	22%
Above Moderate	>\$112,200	34	24%
Total		141	100%



CURRENT HOUSING ELEMENT IMPLEMENTATION

KEY ACCOMPLISHMENTS

- Established the Multi-Family High Density General Plan land use designation and zone
 - Sites to meet the RHNA were rezoned to PD, revisions to the PD zone to facilitate multi-family housing to accommodate the remaining RHNA are planned for 2014
- Adopted a Universal Design Ordinance
- Established Affordable Housing Plan guidelines

KEY ACCOMPLISHMENTS CONT'D

- Created promotional handouts for second unit development
- Development approval and CEQA for Creekside Terrace
- Established an Emergency Shelter Overlay Zone to achieve compliance with SB 2
- Updated the Zoning Ordinance to address transitional and supportive housing in compliance with SB 2

KEY ACCOMPLISHMENTS *CONT'D*

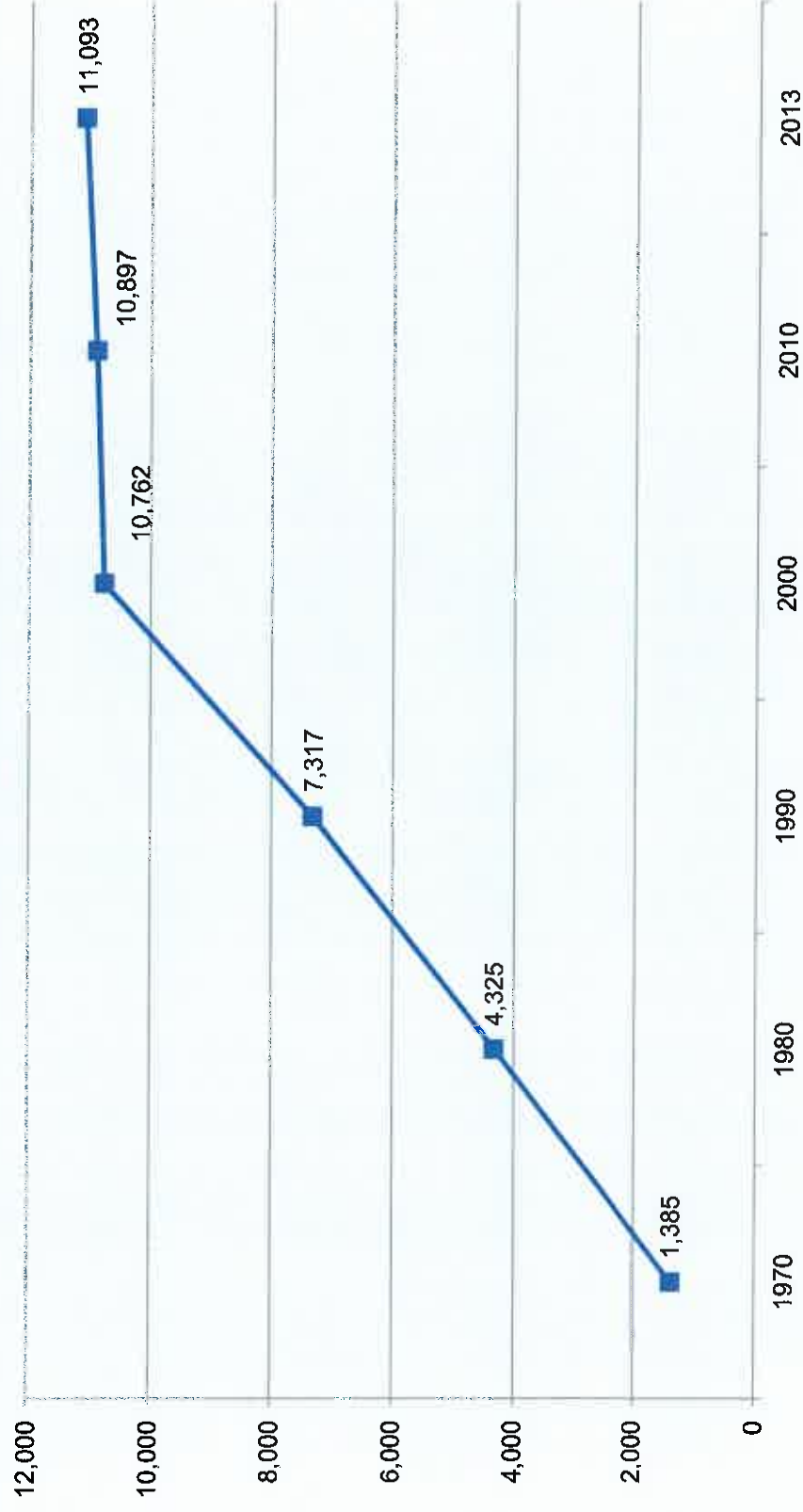
- Established zoning for single-room occupancy units (SROs)
- Modified the Zoning Ordinance to allow single-family in multi-family zones with a CUP
- Adopted a Density Bonus Ordinance
- Adopted a Green Building Ordinance

KEY ACCOMPLISHMENTS CONT'D

- Updated the Zoning Ordinance to expand the definition of “family”
- Adopted manufactured housing regulations
- Adopted a reasonable accommodations ordinance

HOUSING NEEDS ASSESSMENT

POPULATION GROWTH

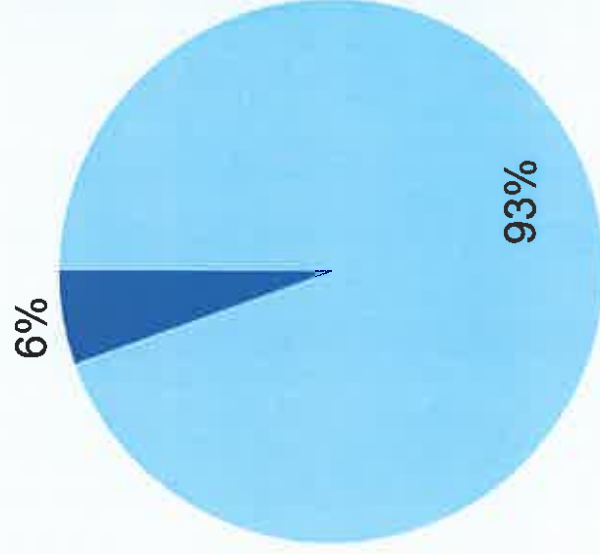


Source: U.S. Census and CA Department of Finance, Population and Housing Estimates, January 1, 2013.

HOUSING OCCUPANCY & TENURE

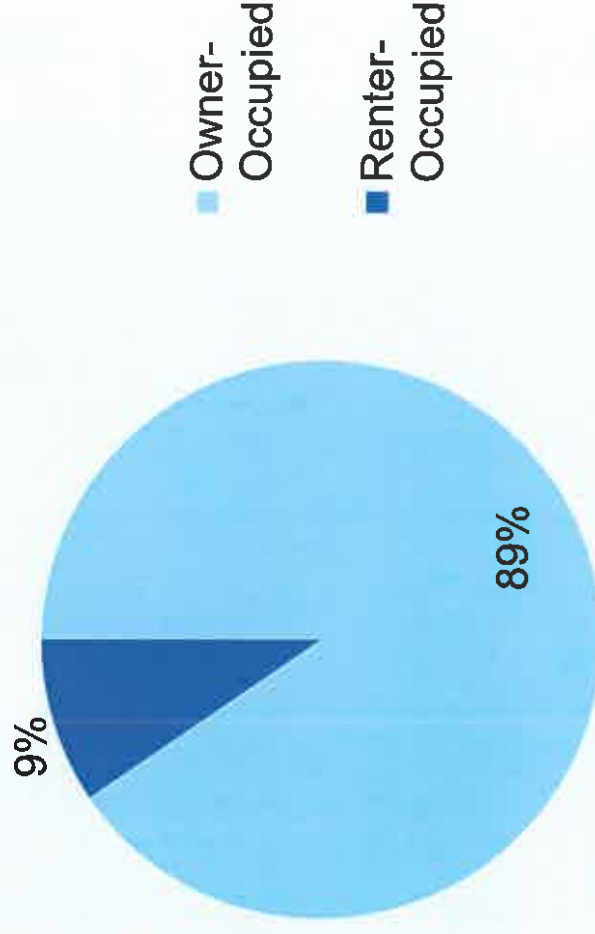
2000

99% Occupancy



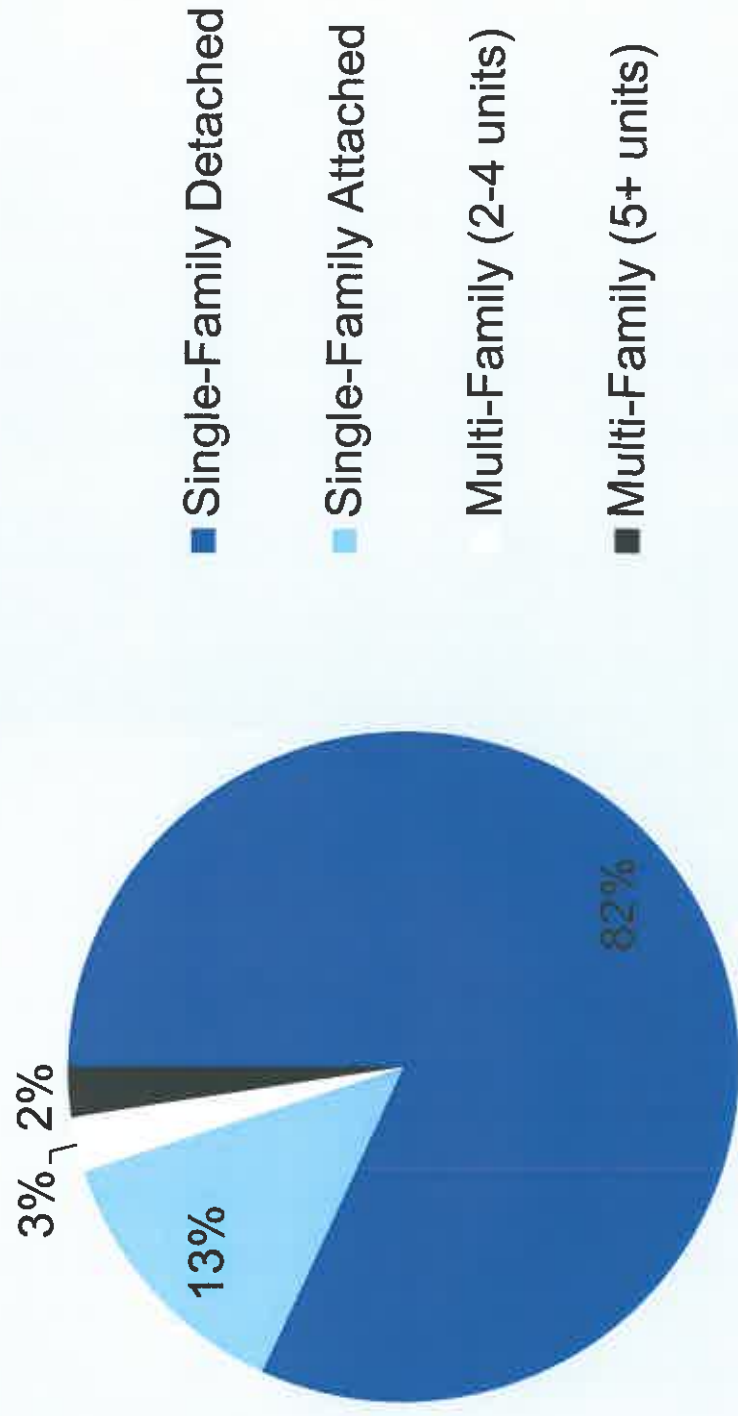
2010

98% Occupancy



Source: US Census, 2000 and 2010

HOUSING TYPES



Source: CA Department of Finance, Population and Housing Estimates, January 1, 2013

RENTAL HOUSING AFFORDABILITY

2013 Contra Costa County Median Income: \$93,500

Income Category	Household Income Limit (4-person household)	Affordable Monthly Rent*
Extremely Low-Income	\$28,050	\$701
Very Low-Income	\$46,750	\$1,169
Low-Income	\$66,250	\$1,656
Moderate-Income	\$112,200	\$2,805

Source: HCD State Income Limits, 2013

*Utilities not included

RENTAL PRICES

Unit Size	Range
1-bedrooms	\$1,245 - \$1,295
2-bedrooms	\$1,350 - \$1,550
3-bedrooms	\$1,895 - \$2,995
4+ bedrooms	\$3,950

* Data may be unreliable due to the small number of listings
Sources: Craigslist, Zillow, Apartments.com

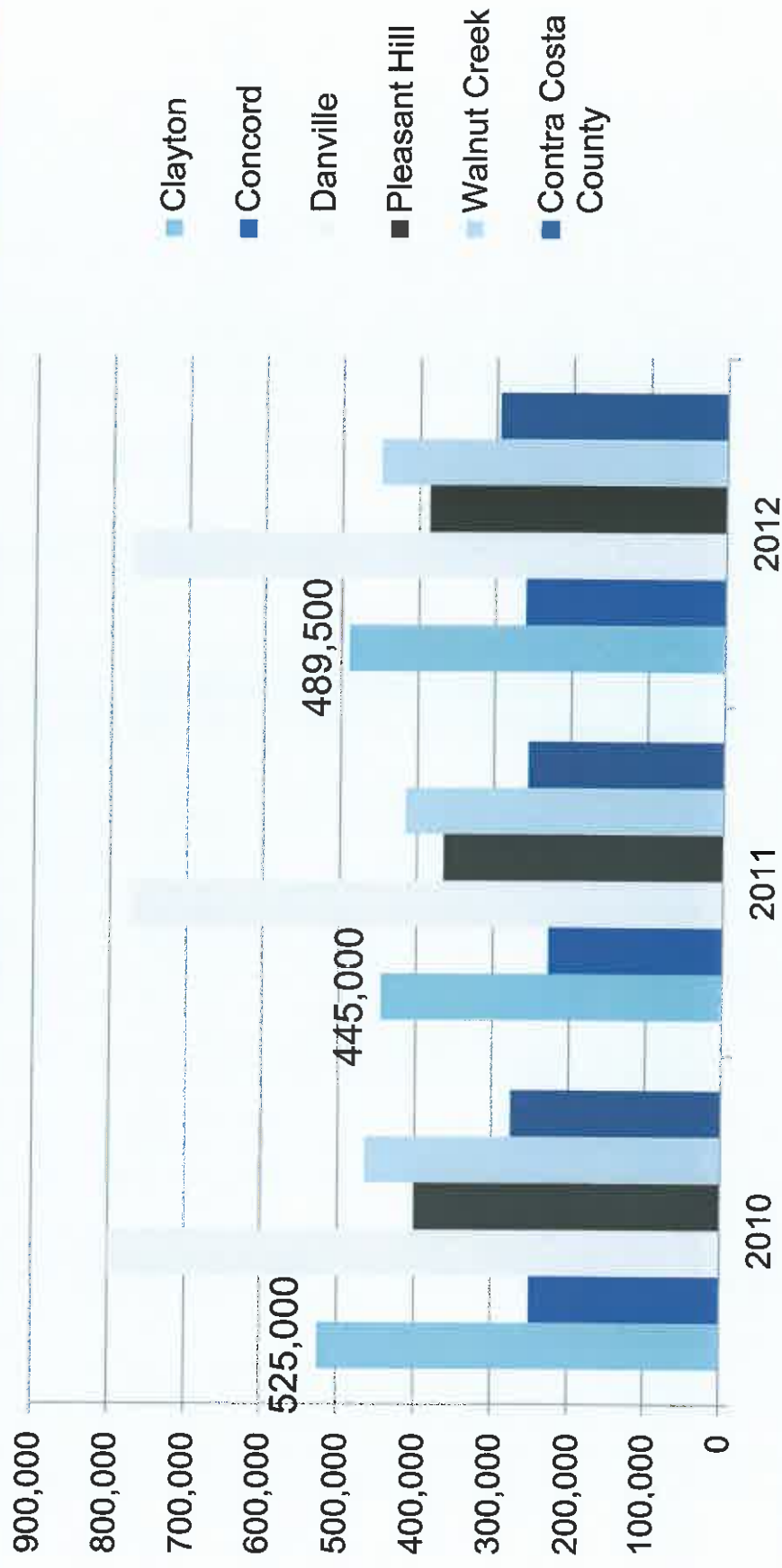
OWNERSHIP AFFORDABILITY

Income Category	Household Income Limit (4-person household)	Maximum Purchase Price
Very Low-Income	\$46,750	\$127,389
Low-Income	\$66,250	\$224,344
Moderate-Income	\$112,200	\$254,777

Source: HCD State Income Limits, 2013; realtor.com

* Assumes 5% interest, 30-year fixed mortgage, \$10,000 downpayment for very low-income, and \$20,000 for low and moderate-income

MEDIAN SALES PRICES



Source: DataQuick

HOUSING ELEMENT UPDATE SCHEDULE

September - October	Gather data, review current Housing Element
November 5	Joint Planning Commission/City Council Workshop
February	Planning Commission meeting
March	City Council meeting
March – April	HCD review
May/June	Adoption hearings
June– August	Final HCD review
August/September	Certified Housing Element

QUESTIONS/COMMENTS

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

TUESDAY, October 1, 2013

Agenda Date: 11/5/13

Agenda Item: 6a

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:05 p.m. by Mayor Pierce in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Pierce, Vice Mayor Stratford Councilmembers Diaz, Geller, and Shuey. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Charlie Mullen, Police Chief Chris Thorsen, and City Clerk Laci Jackson.
2. **CLOSED SESSION** On call by Mayor Pierce the Council adjourned into Closed Session for the following purposes:
 - (a) Conference with Labor Negotiator
Government Code Section 54957.6
Instructions to City-designated labor negotiator: City Manager.
 1. Employee Organization: Clayton Police Officers Association (CPOA).
 2. Employee Organization: Undesignated City Employees Unit.
 - (b) *Government Code Section 54956.8*, Conference with Real Property Negotiator
 1. Real Properties: Oak Street Properties (APNs 119-050-008, 119-050-009, & 119-050-034). Instructions to City Negotiator (City Manager) concerning terms and conditions. Negotiating Party: Luckfield Real Estate Investment Fund, LLC
 2. Real Property: 1.67 acre vacant parcel off Main Street, Clayton (APN 118-560-010). Instructions to City Negotiator (City Manager) concerning terms and conditions. Negotiating Party: Luckfield Real Estate Investment Fund, LLC

7:12 p.m. Report out of Closed Session: Mayor Pierce reported the Council will continue their Closed Session at the end of the meeting.
3. **PLEDGE OF ALLEGIANCE** – led by Mayor Pierce.
4. **CONSENT CALENDAR-** It was moved by Councilmember Shuey, seconded by Vice Mayor Stratford, to approve the Consent Calendar (Passed; 5-0 vote).
 - (a) Approved the minutes of the regular meeting of September 17, 2013.
 - (b) Approved Financial Demands and Obligations of the City.
 - (c) Approved the proposed schedule for the 2014 Saturday "Concerts in The Grove" series.
 - (d) Adopted Resolution No. 32-2013 approving a three (3) month Addendum No. 7 to the base Memorandum of Understanding with the Clayton Police Officers' Association (CPOA), effective October 1, 2013 through December 31, 2013.

5. RECOGNITIONS AND PRESENTATIONS

- (a) Mayor Pierce presented a Proclamation declaring October 2013 as "Sudden Cardiac Arrest Awareness Month" to CERT Corps Council member Herb Yonge and Police Chief Chris Thorsen. Chief Thorsen stated this hits everyone and stated survival can be increased by providing these skills. He noted October 28th the AAUW will be sponsoring a "Hands Only CPR" class at the Clayton Library at 7 p.m.
- (b) Certificates of Recognition to "Do The Right Thing" public school students chosen for exemplifying the character trait of "Responsibility".

Mayor Pierce and Mt. Diablo Elementary School teachers Mrs. Gilsson and Ms. Huaco recognized students Karleigh Cooper and Derek Townsend.

Mayor Pierce and Diablo View Middle School Principal Patti Banister recognized students Sophie Wheeler and Alyssa Jecker.

Mayor Pierce and Clayton Valley High School teachers Sayed Anwar and Amber Lineweaver recognized Clayton Valley Charter High School students Rachel Siver, Christi Kelley, Dominic Clement, and Maira Ahmed.

- (c) Presentation by Cal Fire Battalion Chief Mike Marcucci and Contra Costa County Fire Protection District representatives regarding the recent Morgan Fire.

Cal Fire Battalion Chief Marcucci presented a powerpoint presentation of the Morgan Fire and provided an update on the fire including the lessons learned. He stated next time they will embed a Public Information Officer providing information directly to Clayton officials.

Councilmember Shuey stated understanding social media is an important way to quickly provide information to citizens is very important.

Ben Smith, Contra Costa Fire Protection District, stated it is a miracle no structures were lost and he stated the boots on the ground deserve the credit for the fire being contained so quickly.

Mayor Pierce presented Cal Fire and the Contra Costa Fire Protection District with Certificates of Appreciation for their work on containing and extinguishing the Morgan Fire.

6. REPORTS

- (a) Planning Commission- Commissioner Keith Haydon stated it was impressive how the community responded to the fire by providing food and water to the firemen so quickly. Commissioner Haydon reported on the September 24th Planning Commission meeting. He stated the Commission approved a Site Plan Review for a one story addition on Atchinson Stage, and a two story addition on Mt. Washington Way. He stated the Commission also heard an informational presentation on the proposal for Skipolini's expansion and bocce ball courts.

- (b) Trails and Landscaping Committee – No meeting held.
- (c) The City Manager noted the annual Oktoberfest event is being held this weekend. He noted the carnival has arrived, will operate Friday evening, and presale tickets are available at merchants downtown. Lastly, he congratulated the City Clerk on her upcoming wedding this weekend, noting this is her last meeting as “Laci Jackson” (it will be “Kolc”).
- (d) City Council
 - Councilmember Geller attended the Homecoming parade and football game for Clayton Valley Charter High School.
 - Councilmember Shuey stated the Board of the Charter High School is appointing a new member after a recent resignation.
 - Councilmember Diaz stated the City hosted its final Thursday night concert of the year; he attended the CBCA meeting and the Contra Costa County Association of Realtors reception.
 - Vice Mayor Stratford stated the “Do the Right Thing” trait being focused on for October is “Respect.”
 - Mayor Pierce attended three ABAG meetings, a Transportation Authority meeting, and a Clayton Historical Society meeting. She also noted she was nominated for President of ABAG.
- (e) Other

7. PUBLIC COMMENTS

Bryan Blatter, resident, thanked the City of Clayton and the City Manager for being quick and responsive to emails concerning various issues he raised in the City.

8. PUBLIC HEARINGS

- (a) Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance to amend portions of Title 17 – Zoning of the *Clayton Municipal Code* to establish a definition and regulations for cottage food operations as home-based businesses in Clayton, pursuant to new State law (AB 1616).

The Community Development Director presented the staff report for the Ordinance on cottage food operations in home based businesses. He stated this Ordinance is required because of AB 1616 and allows citizens to prepare and package certain foods for resale in their homes. He stated cottage food operations are supposed to register with a local enforcement agency and can only prepare food products as established on a non-hazardous foods list. Staff researched the new laws and drafted the Ordinance which complies with AB 1616. He stated this Ordinance places local control to the Planning Commission for approval. He noted there was no public testimony at Planning Commission meeting.

Mayor Pierce opened the Public Hearing at 8:18 p.m. and closed the Public Hearing at 8:19 p.m. No comments were presented.

It was moved by Vice Mayor Stratford, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 450 by title and number only and waive further reading (Passed; 5-0 vote).

The City Clerk read Ordinance No. 450 by title and number only.

It was moved by Vice Mayor Stratford, seconded by Councilmember Shuey, to approve Ordinance No. 450 for Introduction with findings the action does not constitute a project under CEQA. (Passed; 5-0 vote).

9. ACTION ITEMS

- (a) Second Reading and Adoption of a proposed City-initiated Ordinance to amend Title 17 - Zoning of the *Clayton Municipal Code* by establishing regulations for emergency shelters (ZOA -04-13).

The Community Development Director stated this Ordinance was introduced at September 17th meeting. No public comments were provided or received.

It was moved by Vice Mayor Stratford, seconded by Councilmember Shuey, to have the City Clerk read Ordinance No. 449 by title and number only and waive further reading (Passed; 5-0 vote).

The City Clerk read Ordinance No. 449 by title and number only.

It was moved by Vice Mayor Stratford, seconded by Councilmember Shuey, to approve Ordinance No. 449 for Introduction with findings the action does not constitute a project under CEQA. (Passed; 5-0 vote).

10. COUNCIL ITEMS – None.

- 11. CLOSED SESSION** On call by Mayor Pierce the Council adjourned into Closed Session for the following purposes:

- (a) Conference with Labor Negotiator
Government Code Section 54957.6
Instructions to City-designated labor negotiator: City Manager.
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- (b) *Government Code Section 54956.8*, Conference with Real Property Negotiator
1. Real Properties: Oak Street Properties (APNs 119-050-008, 119-050-009, & 119-050-034). Instructions to City Negotiator (City Manager) concerning terms and conditions.
Negotiating Party: Luckfield Real Estate Investment Fund, LLC
 2. Real Property: 1.67 acre vacant parcel off Main Street, Clayton (APN 118-560-010). Instructions to City Negotiator (City Manager) concerning terms and conditions.
Negotiating Party: Luckfield Real Estate Investment Fund, LLC

9:20 p.m. Report out of Closed Session: Mayor Pierce reported the Council gave direction to its labor negotiator.

12. **ADJOURNMENT**– on call by Mayor Pierce the meeting adjourned at 9:21 p.m. in memory of the City Manager's father-in law D. Gary Schulthies, and the City Attorney's father Sundaram Subramanian, who each passed away separately on the evening of September 17th.

#

Respectfully submitted,

Laci J. Jackson, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

Julie K. Pierce, Mayor

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, October 15, 2013

Agenda Date: 11/5/13

Agenda Item: 6a

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 6:00 p.m. by Mayor Pierce in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Pierce, Vice Mayor Stratford Councilmembers Diaz, Geller, and Shuey. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Charlie Mullen, Police Chief Chris Thorsen, and City Clerk Laci Kolc.
2. **CLOSED SESSION** On call by Mayor Pierce the Council adjourned into Closed Session for the following purpose:
 - (a) Conference with Labor Negotiator
Government Code Section 54957.6
Instructions to City-designated labor negotiator: City Manager.
 1. Employee Organization: Clayton Police Officers Association (CPOA).
 2. Employee Organization: Undesignated City Employees Unit.

7:03 p.m. Report out of Closed Session: Mayor Pierce reported the Council gave instructions to the labor negotiator.
3. **PLEDGE OF ALLEGIANCE** – led by Mayor Pierce.
4. **CONSENT CALENDAR**- It was moved by Councilmember Shuey, seconded by Vice Mayor Stratford, to approve the Consent Calendar (Passed; 5-0 vote).
 - (a) Approved the Financial Demands and Obligations of the City
 - (b) Set Tuesday, November 5, 2013 at 5:30 p.m. in Hoyer Hall at the Clayton Community Library, 6125 Clayton Road, as the date, time and location of a joint workshop of the City Council and its Planning Commission for review of proposed policies concerning the state-required City Housing Element update for Years 2014-2022.
 - (c) Adopted Resolution No. 33-2013 supporting proposed state legislation (SB 405; Padilla) in calendar year 2014 which would phase out or prohibit single-use retail carryout plastic bags in California.
5. **RECOGNITIONS AND PRESENTATIONS**
 - (a) Mayor Pierce announced a Proclamation declaring October 2013 as “Domestic Violence Awareness Month” is being mailed to STAND! For Families Free of Domestic Violence.

6. REPORTS

- (a) Planning Commission- The Community Development Director provided an update on the Planning Commission's October 8, 2013 meeting. He stated the meeting was an informational study session held by the developers of the proposed Silver Oak Estates project. He stated there was a good turn out and a lot of input from the neighborhood.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) The City Manager had no report.
- (d) City Council

Councilmember Geller attended the land dedication of Rowdy Ranch to the East Bay Regional Parks District. He also attended a dinner to honor Tim Argenti as the "Citizen of the Year" by the Silverado Council of the Boy Scouts of America.

Vice Mayor Stratford attended the land dedication and the CERT Corps Council meeting. He stated CERT talked about revisiting the City's Emergency Response plan. He also noted the character trait of the month is "Respect."

Councilmember Diaz attended the Mayors' Conference in Clayton and worked at the Oktoberfest.

Mayor Pierce attended a Transportation Authority meeting, ABAG Regional Planning Committee meeting, the Mayors' Conference, and a TRANSPAC meeting. She stated TRANSPAC is looking at forming a Joint Powers Authority (JPA). The City Manager noted other similar agencies are doing the same thing for insurance purposes.

Councilmember Geller stated this was one of the best Oktoberfest events with many vendors and attendees.

The City Manager stated staff received an email that Contra Costa County Fire Protection District is closing Station 8 in Concord for three weeks in November for construction. The ConFire Station 8 crew will stage out of Clayton's Station 11 during that interim time.

- (e) Other

7. PUBLIC COMMENTS

Richard Taylor announced the 33rd annual Clayton Halloween Ghost Walk will be held on October 31st. He thanked the City for helping out with the PA system and the local press for their coverage. He stated he appreciates the local support and hopes the tradition continues.

8. PUBLIC HEARINGS – None.

9. ACTION ITEMS

- (a) Consider the Introduction and First Reading of proposed City-initiated Ordinance No. 451 amending Chapters 1.14, 1.18, 1.20, 8.08 and 17.72 of the *Clayton Municipal Code* concerning code enforcement procedures and regulations.

The Community Development Director presented the staff report about the proposed Ordinance to amend the Clayton Municipal Code for code enforcement procedures and regulations. He stated after a recent code enforcement case and appeal hearing staff identified a need to clean up procedural wording and incorporate better cost recovery into the Municipal Code. The code enforcement action was about \$1,200 for a hearing officer and that does not include staff or the City Attorney's time. He stated because of the Code the City was only able to charge a \$53 fee. The proposed Ordinance amendments provide a fairer cost recovery procedure to be more current. He stated Chapter 1.14 create more flexibility for courtesy notice violations, for notice between 10-20 days and 1.18 defines responsible persons and clarifies the payment of fines. He also stated the process has to allow for the waiver for advance deposits for those who need it. He also stated Section 1.20 allows the City to recover attorney fees. The Ordinance also clarifies nuisances sections of the zoning code, clarifies ability to recover cost of violations that require immediate abatement, and clarifying property owners' responsibilities to look at this. It also establishes an abatement hearing process and the nuisance appeal process. Lastly, it changes some clean-up of redundancies in code sections.

Councilmember Geller asked why the state can mandate the fees be waived for indigent persons? The City Attorney stated it is only temporarily waiving deposit fees in the case of economic hardship; proof of bank statements would have to be shown. Should the appeal decision be in the City's favor, the appellant would then owe the fees and expenses.

Mayor Pierce stated Exhibit A, both sections b and c are unclear as it reads, regarding the fine for second violations of local building and safety codes, and whether it was a per day fine or fixed one-time fine.

The City Attorney confirmed the intent was a violation per day fine. The City Manager responded where it included a building and safety code, "per day" could be added to the text.

Councilmember Shuey stated staff's proactivity on these changes is great, that we recognized a problem and proposed changes to fix it.

The Community Development Director stated he and the City Attorney would work on the text amendments for consideration at the Ordinance's second reading.

It was moved by Councilmember Shuey seconded by Vice Mayor Stratford, to have the City Clerk read Ordinance No. 451 as amended to add "per day" by title and number only and waive further reading (Passed; 5-0 vote).

The City Clerk read Ordinance No. 450 by title and number only.

It was moved by Vice Mayor Stratford, seconded by Councilmember Shuey, to approve Ordinance No. 451 with the "per day" amendments for Introduction with findings the action does not constitute a project under CEQA. (Passed; 5-0 vote).

- (b) Second Reading and Adoption of proposed City-initiated Ordinance No. 450 amending portions of Title 17 – Zoning of the *Clayton Municipal Code* to establish regulations for the operation of cottage food businesses in residential zones.

The Community Development Director stated this Ordinance was introduced at the October 1st City Council meeting. He stated this Ordinance will amend the Municipal Code to allow the Planning Commission to review cottage foods business proposals for approval or denial.

No public comments were received.

It was moved by Councilmember Shuey, seconded by Vice Mayor Stratford, to have the City Clerk read Ordinance No. 450 by title and number only and waive further reading (Passed; 5-0 vote).

The City Clerk read Ordinance No. 450 by title and number only.

It was moved by Vice Mayor Stratford, seconded by Councilmember Shuey, to adopt Ordinance No. 450 with findings the action does not constitute a project under CEQA. (Passed; 5-0 vote).

10. COUNCIL ITEMS

Councilmember Geller asked for an item to be placed on a future agenda to discuss hiring a professional to actively market the City's properties for sale in the downtown area.

11. ADJOURNMENT– on call by Mayor Pierce the meeting adjourned at 7:40 p.m.

#

Respectfully submitted,

Laci J. Kolc, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

Julie K. Pierce, Mayor

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

TUESDAY, November 27, 2012

Agenda Date: 11-5-13

Agenda Item: 6a

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 9:02 a.m. by Mayor Geller in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Councilmembers Pierce, Shuey, Stratford (arrived at 9:03 a.m.) and Councilmember-Elect Jim Diaz. Staff present: City Manager Gary Napper, Police Chief Dan Lawrence, Community Development Director David Woltering, and City Clerk Laci Jackson.
2. **PUBLIC COMMENT ON NO AGENDA ITEMS**- None.
3. **TOWN HALL MEETING**

The following business owners and community members were present: Steve Barton, Dennis Mitchell, Dolores Austin (Clayton Club Saloon), Tom Payne (Prosperitas Wealth Management), Barbara and Leroy Carney (Frontier Beauty Salon, TLC Pet Grooming), Sue White (Accurate Business Services), Kent Ipsen, Jared Josephson, Clayton Perry, C.J. Fowlie (Skipolini's Pizza), Shane Carley (Kaliball/ Wranglers), Doug Van Wyck (State Farm), Matt Mazzei (Mazzei Realty), Joe Medrano (IMC Insurance and P2C Foundation), and Tamara Steiner (Clayton Pioneer).

3. **Town Hall Roundtable**

- (a) Open Forum discussion between business community and City Council to address issues, concerns or matters of mutual interest:

Suggested Topics

1. Critique of the 2012 Concerts in The Grove Saturday series (10 concerts).
Suggestions for the 2013 series?
2. Evaluation of the inaugural Thursday 2012 Concert in The Grove series (5 concerts). Suggestions?

Mayor Geller stated the Saturday night concerts have been held at the same time and place for the last 5 years. He stated they are popular and the public donated nearly \$16,000 this year to fund the concerts. He stated the first concert is typically held the weekend following the Clayton Art and Wine Festival and the last concert is held in mid-September.

Steve Barton stated he has been very happy with the concert series. He stated even though some neighbors have spoken out about the noise he believes it is a good community event. He stated his business saw a small increase in business with the Thursday night concerts.

Jim Diaz, Councilmember-Elect, stated there is a desire to start the Thursday night concerts later and end them earlier. He stated there was also discussion about reducing the number of weeknight concerts to stimulate interest. The goal is to use more local entertainers and possibly consider a vocal talent show.

Councilmember Shuey stated he believes the talent show is a good idea and the Charter High School might be interested in participating. He stated he received a text from Ed Moresi and he favored continuing the Thursday night concerts.

Tom Payne stated the Saturday night concerts are good but he did not see the numbers at the Thursday night concerts.

Mayor Geller stated some citizens believe the City has too many events and it is a balancing act in trying to provide the best for all citizens.

Dennis Mitchell stated he would like to see the business have coupons as a way of attracting donations for the event. Steve Barton agreed it would be good to have one piece of paper with many coupons on it. He stated it would not be a large expense. Dennis Mitchell stated he would work on seeing who wants to participate in something like this for next year.

Councilmember Shuey stated he is curious if the weeknight concerts should be attempted again? Joe Medrano stated the weeknight concerts bring more people downtown. Steve Barton stated he was not sure having a VIP section was necessary. Mr. Medrano stated they were unsure how busy the concerts were going to be when they floated the concept of VIP seating.

Dennis Mitchell stated it was worth trying another year. Jim Diaz stated he is exploring concerts funding options.

3. Ideas for a healthier local business economy.

4. Other topics.

Mayor Geller asked the group how the Oktoberfest and Art and Wine Festival went? Steve Barton stated they are great events.

Joe Medrano asked if businesses are interested in exploring the idea of a synthetic ice rink to bring downtown for the whole day of the Tree Lighting, if it was sponsored and taken care of? He stated the cost for the weekend is about \$8,000.

Kent Ipsen stated a synthetic ice rink is good idea. Dennis Mitchell agreed but stated it would be more effective if it was open longer than one weekend.

Councilmember Stratford asked if there were other ideas to help businesses? What could the City do to help?

Mayor Geller stated if the business community joined together they could advertise more effectively. Steve Barton stated the only way to do that is to mandate participation and the CBCA is the logical place for this type of group to form. Jim Diaz suggested the businesses collaborate with the Oakhurst Country Club because already they have a business group which meets regularly.

Mayor Geller asked if anyone noticed the improvements to the Farmers' Market (PCFMA)?

CJ Fowlie stated after Farmers' Market he is picking up trash and he would like to be able to contract the person in charge. He did note there were improvements after the Assistant to the City Manager spoke to the PCFMA.

Mayor Geller stated the market seems successful and there has been positive feedback. Councilmember Pierce stated the PCFMA does have an email list and they are good at promoting the Clayton Farmers' Market.

Kent Ipsen asked if the bocce courts had been discussed recently. Mayor Geller stated funding has been problem. Kent Ipsen stated the difficult thing is the approved location by City Hall is detached from downtown.

Sue White asked if the produce store was still coming to the Flora Square building? Mayor Geller responded no.

Kent Ipsen asked if is the City in the position to buy the Clayton Community Church property? Mayor Geller stated he could not comment.

Shane Carley, Associate Head Coach for San Francisco City baseball team, stated he is trying to bring a summer collegiate baseball league to Clayton. He stated he and his investors are looking at Field 1 of the Clayton Community Park; he stated they would like to put up a fence and hold 30-33 home games in Clayton. He stated on top of that he would like to start new leagues. He stated the Clayton Wranglers would be the non-profit and would sell programs, shirts and tickets to spectators. He stated he has his own Limited Liability Corporation that would pay for the upgrades. Councilmembers recommended he work with staff on such details.

Councilmember Shuey asked if holding this meeting one time per year is sufficient? Tamara Steiner stated she would be really interested in knowing why not all businesses are participating in this meeting? She stated she and Steve Barton would try to find out why more people were not attending the meeting.

4. **CLOSED SESSION-** 10:48 a.m. On call by Mayor Geller the Council moved into Closed Session for the following purpose:

- (a) *Government Code Section 54957(b) (1).*
[Annual] Performance Evaluation of Public Employee
Title: City Manager

Report out from Closed Session: Mayor Geller indicated the City Council met to discuss the purpose of Closed Session and that no reportable action was taken.

6. **ADJOURNMENT**– On call by Mayor Geller the meeting adjourned at 11:45 a.m.

Respectfully submitted,

Laci J. Jackson, City Clerk

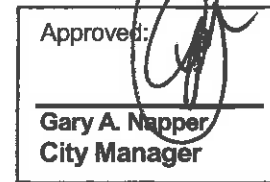
APPROVED BY CLAYTON CITY COUNCIL

Howard Geller, Mayor



Agenda Date 11/5/2013

Agenda Item: 6b



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MERRY PELLETIER, FINANCE MANAGER

DATE: 11/5/2013

SUBJECT: INVOICE SUMMARY

RECOMMENDATION:

Approve the following Invoices:

11/1/2013 Cash Requirements Report

\$278,276.82

Total:

\$278,276.82

Attachments:

Cash Requirements Report dated 11/1/2013 (8 pages)

Cintas Fire Protection

City of Clayton

Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Cintas Fire Protection	11/5/2013	9/27/2013	OF44583019	Inspections - EH	\$123.00	\$0.00		\$123.00
Cintas Fire Protection	11/5/2013	9/27/2013	OF44583018	Inspections - Library	\$449.44	\$0.00		\$449.44
Cintas Fire Protection	11/5/2013	9/27/2013	OF44582910	Inspection - City Hall	\$455.60	\$0.00		\$455.60
				<i>Totals for Cintas Fire Protection:</i>	<i>\$1,028.04</i>	<i>\$0.00</i>		<i>\$1,028.04</i>
City of Concord								
City of Concord	11/5/2013	10/18/2013	34933	Live Scan Services	\$96.00	\$0.00		\$96.00
City of Concord	11/5/2013	10/18/2013	34957	Printing Services - 2,000 regular #10 envelope	\$106.00	\$0.00		\$106.00
City of Concord	11/5/2013	10/18/2013	34931	Dispatch Services	\$14,165.00	\$0.00		\$14,165.00
City of Concord	11/5/2013	10/18/2013	34981	Vehicle Labor/Maintenance	\$2,430.17	\$0.00		\$2,430.17
City of Concord	11/5/2013	10/18/2013	34982	Vehicle Labor/Maintenance	\$1,601.66	\$0.00		\$1,601.66
				<i>Totals for City of Concord:</i>	<i>\$18,398.83</i>	<i>\$0.00</i>		<i>\$18,398.83</i>
Comcast								
Comcast	11/5/2013	10/5/2013	10/10-11/9	High speed internet	\$395.70	\$0.00		\$395.70
				<i>Totals for Comcast:</i>	<i>\$395.70</i>	<i>\$0.00</i>		<i>\$395.70</i>
Concord Garden Equipment								
Concord Garden Equipment	11/5/2013	9/10/2013	462711	supplies	\$233.52	\$0.00		\$233.52
Concord Garden Equipment	11/5/2013	6/7/2013	455129	supplies	\$152.33	\$0.00		\$152.33
Concord Garden Equipment	11/5/2013	7/1/2013	457295	supplies/service	\$271.08	\$0.00		\$271.08
Concord Garden Equipment	11/5/2013	7/1/2013	457296	supplies/service	\$93.61	\$0.00		\$93.61
Concord Garden Equipment	11/5/2013	7/1/2013	457297	supplies/service	\$51.00	\$0.00		\$51.00
Concord Garden Equipment	11/5/2013	7/2/2013	457385	supplies/service	\$637.10	\$0.00		\$637.10
Concord Garden Equipment	11/5/2013	7/2/2013	457385	supplies/service	\$637.11	\$0.00		\$637.11
Concord Garden Equipment	11/5/2013	7/16/2013	458428	supplies/service	\$189.60	\$0.00		\$189.60
Concord Garden Equipment	11/5/2013	7/16/2013	458430	supplies/service	\$16.59	\$0.00		\$16.59
Concord Garden Equipment	11/5/2013	7/31/2013	459656	supplies/service	\$395.70	\$0.00		\$395.70
Concord Garden Equipment	11/5/2013	7/31/2013	459657	supplies/service	\$444.74	\$0.00		\$444.74
Concord Garden Equipment	11/5/2013	7/31/2013	459657	supplies/service	\$444.75	\$0.00		\$444.75
Concord Garden Equipment	11/5/2013	8/30/2013	462094	supplies/service	\$828.34	\$0.00		\$828.34
				<i>Totals for Concord Garden Equipment:</i>	<i>\$4,395.47</i>	<i>\$0.00</i>		<i>\$4,395.47</i>
Concord Trailer World & Sport								
Concord Trailer World & Sport	11/5/2013	9/30/2013	771419	service	\$902.53	\$0.00		\$902.53
				<i>Totals for Concord Trailer World & Sport:</i>	<i>\$902.53</i>	<i>\$0.00</i>		<i>\$902.53</i>
Contra Costa County Sheriff - Forensic Svc Div (Lab)								
Contra Costa County Sheriff - Forensic S	11/5/2013	10/15/2013	CLPD-1309	Toxicology/Testing September 2013	\$1,730.00	\$0.00		\$1,730.00
Contra Costa County Sheriff - Forensic S	11/5/2013	10/8/2013	CLPD-313	Blood withdrawal services July-September 20	\$745.50	\$0.00		\$745.50
				<i>Totals for Contra Costa County Sheriff - Forensic Svc Div (Lab):</i>	<i>\$2,475.50</i>	<i>\$0.00</i>		<i>\$2,475.50</i>
Contra Costa County Tax Collector								
Contra Costa County Tax Collector	11/5/2013	9/9/2013	13 118069 2	Property Taxes 2013-2014 Parcel # 118-560-0	\$2,690.62	\$0.00		\$2,690.62
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-370-070	\$67.00	\$0.00		\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-370-076	\$67.00	\$0.00		\$67.00

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount Expires On	Net Amount Due
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-370-077	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-370-115	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-370-118	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-490-026	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-520-009	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	118-540-066	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-011-002	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-011-002	\$67.00	\$0.00	\$67.00
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-015-007	\$250.56	\$0.00	\$250.56
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-016-008	\$1,252.88	\$0.00	\$1,252.88
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-050-009	\$250.56	\$0.00	\$250.56
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-050-009	\$223.04	\$0.00	\$223.04
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-050-034	\$501.14	\$0.00	\$501.14
Contra Costa County Tax Collector	11/5/2013	9/9/2013	2013/2014	119-050-034	\$223.04	\$0.00	\$223.04
Totals for Contra Costa County Tax Collector:					\$6,245.40	\$0.00	\$6,245.40
Contra Costa Television							
Contra Costa Television	11/5/2013	7/18/2012	1854	Shared government channel semiannual pmt 2	\$5,232.01	\$0.00	\$5,232.01
Contra Costa Television	11/5/2013	1/30/2012	1809	Shared Gov't Channel, pmts 1/2, 2/2 3rd yr &	\$15,696.05	\$0.00	\$15,696.05
Totals for Contra Costa Television:					\$20,928.06	\$0.00	\$20,928.06
CR Fireline Inc							
CR Fireline Inc	11/5/2013	10/18/2013	97502	Annual Fire Sprinkler Insp. City Hall	\$375.00	\$0.00	\$375.00
CR Fireline Inc	11/5/2013	10/18/2013	97503	Annual Fire Sprinkler Insp. Library	\$375.00	\$0.00	\$375.00
CR Fireline Inc	11/5/2013	10/18/2013	97501	Annual Sprinkler Insp. Endeavor Hall	\$375.00	\$0.00	\$375.00
Totals for CR Fireline Inc:					\$1,125.00	\$0.00	\$1,125.00
Cropper Accountancy Corp							
Cropper Accountancy Corp	11/5/2013	9/30/2013	787	Second Progress Billing - audit ending June 3	\$14,135.00	\$0.00	\$14,135.00
Totals for Cropper Accountancy Corp:					\$14,135.00	\$0.00	\$14,135.00
Charles & Jacqueline Del Monte							
Charles & Jacqueline Del Monte	11/5/2013	9/5/2013	0059	Deposit refund 943 Douglas Ct	\$395.38	\$0.00	\$395.38
Totals for Charles & Jacqueline Del Monte:					\$395.38	\$0.00	\$395.38
Environtech Enterprises							
Environtech Enterprises	11/5/2013	10/10/2013	A001B-3B-13	Mustard and yellow star thistle abatement thru	\$7,000.00	\$0.00	\$7,000.00
Environtech Enterprises	11/5/2013	10/10/2013	A001A3A-13	Thistle abatement thru September 2013	\$2,000.00	\$0.00	\$2,000.00
Totals for Environtech Enterprises:					\$9,000.00	\$0.00	\$9,000.00
Globalstar LLC							
Globalstar LLC	11/5/2013	10/16/2013	100000005139659	service 9/16-10/15/13	\$54.65	\$0.00	\$54.65
Totals for Globalstar LLC:					\$54.65	\$0.00	\$54.65
Goldfarb & Lipman							
Goldfarb & Lipman	11/5/2013	10/17/2013	109914	Current Fees through 9/30/13	\$49.00	\$0.00	\$49.00

City of Clayton

Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount Expires On	Net Amount Due
Graybar Electric Co, Inc				<i>Totals for Goldfarb & Lipman:</i>	<i>\$49.00</i>	<i>\$0.00</i>	<i>\$49.00</i>
Graybar Electric Co, Inc	11/5/2013	9/27/2013	968844501	2- DS36-750A260-10D-FP-FBC-AB	\$3,741.01	\$0.00	\$3,741.01
				<i>Totals for Graybar Electric Co, Inc:</i>	<i>\$3,741.01</i>	<i>\$0.00</i>	<i>\$3,741.01</i>
Hammons Supply Company							
Hammons Supply Company	11/5/2013	9/27/2013	80013	supplies - City Hall	\$125.51	\$0.00	\$125.51
Hammons Supply Company	11/5/2013	9/27/2013	80007	supplies - Library	\$295.78	\$0.00	\$295.78
Hammons Supply Company	11/5/2013	9/27/2013	80006	supplies - Grove Park	\$268.03	\$0.00	\$268.03
Hammons Supply Company	11/5/2013	10/4/2013	80099	supplies - Library	\$51.62	\$0.00	\$51.62
Hammons Supply Company	11/5/2013	9/30/2013	80029	supplies - Library	\$167.87	\$0.00	\$167.87
Hammons Supply Company	11/5/2013	9/30/2013	80048	supplies - EH	\$73.92	\$0.00	\$73.92
Hammons Supply Company	11/5/2013	10/24/2013	80459	supplies EH	\$206.25	\$0.00	\$206.25
				<i>Totals for Hammons Supply Company:</i>	<i>\$1,188.98</i>	<i>\$0.00</i>	<i>\$1,188.98</i>
HUB Inter of CA Ins Svc							
HUB Inter of CA Ins Svc	11/5/2013	10/24/2013	September-October 1	Insurance - Grau, Clayton Theatre Co, Inc	\$654.48	\$0.00	\$654.48
				<i>Totals for HUB Inter of CA Ins Svc:</i>	<i>\$654.48</i>	<i>\$0.00</i>	<i>\$654.48</i>
ICMA Retirement Corporation							
ICMA Retirement Corporation	11/5/2013	10/3/2013	13344	Annual Fee (Qty) 10/1/13-12/31/13	\$125.00	\$0.00	\$125.00
				<i>Totals for ICMA Retirement Corporation:</i>	<i>\$125.00</i>	<i>\$0.00</i>	<i>\$125.00</i>
J & R Floor Services							
J & R Floor Services	11/5/2013	11/1/2013	Ten	October Billing	\$4,880.00	\$0.00	\$4,880.00
				<i>Totals for J & R Floor Services:</i>	<i>\$4,880.00</i>	<i>\$0.00</i>	<i>\$4,880.00</i>
Jarvis Fay Doporto & Gibson, LLP							
Jarvis Fay Doporto & Gibson, LLP	11/5/2013	10/10/2013	5732	PTAF for September 2013	\$35.44	\$0.00	\$35.44
Jarvis Fay Doporto & Gibson, LLP	11/5/2013	10/10/2013	5716	Chevron Prop. Tax Refund Dispute Septembe	\$13.52	\$0.00	\$13.52
				<i>Totals for Jarvis Fay Doporto & Gibson, LLP:</i>	<i>\$48.96</i>	<i>\$0.00</i>	<i>\$48.96</i>
John Deere Landscapes Inc							
John Deere Landscapes Inc	11/5/2013	9/19/2013	66131577	supplies - Order # 73402843	\$347.72	\$0.00	\$347.72
John Deere Landscapes Inc	11/5/2013	9/23/2013	66160457	supplies - Order # 73402806	\$1,588.91	\$0.00	\$1,588.91
John Deere Landscapes Inc	11/5/2013	10/23/2013	66500705	order # 73860151	\$139.89	\$0.00	\$139.89
				<i>Totals for John Deere Landscapes Inc:</i>	<i>\$2,076.52</i>	<i>\$0.00</i>	<i>\$2,076.52</i>
LarryLogic Productions							
LarryLogic Productions	11/5/2013	10/17/2013	1367	City Council Meeting 10/15/13	\$325.00	\$0.00	\$325.00
				<i>Totals for LarryLogic Productions:</i>	<i>\$325.00</i>	<i>\$0.00</i>	<i>\$325.00</i>
Marken Mechanical Services Inc							
Marken Mechanical Services Inc	11/5/2013	10/2/2013	413-1151-10	Maintenance City Hall October 2013	\$150.00	\$0.00	\$150.00
Marken Mechanical Services Inc	11/5/2013	9/18/2013	113-17710	Service Call - EH - AC Repair	\$2,225.92	\$0.00	\$2,225.92
Marken Mechanical Services Inc	11/5/2013	10/2/2013	413-1152-10	Maintenance Library October 2013	\$150.00	\$0.00	\$150.00

City of Clayton Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
MB Contract Furniture, Inc				<i>Totals for Marken Mechanical Services Inc:</i>	\$2,525.92	\$0.00		\$2,525.92
MB Contract Furniture, Inc	11/5/2013	9/30/2013	CLAY14989	20 chairs, 4 black carts for Endeavor Hall	\$4,319.80	\$0.00		\$4,319.80
				<i>Totals for MB Contract Furniture, Inc:</i>	\$4,319.80	\$0.00		\$4,319.80
Mark Morris								
Mark Morris	11/5/2013	10/18/2013	025287	Deposit refund - CAP 0082 - 10 Mt. Shasta P	\$1,952.27	\$0.00		\$1,952.27
				<i>Totals for Mark Morris:</i>	\$1,952.27	\$0.00		\$1,952.27
MPA								
MPA	11/5/2013	8/19/2013	B1303-B	Installment #3 - Workers' Comp Premium 2011	\$16,535.75	\$0.00		\$16,535.75
MPA	11/5/2013	10/17/2013	November	LTD/Life November 2013	\$1,406.16	\$0.00		\$1,406.16
				<i>Totals for MPA:</i>	\$17,941.91	\$0.00		\$17,941.91
NSP3								
NSP3	11/5/2013	9/27/2013	14530	Parts for ZZPM3900	\$951.22	\$0.00		\$951.22
				<i>Totals for NSP3:</i>	\$951.22	\$0.00		\$951.22
Pacific Telemanagement Svc								
Pacific Telemanagement Svc	11/5/2013	10/23/2013	584003	Courtyard Pay Phone November 2013	\$73.00	\$0.00		\$73.00
				<i>Totals for Pacific Telemanagement Svc:</i>	\$73.00	\$0.00		\$73.00
PERMCO, Inc.								
PERMCO, Inc.	11/5/2013	10/25/2013	10095	Retainer - General Services	\$5,055.91	\$0.00		\$5,055.91
PERMCO, Inc.	11/5/2013	10/25/2013	10096	General Stormwater - Reviewing O&M Inspe	\$434.63	\$0.00		\$434.63
PERMCO, Inc.	11/5/2013	10/25/2013	10097	Diablo Pointe Construction Inspection	\$705.50	\$0.00		\$705.50
PERMCO, Inc.	11/5/2013	10/25/2013	10098	CAP Inspection - Initial & Final CAP 0093	\$83.00	\$0.00		\$83.00
PERMCO, Inc.	11/5/2013	10/25/2013	10099	2013 Pavement Rehabilitation Project	\$247.81	\$0.00		\$247.81
PERMCO, Inc.	11/5/2013	10/25/2013	10100	Diablo View Middle School Safety Signage	\$689.50	\$0.00		\$689.50
PERMCO, Inc.	11/5/2013	10/25/2013	10101	Oak Creek Canyon	\$150.00	\$0.00		\$150.00
				<i>Totals for PERMCO, Inc.:</i>	\$7,366.35	\$0.00		\$7,366.35
PG&E								
PG&E	11/5/2013	10/15/2013	101513	Service 9/16/13-10/14/13 - 7293447797-6	\$18,224.17	\$0.00		\$18,224.17
PG&E	11/5/2013	10/16/2013	101613	Gas/Electricity 9/17/13-10/15/13	\$3,940.94	\$0.00		\$3,940.94
				<i>Totals for PG&E:</i>	\$22,165.11	\$0.00		\$22,165.11
Pinnacle Construction Services, Inc								
Pinnacle Construction Services, Inc	11/5/2013	9/27/2013	1782	Diablo Estates Management October 2013	\$4,099.00	\$0.00		\$4,099.00
				<i>Totals for Pinnacle Construction Services, Inc:</i>	\$4,099.00	\$0.00		\$4,099.00
PMC (Planning)								
PMC (Planning)	11/5/2013	10/10/2013	38529	Clayton Housing Element Update August & S	\$3,325.00	\$0.00		\$3,325.00
				<i>Totals for PMC (Planning):</i>	\$3,325.00	\$0.00		\$3,325.00
Raney Planning & Management, Inc.								

City of Clayton

Cash Requirements Report

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount Expires On	Net Amount Due
Raney Planning & Management, Inc.	11/5/2013	10/14/2013	1322E-3	Labor - September 2013	\$16,368.60	\$0.00	\$16,368.60
				<i>Totals for Raney Planning & Management, Inc.:</i>	<i>\$16,368.60</i>	<i>\$0.00</i>	<i>\$16,368.60</i>
Red Cloud Wireless Voice & Data							
Red Cloud Wireless Voice & Data	11/5/2013	10/23/2013	31433	service report #001	\$95.00	\$0.00	\$95.00
				<i>Totals for Red Cloud Wireless Voice & Data:</i>	<i>\$95.00</i>	<i>\$0.00</i>	<i>\$95.00</i>
Riso Products of Sacramento							
Riso Products of Sacramento	11/5/2013	10/18/2013	116250	copier 10/18/13-11/17/13	\$94.86	\$0.00	\$94.86
				<i>Totals for Riso Products of Sacramento:</i>	<i>\$94.86</i>	<i>\$0.00</i>	<i>\$94.86</i>
Rock & Waterfall Co							
Rock & Waterfall Co	11/5/2013	9/28/2013	113-80	waterfall maintenance	\$650.00	\$0.00	\$650.00
				<i>Totals for Rock & Waterfall Co:</i>	<i>\$650.00</i>	<i>\$0.00</i>	<i>\$650.00</i>
Sentry Electric LLC							
Sentry Electric LLC	11/5/2013	9/26/2013	27662A	P O # 2464	\$3,910.05	\$0.00	\$3,910.05
				<i>Totals for Sentry Electric LLC:</i>	<i>\$3,910.05</i>	<i>\$0.00</i>	<i>\$3,910.05</i>
Robert & Cristie Sheffield							
Robert & Cristie Sheffield	11/5/2013	10/18/2013	025275	Deposit Refund CAP 0074, 1074 Pebble Bea	\$500.00	\$0.00	\$500.00
				<i>Totals for Robert & Cristie Sheffield:</i>	<i>\$500.00</i>	<i>\$0.00</i>	<i>\$500.00</i>
SPRAYTEC (Sprayer Sales Co)							
SPRAYTEC (Sprayer Sales Co)	11/5/2013	10/9/2013	12036	monthly maintenance waste water treatment 9	\$225.00	\$0.00	\$225.00
				<i>Totals for SPRAYTEC (Sprayer Sales Co):</i>	<i>\$225.00</i>	<i>\$0.00</i>	<i>\$225.00</i>
Stericycle Inc							
Stericycle Inc	11/5/2013	11/1/2013	3002415872	Quarterly Service 11/2013-01/2014	\$246.11	\$0.00	\$246.11
				<i>Totals for Stericycle Inc:</i>	<i>\$246.11</i>	<i>\$0.00</i>	<i>\$246.11</i>
US Bank Corp Pymt System (Cal Card)							
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Advertising for Finance Manager	\$238.00	\$0.00	\$238.00
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Caution Tape	\$21.78	\$0.00	\$21.78
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Supplies	\$448.14	\$0.00	\$448.14
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Creative Support - Chair for Charlie	\$550.38	\$0.00	\$550.38
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Geoconsultants - well monitoring	\$3,093.00	\$0.00	\$3,093.00
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Central Storage - Rent	\$96.00	\$0.00	\$96.00
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	office supplies	\$59.30	\$0.00	\$59.30
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	stormwater supplies	\$396.78	\$0.00	\$396.78
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	library lighting	\$349.25	\$0.00	\$349.25
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	tables for EH	\$824.49	\$0.00	\$824.49
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	wasp spray	\$32.59	\$0.00	\$32.59
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Auto Zone - oil and grease	\$58.36	\$0.00	\$58.36
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	General Plumbing - faucets	\$637.45	\$0.00	\$637.45
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Vehicle fuel	\$824.18	\$0.00	\$824.18
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	radio batteries, phone supplies	\$211.64	\$0.00	\$211.64

City of Clayton

Cash Requirements Report

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)	11/5/2013	9/22/2013	Statement 9/22/13	East Bay Tire - 2 front tires F450(07)	\$866.53	\$0.00		\$866.53
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	landscape supplies, plants	\$769.76	\$0.00		\$769.76
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Landscaping fuel	\$1,258.80	\$0.00		\$1,258.80
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	supplies	\$91.16	\$0.00		\$91.16
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	office supplies	\$58.08	\$0.00		\$58.08
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	postage	\$6.11	\$0.00		\$6.11
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	Vehicle gas	\$3,186.21	\$0.00		\$3,186.21
US Bank Corp Pymt System (Cal Card)	11/5/2013	9/22/2013	Statement 9/22/13	car washes, supplies	\$134.04	\$0.00		\$134.04
				Totals for US Bank Corp Pymt System (Cal Card):	\$14,212.03	\$0.00		\$14,212.03
Warner Brothers Tree Service								
Warner Brothers Tree Service	11/5/2013	9/27/2013	10705	Regency Drive - Ailanthus Tree Pruning	\$450.00	\$0.00		\$450.00
Warner Brothers Tree Service	11/5/2013	9/27/2013	10702	Clayton Rd - Elevated Trees	\$450.00	\$0.00		\$450.00
Warner Brothers Tree Service	11/5/2013	9/27/2013	10703	Lydia Lane Trail - broken Eucalyptus limb, tr	\$900.00	\$0.00		\$900.00
Warner Brothers Tree Service	11/5/2013	9/27/2013	10704	Emergency call out - City Hall - broken limb L	\$300.00	\$0.00		\$300.00
				Totals for Warner Brothers Tree Service:	\$2,100.00	\$0.00		\$2,100.00
Western Exterminator								
Western Exterminator	11/5/2013	9/30/2013	1626756	September 2013	\$353.00	\$0.00		\$353.00
				Totals for Western Exterminator:	\$353.00	\$0.00		\$353.00
YP (Advertising)								
YP (Advertising)	11/5/2013	10/23/2013	Advertising	YP Advertising	\$84.00	\$0.00		\$84.00
				Totals for YP (Advertising):	\$84.00	\$0.00		\$84.00
				GRAND TOTALS:	\$278,276.82	\$0.00		\$278,276.82



Agenda Date: 11-5-13

Agenda Item: 6c

Approved:

Gary A. Napper
City Manager/Executive Director

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Laura Hoffmeister, Asst. to the City Manager

MEETING DATE: November 5, 2013

SUBJECT: Resolution approving and authorizing the City Manager to execute the Third Amendment to the Stormwater Utility Area Agreement [Commercial and Industrial Inspection Services]

RECOMMENDATION

Adopt Resolution No. ____ - 2013, approving and authorizing the City Manager to execute the Third Amendment to the Stormwater Utility Area Agreement between the Contra Costa Flood Control and Water Conservation District and the City of Clayton [Commercial and Industrial Inspection Services].

BACKGROUND

The City of Clayton was mandated by both the State and Federal laws to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the City's Stormwater discharges. These permits are issued for five-year increments by the SF Regional Water Quality Control Board, as required by the Federal Water Quality Act and the State law. The City participates and obtained its joint NPDES permit from the SF Regional Water Quality Control Board via the Contra Costa Clean Water Program whose participants include the cities within the County, the County and the Flood Control District. The City of Clayton has participated since its inception in 1993 (some sixteen years ago).

One of the NPDES requirements added to the permit issued in 1999, is to have an inspection program for commercial and industrial businesses and for illegal discharges. Additional requirements for commercial/ industrial business inspection and illegal discharges and prevention has been enhanced in subsequent permits issued by the SFRWCB including the most recently 5 year Municipal Regional Permit (MRP) which is the bay area wide NPDES requirements.

The City of Clayton has been participating jointly by contracting with the Flood Control District to serve as our agent to obtain inspection services via agreement from Central Sanitary District for commercial businesses within Clayton and some call out illicit discharge complaints, since 2000. The reason for using the Flood Control District is that the Sanitary Districts will not enter into numerous individual agreements with the jurisdictions, but will

enter into a single agreement with a single fiscal agent who in this case is the Flood Control District as they are authorized by the co-permittees (cities and County) to administer the Stormwater Utility Agreement and ERU revenue disbursements.

In July 2003 the City Council approved a First Amendment which was executed in April 6, 2004, extended the services through July 2009. In November 2009 a second amendment was approved and executed April 13, 2010, wherein East Bay Municipal Utility District was included for doing inspections for various West County cities. Recently EBMUD has terminated this activity, and the West County cities will be using West Contra Costa Sanitary District for the required inspection services. Thus there is a need to establish this change with a new agreement for commercial/industrial inspection services, which is technically done as the Third Amendment to the Stormwater Utility Agreement. Additionally the Inspection Agreement has been updated to reflect clarifications and changes to replace EBMUD with West Contra Costa Sanitary.

Staff supports approval of the 3rd Amendment to the Stormwater Utility Agreement. No changes or impacts to the Central Sans providing services for the City of Clayton will result in this amendment. The 3rd Amendment to the Stormwater Agreement to allow for Commercial and Industrial Inspection Services, has been reviewed and approved as to form by the Contra Costa Cities/County Attorneys' Association NPDES sub-committee, and County Legal Counsel, and the respective Sanitary Districts legal counsel.

FISCAL IMPACT

None. There is no change to the costs calculation and methodology with this agreement.

CONCLUSION

To continue to be in compliance with our NPDES Permit requirements, the City must adopt the Resolution amending the SUA agreement to allow the change from EBMUD to West Contra Costa Sanitary District to administer the Commercial/Industrial Inspection Services agreement for those cities that use their services.

After all participating cities have approved the amendment Flood Control District will execute the necessary Restated and Amended Agreement for services (Exhibit B) with the Sanitary Districts.

Attachments:

Resolution No. ____ -2009, Authorizing Execution of 3rd Amendment to Stormwater Utility Area Agreement

Exhibit A: 3rd Amendment to SUAA between CCC Flood Control District and Water Conservation District and the City of Clayton for Commercial/Industrial Inspection Services

Exhibit B: Amended and Restated Inspection Agreement for Commercial/Industrial Inspection Services

RESOLUTION NO. ____ - 2013

**RESOLUTION APPROVING THIRD AMENDMENT
TO STORMWATER UTILITY AREA AGREEMENT
BETWEEN
CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT AND
THE CITY OF CLAYTON**

[COMMERCIAL/INDUSTRIAL STORMWATER INSPECTION SERVICES]

WHEREAS, the County of Contra Costa, the Contra Costa County Flood Control and Water Conservation District ("DISTRICT") and nineteen (19) cities and towns in Contra Costa County have joined to form the Contra Costa Clean Water Program (the "PROGRAM"); and

WHEREAS, the members of the PROGRAM hold joint National Pollutant Discharge Elimination System ("NPDES") Stormwater Permits (Nos. CAS612008 and CAS083313) issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards, respectively; and

WHEREAS, the NPDES Permits require the inspection of industrial and commercial facilities and the control of illicit discharge activities; and

WHEREAS, the DISTRICT and the City of Clayton ("CITY") entered into an agreement entitled "STORMWATER UTILITY AREA AGREEMENT BETWEEN THE CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND THE CITY OF CLAYTON", dated April 6, 2004 (as amended, the "SUAA"), which provides for the imposition, collection, and administration of Stormwater Utility Assessments for the funding of NPDES Permit activities; and

WHEREAS, CITY agrees that the public good is best served by implementing a joint inspection program to encompass inspection activities and illicit discharge control activities, rather than establishing new, separate inspection programs for each municipality; and

WHEREAS, on April 13, 2010 CITY executed a Second Amendment to the SUAA authorizing the DISTRICT to enter into the Agreement Among the Contra Costa County Flood Control and Water Conservation District, the Central Contra Costa Sanitary District, the Delta Diablo Sanitation District, and the East Bay Municipal Utility District Regarding the Contra Costa Clean Water Program's Inspection Activities, dated October 26, 2009 (the "INSPECTION AGREEMENT") on its behalf, for those agencies to perform joint inspection activities and illicit discharge control activities on behalf of CITY and fourteen other municipalities in Contra Costa County; and

WHEREAS, it is in the interest of CITY to continue participating in the joint inspection program; and

WHEREAS, the INSPECTION AGREEMENT has recently been amended and restated to clarify the ongoing nature of the agreement term (unless terminated by either party), clarify the procedure for formal enforcement actions and indemnification provisions; and

WHEREAS, it is necessary to amend the SUAA to provide the DISTRICT with authority to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013, by and among the DISTRICT, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUHNCIL OF THE CITY OF CLAYTON AS FOLLOWS:

1. Approve and authorize the City Manager to execute the Third Amendment to the SUAA, a copy of which is attached to this Resolution Exhibit A.
2. Approve and authorize the District to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013, by and among the DISTRICT, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District, a copy of which is attached to this Resolution as Exhibit B.
3. This Resolution shall become effective immediately upon its passage and adoption.
4. Three (3) certified copy of this Resolution and three (3) signed originals of the Third Amendment to the SUAA shall be promptly forwarded to the Contra Costa Clean Water Program.

Adopted by the City Council of the City of Clayton at its regular of said Council held on November 5, 2013 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Julie K. Pierce, Mayor

ATTEST:

Laci J. Kolc, City Clerk

THIRD AMENDMENT TO STORMWATER UTILITY AREA AGREEMENT (CITY OF CLAYTON)

1. PARTIES

This Third Amendment to Stormwater Utility Area Agreement, is entered into as of June 30, 2013 (this "Third Amendment"), between the City of Clayton, a municipal corporation of the State of California (hereinafter "City"), and the Contra Costa County Flood Control and Water Conservation District, a flood control district existing under the laws of the State of California (hereinafter "District"). The parties to this Third Amendment mutually agree and promise as follows.

2. PURPOSE

This Third Amendment amends the Stormwater Utility Area Agreement between the Contra Costa County Flood Control And Water Conservation District and the City of Clayton (as amended, the "SUAA"), entered into on April 6, 2004.

3. AMENDMENT

The SUAA is hereby amended as follows:

- a. Section 7 (City Use of Revenue). The third paragraph of Section 7 of the SUAA is deleted in its entirety and replaced it with the following:

"City authorizes District, on its behalf, to execute the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013 (the "Amended and Restated Inspection Agreement") among District, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, and West County Wastewater District attached hereto as Exhibit A, to implement an industrial and commercial inspection activities and illicit discharge control inspection activities program (hereinafter the "Inspection Program"), and any amendments or restatement of the Amended and Restated Inspection Agreement that may be required from time to time to implement the Inspection Program."

- b. Exhibit B (Estimate of Inspections and Share of Inspection Costs). The SUAA is hereby amended by deleting the existing Exhibit B attached to the SUAA and replacing it with the Exhibit B (Fiscal Year 2013/14 Stormwater Inspection Program by City) attached to this Third Amendment.
- c. Section 15 (Inspection Program Share of Costs). A new Section 15 (Inspection Program Share of Costs) is hereby added to the SUAA as follows:

Exhibit A to Resolution

- “15. INSPECTION PROGRAM SHARE OF COSTS: “City’s estimated share of the cost for the Inspection Program will be based on the projected number of inspections shown in Exhibit B attached to this Agreement. No later than May 1 of each year, City and District will update Exhibit B to this Agreement by agreeing to the Inspection Program activities and budget for the subsequent year without further amendment of this Agreement.”

4. REMAINING PROVISIONS

Other than the amendments made by this Third Amendment, the SUAA, as previously amended, remains in full force and effect.

[Signatures appear on following pages.]

CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

CITY OF CLAYTON

By: _____
Chair, Board of Supervisors

Gary Napper, City Manager

ATTEST:
David Twa, Clerk of the Board of
Supervisors and County Administrator

ATTEST:

By: _____
Name: _____
Title: _____

Laci J. Kolc,

Recommended for Approval:

Recommended for Approval:

Julia R. Bueren, Chief Engineer, Contra
Costa County Flood Control and Water
Conservation District

Laura Hoffmeister, Asst. to the City Manager

Approved as to Form:
Sharon L. Anderson, County Counsel

Approved as to Form:

By: _____
Name: _____
Title: Deputy County Counsel

Malathy Subramanian, City Attorney

AMENDED AND RESTATED CONTRA COSTA CLEAN WATER PROGRAM INSPECTION ACTIVITIES AGREEMENT

This Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement (this "Agreement"), dated June 30, 2013 (the "Effective Date"), is by and among Contra Costa County Flood Control and Water Conservation District (the "District"), Central Contra Costa Sanitary District ("CCCSD"); Delta Diablo Sanitation District ("DDSD") and, West County Wastewater District ("WCWD", and together with CCCSD and DDSD, the "Agencies," and each separately, an "Agency").

RECITALS

WHEREAS, the County of Contra Costa ("County"), the District, and the 19 incorporated cities and towns in the County have joined to form the Contra Costa Clean Water Program (the "Program"), pursuant to the Contra Costa Clean Water Program Agreement (2010-2025), dated July 1, 2010 (the "Program Agreement"), among the County, the District, Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon and Walnut Creek (the "Program Members"); and

WHEREAS, the District and CCCSD, DDSD and East Bay Municipal Utility District previously entered into that certain Agreement Among the Contra Costa County Flood Control and Water Conservation District (on behalf of The Contra Costa Clean Water Program), the Central Contra Costa Sanitary District, the Delta Diablo Sanitation District, and the East Bay Municipal Utility District Regarding the Contra Costa Clean Water Program's Inspection Activities, dated October 26, 2009 (the "Inspection Agreement"); and

WHEREAS, the District and the Agencies desire to revise certain provisions of the Inspection Agreement, including replacing EBMUD with WCWD, by amending and restating the Inspection Agreement; and

WHEREAS, the California Regional Water Quality Control Board has issued Central Valley Region National Pollutant Discharge Elimination System ("NPDES") Stormwater Permit No. CAS083313, and San Francisco Bay Region NPDES Permit No. CAS612008 (together, the "NPDES Permits"), governing waste discharge requirements and stormwater runoff for Program Members; and

WHEREAS, the NPDES Permits contain components related to inspection activities at industrial and commercial facilities (Provision C.4.) and illicit discharge control activities (Provision C.5.); and

WHEREAS, the Agencies wish to provide services to the Participating Municipalities (as defined in Section 2 below) for the inspection activities and illicit discharge control activities, as part of the implementation of the NPDES Permits; and

Exhibit A to 3RD Amendment
Exhibit B to Resolution

WHEREAS, the NPDES Permits identify long-term goals of: eliminating non-stormwater discharges into municipal storm drains and creeks; conducting stormwater inspections of industrial and commercial facilities; controlling illicit discharges by conducting field surveys of the storm drainage conveyance system and identifying and eliminating the sources of non-stormwater discharges; and eliminating illicit connections and discharges resulting from inappropriate or illegal processes, activities or housekeeping practices; and

WHEREAS, the Agencies and the District desire to modify the Agencies' existing inspection programs to encompass a stormwater illicit discharge elimination program, rather than establishing new, separate inspection programs to effect the goals of this Agreement; and

WHEREAS, the Participating Municipalities have by contract authorized the District to enter into this Agreement on their behalf.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the parties to this Agreement agree as follows:

1. Term; Termination.

(a) Term. The term of this Agreement is from the Effective Date of this Agreement until it is terminated pursuant to Section 2 (Participating Municipalities) below.

(b) Termination.

(i) Agency Termination. Any Agency may terminate its obligations under this Agreement at its sole discretion by giving written notice to the District, each of the other Agencies, and each Participating Municipality to which it provides Inspection Activities services under this Agreement at least 180 days prior to the effective date of the termination.

(ii) District Termination. The District may terminate this Agreement, at its sole discretion, upon giving all Agencies and Participating Municipalities at least 180 days written notice. The District may terminate a Participating Municipality from receiving services pursuant to this Agreement if a Participating Municipality breaches its obligations under its Stormwater Utility Area Agreement with the District.

(iii) Participating Municipality Termination. Any Participating Municipality may stop receiving Inspection Activities pursuant to this Agreement, at its sole discretion, upon giving the District and each of the Agencies at least 90 days written notice. In the event a Participating

Municipality stops receiving Inspection Activities under this Agreement, the District shall, as of the effective date of the termination, replace Exhibit A (Inspection Agencies And Participating Municipalities) attached hereto and incorporated herein by reference, with a new Exhibit A, dated the date of its effectiveness, and provide a copy of the new Exhibit A to each of the Agencies.

(iv) Mutual Termination. This Agreement may be terminated by mutual written agreement of the District, all of the Agencies, and all of the Participating Municipalities.

2. Participating Municipalities.

(a) Stormwater Utility Area Agreements. The cities and towns listed on Exhibit A attached hereto (the "Participating Municipalities") have each executed a separate Stormwater Utility Area Agreement with the District that, among other things, authorizes the District to enter into this Agreement on behalf of the particular Participating Municipality, and provides for the invoicing and payment of Inspection Activities costs by the Participating Municipality. The Participating Municipalities are not parties to this Agreement but are intended third-party beneficiaries of this Agreement.

(b) Addition of Participating Municipalities. If a Program Member that is not a Participating Municipality desires to become a Participating Municipality and receive Inspection Activities services pursuant to this Agreement, the District and the Agencies shall execute an amendment to this Agreement in the form of Exhibit B attached hereto and incorporated herein, and the Program Member desiring to become a Participating Municipality shall execute a Stormwater Utility Area Agreement with the District that authorizes the District to enter into this Agreement on behalf of the Participating Municipality, contains an indemnity required by Section 8(c) (Participating Municipality Indemnities) below, and provides for the invoicing and payment of Inspection Activities costs by the Participating Municipality, in form and substance satisfactory to the District.

3. Responsibilities of the Agencies. Each Agency will perform the following services (collectively, the "Inspection Activities") for the respective Participating Municipality set forth on Exhibit A (Inspection Agencies And Participating Municipalities):

(a) Implement stormwater inspection activities and illicit discharge control inspection activities, subject to the direction of the District, and to bill the costs of the Inspection Activities to the District;

(b) Perform scheduled and other inspections and investigations of industrial and commercial facilities and the exterior of residential properties to determine compliance with federal, state and local laws and regulations related

to stormwater discharge. Inspections may have an educational component, as directed by the District. The locations and frequency of an inspection, investigation, or educational efforts shall be at the direction of the District and shall take place between 7:30 a.m. and 4:00 p.m. Pacific Standard Time, Monday through Friday, excluding holidays ("Normal Working Hours");

(c) Perform inspections, investigations and educational efforts described in Section 3(b) above outside of Normal Working Hours if mutually agreed to by the District, the particular Participating Municipality, and the performing Agency;

(d) Prepare inspection and investigation reports;

(e) Issue notices of violation, warning notices and compliance orders to commercial and industrial site operators on behalf of the Participating Municipalities where violations and potential violations occur, all to the extent authority to issue such notices and orders has been lawfully delegated by the Participating Municipalities to the Agencies, in connection with inspections and investigations. The Agencies shall develop a standardized approach to recommending and documenting formal enforcement actions for recurring violations at an inspected location. The Agencies, at the direction of the Participating Municipalities, shall also refer violations and potential violations to appropriate enforcing entities, such as the District Attorney. The Agencies shall notify the appropriate Participating Municipality of the issuance of any warning notice or notice of violation issued by the Agencies, by email, by the close of the business day following issuance;

(f) Assist in formal enforcement actions undertaken by a Participating Municipality, as permitted under the Participating Municipality's enforcement authority and to the extent specifically requested by the Participating Municipality. Activities undertaken by Agencies under this provision include but are not limited to documentation of violations, preparation of documents for use in complaints and at hearings, and assistance in hearing preparation and presentation, including provision of testimony as requested;

(g) Keep records regarding Inspection Activities and investigations accomplished. The Agencies shall retain these records through the term of this Agreement as evidence of Participating Municipality compliance with its NPDES Permit. These records shall become property of the respective Participating Municipality upon termination of this Agreement;

(h) Train, supervise and manage staff of the Agencies necessary to implement the Inspection Activities in a consistent manner;

(i) Provide advice and comments to the District regarding the District's preparation of educational material for distribution to industrial and commercial

facilities and the public. The Agencies shall also provide advice and comments to the District regarding the Contra Costa County Green Business Program, as requested by the District;

(j) Provide comments to the District regarding ordinances necessary to implement the Inspection Activities;

(k) Purchase, operate and maintain all equipment necessary to implement the Inspection Activities, at the cost of the Agencies;

(l) Provide quarterly Inspection Activities reports to the District submitted with the quarterly invoices specified in Section 3(n) below. The final report of the fiscal year (fourth quarter) shall include a status report to each Participating Municipality of all warning notices, notices of violation, and enforcement activities initiated by the Agencies by business name. The final report shall also include a hard or electronic copy of the Agencies' databases of commercial/industrial facilities from their inspections lists grouped by Participating Municipality jurisdiction;

(m) Utilize reasonable efforts to assure that Inspection Activities are implemented by the Agencies in a uniform manner;

(n) Provide quarterly invoices to the District for work performed under this Agreement. Due dates for each quarterly invoice during the fiscal year are as follows: (i) First Quarter - October 15; (ii) Second Quarter - January 15; (iii) Third Quarter - April 15; and (v) Fourth Quarter - July 15 of each fiscal year; and

(o) Provide the District and Participating Municipalities updated inspector rosters that include cellular phone numbers with their assigned service area as needed.

4. Responsibilities of the District. The District will perform the following obligations:

(a) Recommend that the Participating Municipalities draft and adopt such ordinances and laws as are necessary to effectuate the Inspection Activities, including delegation of necessary authority to the Agencies;

(b) Authorize and prioritize inspections and investigations, with direction from the Participating Municipalities and Agencies;

(c) Provide timely input on the scope of the following fiscal year Inspection Activities during budget discussions and timely approval of the Agencies' fiscal year Inspection Activities stormwater program budgets;

(d) Recommend that the appropriate Participating Municipality initiate actions against stormwater permit violators except to the extent enforcement has been initiated on behalf of Participating Municipalities by the Agencies, pursuant to lawfully delegated authority;

(e) Provide educational materials for distribution to industrial and commercial facilities and the public;

(f) Provide comments to the Agencies regarding the formats of inspection and investigation reports;

(g) Adopt and administer a stormwater permitting program, as appropriate;

(h) Make timely payments to the Agencies pursuant to invoices for Inspection Activities costs;

(i) Perform other responsibilities as agreed to in writing between the District and the Agencies;

(j) Notify Participating Municipalities of issues affecting them in a timely manner; and

(k) Provide quarterly Inspection Activities and budget summary reports to Participating Municipalities.

5. Communication between District and the Agencies. Each Agency will designate in writing to the District an Inspection Activities program coordinator and an alternate coordinator, subject to the District's approval of the designated coordinator and alternate coordinator. The purpose of designating an Inspection Activities program coordinator is to facilitate communication between the District and the Agencies. The Agencies shall direct matters such as complaints, claims, legal challenges, and other disputes regarding the Inspection Activities to its Inspection Activities program coordinator who will transmit the matter to the District for handling.

6. Financial. The Agencies shall be reimbursed by the District for all appropriate costs of the Inspection Activities, including the actual inspections and related administrative costs. The costs eligible for reimbursement include, but are not necessarily limited to, labor, benefits, overhead, supplies, equipment, vehicle, laboratory, consultant, legal and insurance costs. The Agencies shall promptly notify the District if the Agencies believe that legal costs will be incurred in connection with the inspection or enforcement activities so that the District may arrange for the affected Participating Municipalities to provide legal services on behalf of Agencies, if the Participating Municipalities so choose.

(a) Each of the Agencies will prepare invoices for costs related to the Inspection Activities and submit the invoices to the District no more frequently than monthly and no less frequently than quarterly. The District will pay invoices within 45 days of receipt.

(b) The Agency's labor costs shall be itemized at base cost per individual for time spent plus an overhead multiplier for benefits, administrative overhead, supplies, equipment and insurance. The Agencies' overhead multipliers for the following fiscal year shall be submitted to the District annually by January 31, and approved as part of an annual cost proposed to the Participating Municipalities.

(c) To the extent practicable, all invoices submitted shall be itemized to allocate costs to the Participating Municipality for which Inspection activities services were performed.

(d) To further cost efficiency, Agency staff time spent at meetings relative to the Inspection Activities will be minimized to the extent practicable. Laboratory services will be similarly minimized.

(e) Prior to the beginning of each fiscal year, the District shall approve an Inspection Activities budget, including individual Inspection Activities budgets for each of the Participating Municipalities. The District shall have the Participating Municipalities review and approve the Inspection Activities budget through the Program. Discussions for the annual budget shall begin in January prior to the upcoming fiscal year. The Agencies shall not exceed their approved written Inspection Activities budgets, absent written consent of the Participating Municipality through the District.

7. Insurance: During the term of this Agreement, each Agency shall carry Workers' Compensation and Employers' Liability Insurance as required by law, and General Liability and Automobile Liability insurance in the amount of at least \$1,000,000 per occurrence. If an Agency is self insured, written notification of the self insurance program shall be made to the other parties to this Agreement within 30 days after the execution of this Agreement. Any change to self insured status by any Agency shall be reported to the District in writing within 30 days of such change.

8. Indemnification.

(a) District Indemnity. The District shall indemnify, defend and hold harmless the Agencies and each of them and their officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities, and expenses, such as but not limited to constitutional or property rights claims, arising out of or related to the District's willful misconduct or the negligent acts, errors or omissions of the District in the performance of this Agreement.

(b) Agency Indemnity. Each Agency shall indemnify, defend and hold harmless the District and each Participating Municipality, and their respective officers, directors, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses arising out of or related to such Agency's willful misconduct or the negligent acts, errors or omissions of such Agency in the performance of this Agreement, except that each Participating Municipality shall be solely liable for any fines resulting from NPDES Permit non-compliance.

(c) Participating Municipality Indemnities. The District shall obtain individual indemnification agreements from each Participating Municipality in the Inspection Activities program, which shall specify that such Participating Municipality shall indemnify the District and Agencies. The indemnification shall read "[Name of City/Town] (Participating Municipality) shall for its jurisdictional area, indemnify, defend and hold harmless Central Contra Costa Sanitary District; Delta Diablo Sanitation District, West County Wastewater District (the "Agencies"), the Contra Costa County Flood Control and Water Conservation District, and each of them, and their respective officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses (collectively, "Claims") arising out of or related to the Participating Municipality's willful misconduct or the negligent acts, errors or omissions of the Participating Municipality, and the Participating Municipality shall also indemnify, defend and hold harmless Agencies, and their respective officers, directors, agents, and employees from and against all Claims that are not based on Agencies' active negligence, willful misconduct, or vehicle accident, such as but not limited to constitutional or property rights claims arising from an Agency's performance under the Inspection Agreement."

9. Notices. Notices required or permitted under this Agreement shall be in writing and made as follows:

If to District, to:

Mr. Thomas E. Dalziel, Program Manager
Contra Costa Clean Water Program
255 Glacier Drive
Martinez, CA 94553
(925) 313-2373

If to the Agencies collectively, to:

Mr. Timothy Potter
Central Contra Costa Sanitary District
5019 Imhoff Place

Martinez, CA 94553-4392
(925) 229-7380

If to CCCSD, to:

Mr. Timothy Potter
Central Contra Costa Sanitary District
5019 Imhoff Place
Martinez, CA 94553-4392
(925) 229-7380

If to WCWD, to:

Mr. Steve Linsley
West County Wastewater District
2910 Hilltop Drive
Richmond, CA 948065238
510- 237-6603

If to DDSD, to:

Mike Bakaldin
Delta Diablo Sanitation District
2500 Pittsburg-Antioch Highway
Antioch, CA 94509-1373
(925) 756-1942

10. Arbitration: In the event of a dispute arising under this Agreement, the parties may jointly agree to submit the dispute to non-binding arbitration. In the event the parties cannot agree to an arbitrator within 30 days after a party requests arbitration by written notice to the other parties, the arbitrator may be selected by petition of any party to the Superior Court of the County of Contra Costa.

11. Amendments. This Agreement may only be amended by written mutual agreement of the each of the parties hereto. Participating Municipalities shall be notified in writing of any written modification to this Agreement. Any amendment to this Agreement to add a Participating Municipality shall be undertaken according to Section 2(b) (Addition of Participating Municipalities) above.

12. Governing Law. This Agreement is made and will be performed in the State of California, and is governed by California laws shall apply.

13. Severability. If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and

conditions of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

14. Assignment. No Agency shall assign any of its right, title or interest under this Agreement without the prior written consent of the District. Any purported assignment of any Agency's rights under this Agreement is void and without effect.

15. Entire Agreement. This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: Sharon L. Anderson, County Counsel By: _____ Eric Gelston, Deputy County Counsel	WEST COUNTY WASTEWATER DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____
CENTRAL CONTRA COSTA SANITARY DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____	DELTA DIABLO SANITATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____

EXHIBIT A

INSPECTION AGENCIES AND PARTICIPATING MUNICIPALITIES

<u>Inspection Agency:</u>	Central Contra Costa Sanitary District	West County Wastewater District	Delta Diablo Sanitation District
<u>City or Town:</u>	Clayton	El Cerrito	Antioch
	Concord	Hercules	
	Danville	Richmond	Pittsburg
	Lafayette		
	Martinez		
	Moraga		
	Orinda		
	Pleasant Hill		
	San Ramon		
	Walnut Creek		

EXHIBIT B

FORM OF AMENDMENT TO AMENDED AND RESTATED CONTRA COSTA CLEAN WATER PROGRAM INSPECTION ACTIVITIES AGREEMENT ADDING A PARTICIPATING MUNICIPALITY

This Participating Municipality Amendment, dated _____, 20[___], (this "Amendment"), amends that certain Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement (the "Agreement"), dated June 30, 2013, and is by and among Contra Costa County Flood Control and Water Conservation District (the "District"), Central Contra Costa Sanitary District ("CCCSD"); Delta Diablo Sanitation District ("DDSD") and, West County Wastewater District ("WCWD", and together with CCCSD and DDSD, the "Agencies," and each separately, an "Agency"). Capitalized terms used in this Amendment and not otherwise defined have the meaning given in the

RECITALS

1. The [City/Town] of [_____] ("Participating Municipality") is a Program Member and a party to the Program Agreement, and desires to participate in the Contra Costa Clean Water Program Inspection Program and receive Inspection Activities conducted in its jurisdiction pursuant to the Agreement by becoming a Participating Municipality under the Agreement.

2. Participating Municipality has executed a Stormwater Utility Area Agreement with the District that authorizes the District to execute this Amendment on its behalf, and that provides for the invoicing and payment of Inspection Activities costs by Participating Municipality pursuant to the Agreement and the indemnification required by the Agreement.

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the parties to this Amendment agree that the Agreement is amended as follows:

1. The [City/Town] of [_____] is hereby made a Participating Municipality under the Agreement.

2. Exhibit A (Inspection Agencies And Participating Municipalities) attached to the Agreement is hereby deleted in its entirety and replaced with the Exhibit A attached hereto.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Amendment as follows:

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: Sharon L. Anderson, County Counsel By: _____ Eric Gelston, Deputy County Counsel	WEST COUNTY WASTEWATER DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____
CENTRAL CONTRA COSTA SANITARY DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____	DELTA DIABLO SANITATION DISTRICT By: _____ Name: _____ Title: _____ APPROVED AS TO FORM: By: _____ Name: _____ Title: _____

**CLEAN WATER PROGRAM
INSPECTION PROGRAM INDEMNIFICATION AGREEMENT**

This Clean Water Program Inspection Program Indemnification Agreement, dated June 30, 2013 (this "Agreement"), is by the City of Clayton, California ("Clayton"). Capitalized terms used in this Agreement and not defined herein have the meaning set forth in the Amended and Restated Inspection Agreement (as defined below).

WHEREAS, Contra Costa County Flood Control and Water Conservation District ("District"), on behalf of the Participating Municipalities (as defined in the Amended and Restated Inspection Agreement), entered into the Amended and Restated Contra Costa Clean Water Program Inspection Activities Agreement, dated June 30, 2013 the (the "Amended and Restated Inspection Agreement"), by and among District, Central Contra Costa Sanitary District ("CCCSD"); Delta Diablo Sanitation District ("DDSD") and, West County Wastewater District ("WCWD", and together with CCCSD and DDSD, the "Agencies," and each separately, an "Agency"), under which the Agencies are performing inspection services to detect and eliminate illicit discharges into the Participating Municipalities' municipal storm drains and creeks;

WHEREAS, pursuant to the Stormwater Utility Area Agreement between District and the City of Clayton (as amended, the "SUAA"), entered into on April 6, 2004, Clayton has authorized District to enter into and perform the terms of the Amended and Restated Inspection Agreement on behalf of Clayton; and

WHEREAS, under the Amended and Restated Inspection Agreement, each Agency has agreed to indemnify, defend and hold harmless District and each Participating Municipality, and their respective officers, directors, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities and expenses arising out of or related to such Agency's willful misconduct or negligent acts, errors or omissions of such Agency in the performance of the Amended and Restated Inspection Agreement, except that each Participating Municipality shall be solely liable for any fines resulting from NPDES Permit non-compliance;

WHEREAS, under the Amended and Restated Inspection Agreement, District is required to obtain an individual indemnification agreement from each Participating Municipality under which each Participating Municipality agrees to indemnify District and the Agencies; and

WHEREAS, Clayton desires to comply with the requirements of the Amended and Restated Inspection Agreement by setting forth its indemnification obligations in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, Clayton agrees as follows:

Clayton shall for its jurisdictional area, indemnify, defend and hold harmless District, the Agencies, and each of them, and their respective officers, directors, agents, and employees from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, consequential damages, liabilities, and expenses (collectively, "Claims") arising out of or related to Clayton's willful misconduct or the negligent acts, errors or omissions of Clayton, and Clayton shall also indemnify, defend and hold harmless the Agencies, and their respective officers, directors, agents, and employees from and against all Claims that are not based on such Agency's active negligence, willful misconduct, or vehicle accident, such as but not limited to constitutional or property rights claims arising from an Agency's performance under the Amended and Restated Inspection Agreement.

The City of Clayton has executed this Agreement as of the date first set forth above.

City of Clayton

By: _____
Name: _____
Title: _____

Exhibit B
Fiscal Year 2013/14 Stormwater Inspection Program by City

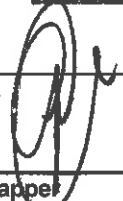
City	Annual Target	FY 13-14 Budget
Antioch	48	\$22,528
Clayton	8	\$3,755
Concord	214	\$100,438
Danville	57	\$26,752
El Cerrito	40	\$20,651
Hercules	16	\$8,260
Lafayette	32	\$15,019
Martinez	67	\$31,446
Moraga	16	\$7,509
Orinda	15	\$7,040
Pittsburg	55	\$25,814
Pleasant Hill	54	\$25,344
Richmond	50	\$23,467
San Ramon	77	\$36,139
Walnut Creek	120	\$56,320
Totals	869	\$410,482

Exhibit B to 3rd Amendment



Agenda Date: 11/5/13

Agenda Item: 6d

Approved: 

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 05 NOVEMBER 2013

**SUBJECT: APPROVAL OF 1-YEAR MEMORANDUM OF AGREEMENT (MOA)
CLAYTON UNDESIGNATED MISCELLANEOUS CITY EMPLOYEES GROUP**

RECOMMENDATION

It is recommended the City Council adopt the attached Resolution authorizing and approving a 1-year Memorandum of Agreement (MOA) with the Clayton Undesignated Miscellaneous City Employees Group concerning certain terms and conditions of their employment and compensation with the City of Clayton, effective 01 July 2013.

BACKGROUND

In December 2006 the City of Clayton approved a 3-year Agreement with the Clayton Undesignated Miscellaneous City Employees Group, retroactive to 01 July 2006. This action was pursuant to California state laws that require a public employer and each of its organized or undesignated collective bargaining units to meet and confer or consult (respectively) over terms and conditions of employment and compensation (ref. *Government Code Section 3500, et. seq.*). That 3-year Agreement expired 30 June 2009.

For each of the last four (4) years the City Council adopted one year Addenda to the underlying Memorandum of Agreement (MOA) with this Group while enacting new labor concessions and extending continued terms and conditions of employment with the Miscellaneous City Employees. A portion of the terms enacted each of the last four (4) years included annual labor concessions amounting to a 4.3% reduction in pay in the form of 11 unpaid furlough days (\$52,105), no employee merit advancements (\$11,482), no cost-of-living increases (no COLAs), and employees absorbing further rate increases in employee health insurance premiums.

In addition, three years ago this Group was among the first in the state to agree on the establishment of a Tier II retirement system for all new and "Classic" employees hired after 30 June 2010. This Tier II Plan rolled back the CalPERS pension formula to 2% at age 60 (the lowest CalPERS pension plan offered at the time), in contrast to the current employees' plan of 2% at age 55 (the second lowest CalPERS pension plan offered). Subsequent to that labor event, the California Public Pension Reform Act (PPRA) instituted a Tier III Plan for Miscellaneous Employees, effective 01 January 2013, which establishes a defined-benefit pension plan for new City employees of 2% at age 62.

Addendum No. 4 expired on 30 June 2013 and it was necessary under the law to consult with this collective bargaining unit and attempt to achieve a replacement agreement governing compensation and terms of public employment for this Group in FY 2013-14. As the City's Budget for FY 2013-14 was late in progress (not adopted until July 2013), the Miscellaneous Employees Group offered to extend the existing yet expiring terms and conditions to 30 September 2013 to allow both parties time to assess the budgetary situation of the City. The City Council adopted Resolution No. 14 – 2013 on 04 June 2013 to concur with that arrangement (ref. Addendum No. 5).

MEET AND CONSULT DISCUSSIONS

As part of the time extension terms contained in Addendum No. 5, the Miscellaneous Employees Group offered/agreed to continue the City's annualized compensation reduction of 4.3% to each employee without taking any unpaid furlough days off in exchange for that concession. Consequently, over the last four (4) months, employees of this Unit continued to experience that reduction in pay along with no merit increase adjustments or cost-of-living modifications. Over the course of the eleven (11) unpaid furlough days (or unpaid City Holidays) since 2009 due to City budgetary constraints, the San Francisco – Bay Area Consumer Price Index (CPI) also rose by 9%, further reducing the net value of Miscellaneous employees' compensation in our City.

Although September 30th passed without an Agreement, both parties continued to discuss in good faith the monetary issues of concern to each other while maintaining the current status quo. On October 16th the Miscellaneous Employees Group agreed to accept an offer by the City Council that results in the approval of a new and revised Memorandum of Agreement (MOA).

SUMMATION OF NEW AGREEMENT

The City and this Group are painfully aware these chronic and protracted difficult times require caution of both the employer and the employees in this fiscal year. Consequently, the parties have agreed on the essential terms for FY 2013-14 as follows:

1. No cost-of-living (COLA) salary adjustments or increases for employees of this Group for the 5th straight year in a row (\$32,228 "savings" to the City this year with CPI at 2.56%);

2. Salary advancements for merit performance or other exemplary service are again suspended during this one year time period (\$10,371 "savings" this year), with the exception that one (1) employee hired before the freeze commenced in 2009 would be eligible for a one (1) step merit increase advancement, retroactive to 01 July 2013. The cost to the City for that personnel action is \$4,537.
3. Retroactive to 01 July 2013, employees of this Unit will incur two (2), rather than the eleven (11) unpaid Work Furlough Days during this fiscal year. The elimination of nine (9) furlough days restores a portion of employee compensation withheld since 01 July 2013 in the annualized amount of the 11 furlough days and will cost the City \$41,733 this fiscal year ("savings" of \$9,274 resulting from the retention of 2 unpaid furlough days).
4. Effective 01 January 2014 concurrent with medical and dental insurance premium changes, the City's contribution to enrolled employee insurance coverage will change from an 80% City – 20% Employee share to the following formula:
 - A). Medical Insurance (thru CalPERS' Public Employees' Medical and Hospital Care Act):
 1. Employee Only enrollment: City pays 100% of the selected Plan premium.
 2. Employee + 1 Dependent enrollment: City pays 100% of the selected Plan premium for the Employee Only and 50% of additional premium expense for the 1 Dependent.
 3. Employee + Family enrollment: City pays 100% of the selected Plan premium for the Employee Only and 59.375% of additional premium expense for the Family.
 - B). Dental Insurance (thru the Municipal Pooling Authority's Delta Dental Health Care Employees/Employers Dental Trust):
 1. Employee Only enrollment: City pays 100% of the Plan premium.
 2. Employee + 1 Dependent: City pays 100% of the Plan premium for the Employee Only and 46.8% of additional premium expense for the 1 Dependent.
 3. Employee + Family: City pays 100% of the Plan premium for the Employee Only and 60.94% of additional premium expense for the Family.

The net effect of this significant modification is to lessen the amount the Employer [City] will pay towards employee health insurance coverage; with premium increases effective January 2014 the City will be contributing less to health insurance premiums and employees will

5. All other terms and conditions contained in the expired base Memorandum of Agreement (MOA) remain in effect.

The fifteen (15) employees covered by this Agreement include all City Management employees (except the City Manager), Public Works employees, City Hall employees and civilian Police Department employees.

FISCAL IMPACT

Overall, the 1-year Agreement represents a cost to the City of \$46,270. However, that direct expense is offset by the \$3,132 reduction in City contributions to employee health insurance premiums for half of this fiscal year coupled with sizeable "savings" totaling \$51,873 for continued labor concessions (as noted above).

The adopted FY 2013-14 City Budget carried a projected General Fund surplus of \$24,320 yet the City's historically-conservative budgeting practices typically produce an average annual General Fund surplus of approximately \$100,000. With property assessed valuations once again on the rise in our primarily residential community, the expectation is FY 2013-14 will conclude operations with similar results. If not, this 1-Year Agreement expires on 30 June 2014 and its terms and conditions will again be subject to renewed labor negotiations.

Of note is the City's General Fund will not be the sole source of this financial impact as some members of this Miscellaneous Employees Group also charge out labor time to special and enterprise funds of the City (e.g. Maintenance Landscape District; Gas Tax; Storm Water; The Grove Park District).

Attachments: A. Resolution approving a 1-Year MOA [2 pp.]
Exhibit 1: Memorandum of Agreement [12 pp.]
B. Red-lined Copy of MOA [16 pp.]

RESOLUTION NO. - 2013

**A RESOLUTION APPROVING A ONE (1) –YEAR
MEMORANDUM OF AGREEMENT WITH THE CLAYTON
UNDESIGNATED MISCELLANEOUS CITY EMPLOYEES GROUP
EFFECTIVE THE FISCAL YEAR 2013-2014**

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

WHEREAS, authorized representatives of the City of Clayton and the Clayton Undesignated Miscellaneous City Employees Group have met and consulted in good faith regarding certain matters including, but not limited to, wages, hours, and terms and conditions of employment with the City, pursuant to *California Government Code* Section 3500, et. seq.; and

WHEREAS, the parties to the aforementioned negotiations have set forth a one (1) year Memorandum of Agreement (MOA) that encompasses the full and complete terms and conditions reached between the parties as a result of said good faith negotiations; and

WHEREAS, the proposed Memorandum of Agreement, contained and described in its entirety as “Exhibit 1” and incorporated herein by reference to this Resolution, was presented to the members of the Miscellaneous City Employees Group on 23 October 2013 and the Group has since represented to the City Manager of its ratification and approval, witnessed by the signature of their authorized Group representatives; and

WHEREAS, the City Manager, as the City Council’s designated labor negotiator, does herein recommend approval of the proposed Memorandum of Agreement as outlined in its entirety as “Exhibit 1”.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California does hereby accept and approve the Memorandum of Agreement (attached as “Exhibit 1”) by and between the City and the Clayton Undesignated Miscellaneous City Employees Group during the term hereof, effective the Fiscal Year 2013-2014, and does hereby authorize and instruct the City Manager to implement the agreed-upon terms and conditions accordingly.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California at a regular public meeting thereof held on the 5th day of November 2013 by the following vote:

Resolution No. - 2013
1-Year Memorandum of Agreement with Miscellaneous City Employees Group
05 November 2013

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

Julie K. Pierce, Mayor

ATTEST:

Laci J. Kolc, City Clerk

**TERMS AND CONDITIONS OF EMPLOYMENT FOR
THE UNDESIGNATED MISCELLANEOUS CITY EMPLOYEES
UNIT EFFECTIVE THE FISCAL YEAR 2013-2014**

ARTICLE 1: PREAMBLE

This agreement, pursuant to the State of California Government Code Section 3500 et seq., entered into by the City of Clayton, hereinafter referred to as "City", and its Undesignated Miscellaneous City Employees, hereinafter referred to as "Unit", is hereby effective 01 July 2013 through 30 June 2014.

It is the intent and purpose of this document to set forth the understanding and agreement of the parties reached as a result of meeting and consulting in good faith regarding, but not limited to, matters relating to wages, hours, and terms and conditions of employees represented by the Unit. Any and all other employment matters not contained in this document are applicable as found in the City's "Personnel System and Guidelines" dated March 1993.

ARTICLE 2: GROUP DESCRIPTION

The following job classifications are members of this Unit for purposes of the agreements in this document:

Job Classifications

Accounting Technician
Administrative Assistant/Code Enforcement Officer
Assistant to the City Manager
Chief of Police
City Clerk/HR Manager
Community Development Director
Community Services Officer
Finance Manager
Maintenance Supervisor
Maintenance Leader
Maintenance Worker I
Assistant Planner
Police Office Coordinator

ARTICLE 3: PERSONNEL FILES

The City's secured personnel files, maintained in the City offices, are not subject to public inspection. Any employee has the right to inspect their own personnel file. An employee has the right, in accordance with law, to respond in writing to anything contained or placed in their own personnel file and any such response(s) shall become part of their personnel file.

ARTICLE 4: WORK HOURS

The work period (hours) for classifications and corresponding compensation in this Unit will be eighty (80) work hours in a bi-weekly (10-day) work period.

Any employee in this Unit scheduled to regularly work less hours than the defined work period shall receive a corresponding pro-rated portion of the monthly compensation and employee benefits outlined in Articles 5, 6 and 8 below.

ARTICLE 5: COMPENSATION

Section 5.1 Wages

A. Effective 01 July 2013, the monthly base salary ranges for the following job classifications shall be:

<u>Classification</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Accounting Technician	4003	4203	4413	4634	4865
Administrative Assistant/ Code Enforcement Officer	3333	3500	3675	3859	4051
Assistant to the City Mgr.	5493	5767	6055	6358	6676
Chief of Police	7942	8339	8756	9194	9653
City Clerk/HR Manager	5108	5363	5632	5913	6209
Community Development Director	7384	7753	8141	8548	8975
Community Services Officer	3333	3500	3675	3859	4051
Finance Manager	6516	6842	7184	7543	7920
Maintenance Supervisor	4869	5112	5368	5636	5918
Maintenance Leader	4016	4217	4428	4649	4882
Maintenance Worker	3326	3492	3666	3850	4042
Assistant Planner	5108	5363	5632	5913	6209
Police Office Coordinator	3765	3954	4151	4359	4577

During the term of this Agreement, salary advancement for merit or exemplary service of an eligible employee is hereby suspended and no individual shall receive a salary step increase during this Term, with exception that an existing employee hired before 01 July 2009 and deemed eligible for a one (1) step merit salary increase may receive said merit increase effective 01 July 2013, provided the action is approved by that employee's supervisor and the City Manager.

Employees eligible for merit step advancement yet prohibited from receipt thereof do not have their salary review (anniversary) date altered or deferred by this freeze on merit increases. At such time as the City restores merit increase advancements by subsequent agreement, any employee deemed eligible for a merit step increase during this Term shall automatically advance to the next merit salary step that would have been earned had the merit increase freeze not been in effect, effective the day the suspension is lifted; provided, however, no retroactive merit pay is due the eligible employee for hours worked in the missed merit salary range.

Employees of this Unit shall not receive a cost-of-living adjustment (COLA) during this Term.

ARTICLE 6: MEDICAL, DENTAL, AND LIFE/ACCIDENTAL DEATH/DISEMBLEMENT INSURANCE

Section 6:1 City Contribution to Medical and Dental Insurance Premiums

The maximum monthly City premium contribution for medical and dental insurance coverage for regular, full-time members of this Unit shall be paid by the City in accord with the following employee subscription enrollment schedules:

- A. Effective 01 July 2013, the current monthly City-paid premium contribution caps for combined medical, dental, life/accidental death/dismemberment insurance through the City shall be increased by the following amounts, as subscribed to and enrolled in by employees of this Group:

1. The City's monthly premium contribution cap shall be increased by the actual dental premium rate dollar increase up to and including a seven percent (7%) rate increase for each enrolled subscription category (i.e., Employee Only; Employee + One Dependent; or Employee + Family coverage) with the Delta Dental Health Care Employees/Employers Dental Trust. Actual dental premium rate dollar increases above 7% shall be paid solely by the enrolled employee; and

2. The City's monthly premium contribution cap shall be increased by the actual medical premium rate dollar increase up to and including a nine and one-half percent (9.5%) rate increase for each enrolled Health Plan and subscription category (i.e., Employee Only; Employee + One Dependent; or Employee + Family coverage) with the CalPERS Public Employees' Medical and Hospital

Care Act (PEMHCA). Actual medical premium rate dollar increases above 9.5% shall be paid solely by the enrolled employee.

Said City premium cap contribution shall not and does not increase the following non-enrollment plan categories:

No Enrollment/Unused Benefit (enrollments after 30 June 2010): \$ -0-

No Enrollment/Unused Benefit (existing eligible employees): \$ 250.00/mo.

(Provided proof of similar medical and dental coverage is available to the employee, is placed and maintained via another qualified third party insurance provider. Ref. Section 6.2).

B. Effective 01 January 2014 and terminating on 01 July 2014, the City's maximum premium contribution to employee-enrolled medical and dental insurance coverage shall be as follows:

1. Medical Insurance (thru CalPERS' Public Employees' Medical and Hospital Care Act):

1. Employee Only enrollment: City pays 100% of the selected Plan premium.

2. Employee + 1 Dependent enrollment: City pays 100% of the selected Plan premium for the Employee Only and 50% of additional premium expense for the 1 Dependent.

3. Employee + Family enrollment: City pays 100% of the selected Plan premium for the Employee Only and 59.375% of additional premium expense for the Family.

2. Dental Insurance (thru the Municipal Pooling Authority's Delta Dental Health Care Employees/Employers Dental Trust):

1. Employee Only enrollment: City pays 100% of the Plan premium.

2. Employee + 1 Dependent: City pays 100% of the Plan premium for the Employee Only and 46.8% of additional premium expense for the 1 Dependent.

3. Employee + Family: City pays 100% of the Plan premium for the Employee Only and 60.94% of additional premium expense for the Family.

Proration of the above City premium contributions for permanent part-time eligible employees shall be calculated and applied based on said employee's percentage of regularly-scheduled work hours as to a regularly-scheduled forty (40) hours work week (e.g. an employee scheduled to work 24 hours per work receives sixty (60) percent of the City's premium contribution).

C. The above City premium cap contributions shall not and do not increase the following non-enrollment plan categories:

No Enrollment/Unused Benefit (enrollments after 30 June 2010): \$ -0-

No Enrollment/Unused Benefit (enrollments before 30 June 2010): \$ 250.00/mo.

(Provided proof of similar medical and dental coverage is available to the employee, is placed and maintained via another qualified third party insurance provider. Ref. Section 6.2).

Section 6.2 Unused Medical Benefit Account

Employees may elect to decline City-provided medical and/or dental coverage only in cases when the employee is covered under an alternate third party insurance plan. Proof of insurance is required. For employees authorized to decline City-provided medical and/or dental coverage, the City will contribute a monthly amount, up to the maximum monthly premium cap outlined in Section 6.1 above under "No Enrollment", to a City-approved deferred compensation plan or to the employee's Unused Medical Benefit account, at the employee's designated option. Those members of this Unit whose expense for their enrolled subscription in City-secured medical and dental insurance is less than the maximum amounts listed in Section 6.1 may only elect to have said monthly difference placed in their City-approved deferred compensation plan or deposited into the employee's Unused Medical Benefit account, at the employee's designated option.

In order for one to qualify for City contribution toward medical and/or dental insurance coverage, an employee in a classification of this Unit must be permanently scheduled to work a minimum of twenty (20) hours per week. Such "part-time" regular employee is then eligible to enroll in the City-provided medical and/or dental insurance coverage but the City's maximum contribution for such a part-time regular employee is pro-rated in ratio to the percentage of the number of permanent hours worked per week. For example, if a part-time employee regularly works 32 hours per week (which represents a 0.8 full-time employee), then the individual is eligible to receive a maximum City contribution toward their subscribed medical and/or dental enrollment equal to 80% of the maximum amount specified in Section 6.1.

Section 6.3 Life/Accidental Death/Dismemberment Insurance

The City will contract and pay the full premium to enroll each permanent full-time and part-time employee in a \$50,000 face amount life insurance policy and a \$50,000 Accidental Death and Dismemberment Insurance coverage.

Section 6.4 Short Term and Long Term Disability Insurance

The City shall provide and pay for short term (STD) and long term disability (LTD) insurance(s) in behalf of each employee of this Unit for the purpose of providing contracted levels of continued compensation in the event of an off-duty illness or injury.

ARTICLE 7: EMPLOYEE RETIREMENT PENSION SYSTEM

The City is a member of the California Public Employees' Retirement System, hereinafter referred to as "CalPERS". All regular full-time and regular part-time employees of this Unit are required by contract and corresponding law to be participating members of this retirement system.

Section 7.1 Tier I "Classic" Existing City Employees as of 30 June 2010

By contract, the City and its eligible employees of this Unit are members of the 2% at age 55 Miscellaneous Employees CalPERS retirement system. The City shall pay the entire required Employer CalPERS rate and share for this Miscellaneous Retirement System and all increases in rate thereof during the term of this Agreement, including any costs of administration. In addition, the City shall pay 100% of the current 7% Employee CalPERS fixed rate and share for members of this Miscellaneous Retirement System.

Section 7.2 Tier II Retirement System for "Classic" Employees

By contract, all regular full-time and regular part-time employees of this Unit hired on or after 01 July 2010 are required to be participating members in the California Public Employees' Retirement System ("CalPERS"). In addition, any new City employees hired after that date but deemed "Classic" CalPERS members due to enrollment and active participation in a CalPERS pension system through another CalPERS public agency, as defined by state law, shall become members of the City's Tier II CalPERS plan. The City shall contract with CalPERS and enroll eligible employees in this hiring category in the CalPERS "2% at age 60" Miscellaneous Retirement System.

The City shall pay the entire required Employer CalPERS rate for this "2% at age 60" retirement system and all increases in the rate thereof, and the employee shall pay 100% of the entire required Employee CalPERS fixed rate. For purpose of calculating eligible retirement pension, the 2% at 60 Plan shall be the average of the highest 3 years of eligible compensation paid to the employee.

Section 7.3 Tier III Retirement System for New Members of this Unit

By contract, all regular full-time and regular part-time employees of this Unit hired on or after 01 January 2013 and not a previous member of a CalPERS plan without a 6-month interruption of service shall become members of the City's Tier III CalPERS plan. The City shall contract with CalPERS and enroll eligible employees in this hiring category in the CalPERS "2% at age 62" Miscellaneous Retirement System.

The City and employee enrolled in this CalPERS plan shall each pay fifty percent (50%) of the "normal cost rate", as defined in the Public Employees' Pension Reform Act (PEPRA), and as calculated by CalPERS. The "normal cost rate" is subject to annual change as ordered by CalPERS.

ARTICLE 8: HOLIDAYS AND LEAVES

Section 8.1 Eligibility for Paid Leaves

Temporary and seasonal employees are not eligible for any paid leave time.

Permanent employees of this Unit regularly scheduled to work less than an average eighty (80) hour bi-weekly pay period will earn each paid leaves at a rate proportionate to their number of permanently scheduled work hours.

Section 8.2 Holiday Leave

Permanent regular employees of this Unit shall receive the following eleven (11) 8-hour days of paid holiday leave each calendar year:

New Year's Day	Martin Luther King, Jr. Day
Lincoln's Birthday	Presidents' Day
Memorial Day	Independence Day
Labor Day	Veterans' Day
Thanksgiving Day	Friday after Thanksgiving Day
Christmas Day	

Holidays falling on non-work days will be observed on the nearest regular work day.

Section 8.3 Personal or "Floating" Leave

In addition to the holidays listed under Section 8.2, all members of this Unit shall receive twenty-four (24) hours of paid Personal Leave in each fiscal year. Said leave hours will be credited on July 1st of each year and shall be taken at the employee's discretion, with the advance consent of their supervisor. If one's Personal Leave hours are not taken or exhausted by the end of the fiscal year (June 30th), the remaining hours are forfeited. Permanent regular employees working less than a 40-hour work week shall receive paid Personal Leave hours on a pro-rata basis based on their number of regularly scheduled work hours per week.

Section 8.4 Vacation Leave

Permanent regular employees of this Unit shall be entitled to earn annual paid vacation leave with pay.

A. Vacation leave credit for a 40-hour work week employee shall be accrued on the following basis:

1.	Month 1 through Month 24:	6.67 hours per month
2.	Month 25 through Month 48:	8.00 hours per month
3.	Month 49 through Month 96:	10.00 hours per month
4.	Month 97 through Month 180:	13.33 hours per month
5.	Month 181 and thereafter:	16.67 hours per month

B. Vacation leave credit for permanent regular employees working less than a 40-hour week shall be credited as in Section "A" above on a pro-rata basis based upon the number of hours regularly scheduled to work per week.

C. Vacation leave may be used as earned, subject to the advance approval of one's department manager, based on staffing requirements.

D. Vacation leave may only be used in increments of one-quarter (0.25) hour or more.

E. Vacation leave may be accrued to a maximum number of hours equivalent to eighteen (18) times one's current monthly accrual rate.

F. Upon leaving City employment, the employee will be paid for all accrued, unused vacation leave up to one's maximum annual accrual allowed in sub-section "E".

G. An employee may elect once per fiscal year to convert accrued vacation leave hours into accrued sick leave hours before the end of the fiscal year, at a conversion rate of one (1) hour of accrued vacation into one-half (0.5) hour of sick leave, provided the employee's accrued vacation leave balance exceeds their annual vacation leave accrual specified in sub-section A above at the time of conversion.

Section 8.5 Sick Leave

A. Paid sick leave is earned at the rate of eight (8) hours for each month worked. Permanent regular employees working less than a 40-hour work week shall earn paid sick leave hours on a pro-rata basis based on their number of hours regularly scheduled to work per week.

B. Maximum accrual of sick leave is limited to nine-hundred sixty (960) hours of unused leave.

- C. Unused sick leave shall not be paid off in cash or any other form of compensation upon separation from City employment.
- D. Up to twenty-four (24) hours of accrued sick leave may be used by an employee to attend a funeral of close family members, with the approval of the City Manager.
- E. Employees may use accrued sick leave for non work-related disabilities or illnesses up to the effective or commencement date of short-term or long-term disability benefits.
- F. A physician's report may be required by one's department manager for extended periods of sick leave usage by an employee in this Unit, or if in the determination of the City Manager, the employee exhibits greater than average, or unusual patterns or circumstances in their use of sick leave.
- G. Employees unable to return to work within six (6) months of the date of disability (whether work or non work-related) may be separated from City employment, unless an extension is approved by the City Manager, and except as otherwise restricted by state or federal law.
- H. Employees who have accumulated two-hundred forty (240) hours or more of accrued sick leave may be credited, at the employee's written request, with two (2) additional vacation leave hours for each consecutive three (3) month period in which no paid sick leave was used by the employee.

Section 8.6 Management Leave

In lieu of earning overtime or compensatory time off, department managers (as designated by the City Manager) will be granted up to a maximum of one-hundred twenty (120) hours of paid management leave each fiscal year. The amount available to each management employee may vary, at the discretion of the City Manager. Management leave hours will be credited to the designated manager's leave time account at the commencement of each fiscal year in the total number of hours granted by the City Manager to that employee. Management leave must be used within the fiscal year in which it is earned, and unused leave will not be paid in cash or any other form of compensation upon separation from City employment.

Section 8.7 Work Furlough Days

Effective 01 July 2013, two (2) work furlough days, defined as City Hall operations closed for the entire regular work day and employees of this Group are off work and unpaid for each day, shall occur during the term of this Agreement. The actual two (2) unpaid Work Furlough Days will be determined by and between this Group and the City Manager in advance regarding which work days are subject to furlough. In

the event of unresolved disagreement over the designated furlough days, the City Manager's decision shall be final with no right of appeal.

The City will calculate and implement the two (2) unpaid work furlough days into bi-weekly pay deductions in the annualized regular base pay of the employees in this Group, retroactive to 01 July 2013. No "true-up" in employee compensation is due or owed by either the City or the employee should an employee of this Group leave during the term of this Agreement.

ARTICLE 9: OVERTIME

Section 9.1 Regular Overtime

The City will compensate eligible regular non-management employees for each one-quarter hour (0.25) of overtime worked at the rate of one and one-half times (1.5) the employee's base hourly rate including applicable FLSA-required compensation. Overtime is defined as hours worked in excess of eighty (80) hours per pay period, or hours worked in excess of a regularly-scheduled shift. Employees working partial or reduced schedules will not be eligible for overtime until their hours worked exceed the regular work hours noted in Article 4. Authorization of the employee's supervisor must be obtained prior to the working of overtime hours, except in emergency situations. Compensation for overtime shall be in the form of cash payment, or if requested by the employee and approved by their supervisor, in the form of compensatory time off (CTO) that shall also accrue at the rate of one and one-half (1.5) times the actual overtime hours worked.

For purposes of calculating overtime and compensatory time, all paid leave shall be considered as hours worked.

Section 9.2 Compensatory Time Off

A maximum of one hundred (100) hours of compensatory time off (CTO) may be accrued by each eligible employee of this Unit, except when additional hours are approved by the City Manager for a recognized or specific operational need or situation. Whenever possible and in the discretion of one's supervisor, overtime shall be compensated with compensatory time off. Compensatory time off may be used by written request of the employee filed at least three (3) days in advance with the appropriate supervisor. Management will make every effort to comply with time off requests of the employee and shall not arbitrarily assign employees to compensatory time off.

ARTICLE 10: BILINGUAL PAY

The City has the sole and exclusive right to determine and designate which Employees, and how many Employees, are eligible to receive bilingual pay of \$75.00 per month. Designated Employees will be required to demonstrate conversational fluency in a language (e.g. Spanish) as determined by the City Manager based on community/public needs and organizational usage. The City may administer a competency test to certify fluency of the Employee in the designated language. Any such certification shall be a condition prior to Employee qualifying for monthly bilingual pay.

ARTICLE 11: AUTOMOBILE ALLOWANCE

Certain Employees' duties require that each have continuously available transportation for City business or work-related purposes. Each Employee position designated below shall provide an operable personal vehicle for use for normal business and personal use. The Employer agrees to provide each designated Employee with a monthly automobile allowance as specified below:

<u>Position</u>	<u>Monthly Auto Allowance</u>
Chief of Police	\$370.00
Community Development Director	\$345.00
Assistant to the City Manager	\$345.00

Each Employee shall be responsible for all operation expenses, maintenance expenses, repair expenses, replacement cost and insurance for the personal automobile used for this purpose. Employee shall at all times maintain adequate insurance for the automobile and shall inform his/her insurer that the automobile is used for City business and personal purposes. Each Employee shall maintain and provide to the City a valid Certificate of Insurance demonstrating comprehensive automobile liability coverage for the vehicle used and naming the City of Clayton as an additional insured on the applicable insurance policy.

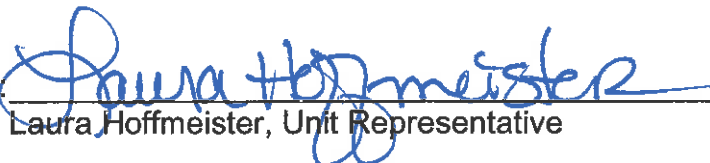
ARTICLE 12: TERM OF AGREEMENT

Except as indicated herein, this Agreement shall be effective commencing 01 July 2013 and continue up to and through 30 June 2014.

IN WITNESS THEREOF, this Agreement is entered into by the following authorized representatives this 29th day of October 2013, pursuant to the provisions of CA Government Code Section 3500, et. seq. for presentation to and adoption by the City Council of Clayton, California.

CLAYTON UNDESIGNATED MISCELLANEOUS CITY EMPLOYEES (UNIT)

By: 
Laci Kolc, Unit Representative

By: 
Laura Hoffmeister, Unit Representative

CITY OF CLAYTON, CA (CITY)

By: 
Gary A. Napper, City Manager

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**TERMS AND CONDITIONS OF EMPLOYMENT FOR
THE UNDESIGNATED MISCELLANEOUS CITY EMPLOYEES
UNIT EFFECTIVE THE FISCAL YEAR 20~~1306~~-20~~1407~~**

ARTICLE 1: PREAMBLE

This agreement, pursuant to the State of California Government Code Section 3500 et seq., entered into by the City of Clayton, hereinafter referred to as "City", and its Undesignated Miscellaneous City Employees, hereinafter referred to as "Unit", is hereby effective 01 July 20~~1306~~ through 30 June 20~~1409~~.

It is the intent and purpose of this document to set forth the understanding and agreement of the parties reached as a result of meeting and consulting in good faith regarding, but not limited to, matters relating to wages, hours, and terms and conditions of employees represented by the Unit. Any and all other employment matters not contained in this document are applicable as found in the City's "Personnel System and Guidelines" dated March 1993.

ARTICLE 2: GROUP DESCRIPTION

The following job classifications are members of this Unit for purposes of the agreements in this document:

Job Classifications

Accounting Technician
Administrative Assistant/Code Enforcement Officer
Assistant to the City Manager
Chief of Police
City Clerk/~~HR Manager~~
Community Development Director
Community Services Officer
Finance Manager
Maintenance Supervisor
Maintenance Leader
Maintenance Worker I
~~Planning~~-Assistant ~~Planner~~
Police Office Coordinator

ARTICLE 3: PERSONNEL FILES

The City's secured personnel files, maintained in the City offices, are not subject to public inspection. Any employee has the right to inspect their own personnel file. An employee has the right, in accordance with law, to respond in writing to anything

contained or placed in their own personnel file and any such response(s) shall become part of their personnel file.

ARTICLE 4: WORK HOURS

The work period (hours) for classifications and corresponding compensation in this Unit will be eighty (80) work hours in a bi-weekly (10-day) work period.

Any employee in this Unit scheduled to regularly work less hours than the defined work period shall receive a corresponding pro-rated portion of the monthly compensation and employee benefits outlined in Articles 5, 6 and 8 below.

ARTICLE 5: COMPENSATION

Section 5.1 Wages

~~A. Effective 01 July 2006, the monthly base salary ranges for the following job classifications shall be:~~

Classification	A	B	C	D	E	Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: -0.25" + Tab after: 0" + Indent at: 0"
Accounting Technician 4411	3629	3810	4001	4201	4201	Formatted: Indent: Left: 0" Formatted: Indent: Left: 0"
Administrative Assistant/ 3672	3021	3172	3331	3497	3497	Formatted: Indent: Left: 0"
Code Enforcement Officer						
Assistant to the City Mgr. 8750	4978	5227	5488	5763	6051	Formatted: Indent: Left: 0"
Chief of Police 8750	7198	7558	7936	8333	8333	Formatted: Indent: Left: 0"
City Clerk 5628	4631	4862	5105	5360	5360	Formatted: Indent: Left: 0"
Community Development Director	6693	7028	7380	7749	8136	
Community Services 3672 Officer	3021	3172	3331	3497	3497	Formatted: Indent: Left: 0"

Finance Manager	5906	6202	6512	6837	7179	Formatted: Indent: Left: 0"
Maintenance Supervisor	4413	4634	4866	5109	5364	Formatted: Indent: Left: 0"
Maintenance Leader 4425	3641	3823	4014	4214	←	Formatted: Indent: Left: 0"
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	
Maintenance Worker I	3014	3165	3323	3489	3664	
Planning Assistant	4631	4862	5105	5360	5628	
Police Office Coordinator	3412	3583	3762	3950	4148	Formatted: Indent: Left: 0"
					←	Formatted: Indent: Left: 0"
B. Effective 01 July 2007, the monthly base salary ranges for the following job classifications shall be:						Formatted: No bullets or numbering
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<u>Classification</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	Formatted: Indent: Left: 0"
Accounting Technician	3774	3962	4161	4369	4587	
Administrative Assistant/ Code Enforcement Officer	3142	3299	3464	3637	3819	Formatted: Indent: Left: 0"
Assistant to the City Mgr.	5177	5436	5708	5993	6293	Formatted: Indent: Left: 0"
Chief of Police 9100	7487	7861	8254	8667	←	Formatted: Indent: Left: 0"
City Clerk 5853	4815	5056	5309	5574	←	Formatted: Indent: Left: 0"
Community Development Director	6961	7309	7675	8059	8464	Formatted: Indent: Left: 0"
Community Services 3819 Officer	3142	3299	3464	3637	←	Formatted: Indent: Left: 0"
Finance Manager	6142	6450	6772	7111	7466	Formatted: Indent: Left: 0"

Maintenance Supervisor 4590 4819 5060 5313 5579

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Maintenance Leader 3786 3975 4174 4383
4602

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Maintenance Worker I 3135 3292 3456 3629
3814

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Planning Assistant 4815 5056 5309 5574 5853

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Police Office Coordinator 3549 3727 3913 4109 4314

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C. Effective 01 July 2008, the monthly base salary ranges for the following job classifications shall be:

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Classification A B C D E
Accounting Technician 3925 4121 4327 4543 4770

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Administrative Assistant/ 3268 3431 3603 3783 3972
Code Enforcement Officer

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Assistant to the City Mgr. 5384 5654 5936 6233 6545

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Chief of Police 7786 8175 8584 9013
9464

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City Clerk 5008 5258 5521 5797
6087

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Community Development 7239 7601 7981 8380 8799
Director

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Community Services 3268 3431 3603 3783
3972
Officer

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Finance Manager 6388 6707 7043 7395 7765

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Maintenance Supervisor 4773 5012 5263 5526 5802

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Maintenance Leader 3938 4134 4341 4558
4786

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Maintenance Worker I	3261	3424	3595	3775	Formatted: Indent: Left: 0"	
3963						
Planning Assistant	5008	5258	5521	5797	6087	Formatted: Indent: Left: 0"
Police Office Coordinator	3691	3876	4069	4273	4487	Formatted: Indent: Left: 0"

AD Effective 01 July January 201309, the monthly base salary ranges for the following job classifications shall be:

Classification	A	B	C	D	E
Accounting Technician	4003	4203	4413	4634	4865
Administrative Assistant/ Code Enforcement Officer	A 3333	B 3500	C 3675	D 3859	E 4051
Assistant to the City Mgr.	5493	5767	6055	6358	6676
Chief of Police	7942	8339	8756	9194	9653
City Clerk/HR Manager	5913	6209	5108	5363	5632
Community Development Director	7384	7753	8141	8548	8975
Community Services Officer	3333	3500	3675	3859	4051
Finance Manager	6516	6842	7184	7543	7920
Maintenance Supervisor	4869	5112	5368	5636	5918
Maintenance Leader	4016	4217	4428	4649	4882
Maintenance Worker I	3326	3492	3666	3850	4042
Planning Assistant Planner	6209	5108	5363	5632	5913

Police Office Coordinator 3765 3954 4151 4359 4577

During the term of this Agreement, salary advancement for merit or exemplary service of an eligible employee is hereby suspended and no individual shall receive a salary step increase during this Term, with exception that an existing employee hired before 01 July 2009 and deemed eligible for a one (1) step merit salary increase may receive said merit increase effective 01 July 2013 provided the action is approved by that employee's supervisor and the City Manager.

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Employees eligible for merit step advancement yet prohibited from receipt thereof do not have their salary review (anniversary) date altered or deferred by this freeze on merit increases. At such time as the City restores merit increase advancements by subsequent agreement, any employee deemed eligible for a merit step increase during this Term shall automatically advance to the next merit salary step that would have been earned had the merit increase freeze not been in effect, effective the day the suspension is lifted; provided, however, no retroactive merit pay is due the eligible employee for hours worked in the missed merit salary range.

Employees of this Unit shall not receive a cost-of-living adjustment (COLA) during this Term.

**ARTICLE 6: MEDICAL, DENTAL, AND LIFE/ACCIDENTAL
DEATH/DISEMBLEMENT
INSURANCE**

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Section 6:1 City Contribution to Medical and Dental Insurance Premiums

The maximum monthly City premium contribution for ~~combined~~ medical ~~and~~ dental, ~~and life/accidental death/dismemberment~~ insurance coverage for regular, full-time members of this Unit shall be paid by the City in accord with the following employee subscription enrollment schedules: ~~Every member of this Unit is required to be enrolled in and pay for the City's life/accidental death/dismemberment insurance coverage.~~

~~A Effective 01 July 2006, the following maximum monthly contribution will be:~~

~~No Enrollment \$ 706.00 per month
(Provided proof of similar medical and dental coverage is available to the employee
and placed via another qualified third party insurance policy)~~

~~Employee Only \$ 706.00 per month~~

~~Employee + 1 Enrolled Dependent \$ 935.71 per month~~

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Employee + 2 or more Enrolled Dependents \$1,226.19 per month

~~B. In the event of any and all future premium increases incurred during the remainder of the term of this Agreement, the City's maximum contribution will remain as set forth in section "A" above.~~

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~~A. Effective 01 July 2013, the current monthly City-paid premium contribution caps for combined medical, dental, life/accidental death/dismemberment insurance through the City shall be increased by the following amounts, as subscribed to and enrolled in by employees of this Group:~~

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~~1. The City's monthly premium contribution cap shall be increased by the actual dental premium rate dollar increase up to and including a seven percent (7%) rate increase for each enrolled subscription category (i.e., Employee Only; Employee + One Dependent; or Employee + Family coverage) with the Delta Dental Health Care Employees/Employers Dental Trust. Actual dental premium rate dollar increases above 7% shall be paid solely by the enrolled employee; and~~

~~2. The City's monthly premium contribution cap shall be increased by the actual medical premium rate dollar increase up to and including a nine and one-half percent (9.5%) rate increase for each enrolled Health Plan and subscription category (i.e., Employee Only; Employee + One Dependent; or Employee + Family coverage) with the CalPERS Public Employees' Medical and Hospital Care Act (PEMHCA). Actual medical premium rate dollar increases above 9.5% shall be paid solely by the enrolled employee.~~

~~Said City premium cap contribution shall not and does not increase the following non-enrollment plan categories:~~

~~No Enrollment/Unused Benefit (enrollments after 30 June 2010): \$ -0-~~

~~No Enrollment/Unused Benefit (existing eligible employees): \$ 250.00/mo.~~

~~(Provided proof of similar medical and dental coverage is available to the employee, is placed and maintained via another qualified third party insurance provider. Ref. Section 6.2).~~

~~B. Effective 01 January 2014 and terminating on 01 July 2014, the City's maximum premium contribution to employee-enrolled medical and dental insurance coverage shall be as follows:~~

~~1. Medical Insurance (thru CalPERS' Public Employees' Medical and Hospital Care Act);~~

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1. Employee Only enrollment: City pays 100% of the selected Plan premium.

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2. Employee + 1 Dependent enrollment: City pays 100% of the selected Plan premium for the Employee Only and 50% of additional premium expense for the 1 Dependent.

3. Employee + Family enrollment: City pays 100% of the selected Plan premium for the Employee Only and 59.375% of additional premium expense for the Family.

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2. Dental Insurance (thru the Municipal Pooling Authority's Delta Dental Health Care Employees/Employers Dental Trust):

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1. Employee Only enrollment: City pays 100% of the Plan premium.

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2. Employee + 1 Dependent: City pays 100% of the Plan premium for the Employee Only and 46.8% of additional premium expense for the 1 Dependent.

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3. Employee + Family: City pays 100% of the Plan premium for the Employee Only and 60.94% of additional premium expense for the Family.

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Proration of the above City premium contributions for permanent part-time eligible employees shall be calculated and applied based on said employee's percentage of regularly-scheduled work hours as to a regularly-scheduled forty (40) hours work week (e.g. an employee scheduled to work 24 hours per work receives sixty (60) percent of the City's premium contribution.

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C. The above City premium cap contributions shall not and do not increase the following non-enrollment plan categories:

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No Enrollment/Unused Benefit (enrollments after 30 June 2010): \$ -0-

No Enrollment/Unused Benefit (enrollments before 30 June 2010): \$ 250.00/mo.

(Provided proof of similar medical and dental coverage is available to the employee, is placed and maintained via another qualified third party insurance provider. Ref. Section 6.2).

Section 6.2 Medical Insurance, Dental Insurance, Life/Accidental Death/Dismemberment Insurance

The City will contract to provide medical and dental insurance coverage for all full-time regular employees and their enrolled dependents, in addition to the mandatory enrollment in a \$50,000 face amount life insurance policy and the \$50,000 Accidental Death and Dismemberment Insurance coverage for each regular employee. Any premium in excess of the maximum amount contributed by the City

~~in Section 6.1 above shall be the responsibility of the individual employee, to be paid through City payroll deductions.~~

Section 6.2 Unused Medical Benefit Account

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Employees may elect to decline City-provided medical and/or dental coverage only in cases when the employee is covered under an alternate third party insurance plan. Proof of insurance is required. For employees authorized to decline City-provided medical and/or dental coverage, the City will contribute a monthly amount, up to the maximum monthly premium cap outlined in Section 6.1 above under "No Enrollment", to a City-approved deferred compensation plan or to the employee's Unused Medical Benefit account, at the employee's designated option. Those members of this Unit whose expense for their enrolled subscription in City-secured medical and dental insurance is less than the maximum amounts listed in Section 6.1 may only elect to have said monthly difference placed in their City-approved deferred compensation plan or deposited into the employee's Unused Medical Benefit account, at the employee's designated option.

In order for one to qualify for City contribution toward medical and/or dental insurance coverage, an employee in a classification of this Unit must be permanently scheduled to work a minimum of twenty (20) hours per week. Such "part-time" regular employee is then eligible to enroll in the City-provided medical and/or dental insurance coverage but the City's maximum contribution for such a part-time regular employee is pro-rated in ratio to the percentage of the number of permanent hours worked per week. For example, if a part-time employee regularly works 32 hours per week (which represents a 0.8 full-time employee), then the individual is eligible to receive a maximum City contribution toward their subscribed medical and/or dental enrollment equal to 80% of the maximum amount specified in Section 6.1.

Section 6.3 Life/Accidental Death/Dismemberment Insurance

The City will contract and pay the full premium to enroll each permanent full-time and part-time employee in a \$50,000 face amount life insurance policy and a \$50,000 Accidental Death and Dismemberment Insurance coverage.

Section 6.43 Short Term and Long Term Disability Insurance

The City shall provide and pay for short term (STD) and long term disability (LTD) insurance(s) in behalf of each employee of this Unit for the purpose of providing contracted levels of continued compensation in the event of an off-duty illness or injury.

ARTICLE 7: EMPLOYEE RETIREMENT PENSION SYSTEM

The City is a member of the California Public Employees' Retirement System, hereinafter referred to as "CalPERS". All regular full-time and regular part-time employees of this Unit are required to be participating members of this retirement system. ~~Presently under CalPERS, the City and employees of this Unit are contractual members of the "2% at 55" Miscellaneous Retirement System.~~

~~The City shall pay the entire required Employer CalPERS rate and share for this Miscellaneous Retirement System and any increases in rate thereof during the term of this Agreement, as well as cover the cost of administration. In addition, the City will only pay the current 7% Employee CalPERS rate and share for this Miscellaneous Retirement System.~~

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Section 7.1 Tier I "Classic" Existing City Employees as of 30 June 2010

By contract, the City and its eligible employees of this Unit are members of the 2% at age 55 Miscellaneous Employees CalPERS retirement system. The City shall pay the entire required Employer CalPERS rate and share for this Miscellaneous Retirement System and all increases in rate thereof during the term of this Agreement, including any costs of administration. In addition, the City shall pay 100% of the current 7% Employee CalPERS fixed rate and share for this Miscellaneous Retirement System.

Section 7.2 Tier II Retirement System for "Classic" Employees

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By contract, all regular full-time and regular part-time employees of this Unit hired on or after 01 July 2010 are required to be participating members in the California Public Employees' Retirement System ("CalPERS"). In addition, any new City employees hired after that date but deemed "Classic" CalPERS members due to enrollment and active participation in a CalPERS pension system through another CalPERS public agency, as defined by state law, shall become members of the City's Tier II CalPERS plan. The City shall contract with CalPERS and enroll eligible employees in this hiring category in the CalPERS "2% at age 60" Miscellaneous Retirement System.

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The City shall pay the entire required Employer CalPERS rate for this "2% at 60" retirement system and all increases in the rate thereof, and the employee shall pay 100% of the entire required Employee CalPERS fixed rate. For purpose of calculating eligible retirement pension, the 2% at 60 Plan shall be the average of the highest 3 years of eligible compensation paid to the employee.

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Section 7.3 Tier III Retirement System for New Members of this Unit

By contract, all regular full-time and regular part-time employees of this Unit hired on or after 01 January 2013 and not a previous member of a CalPERS plan without a 6-month interruption of service, shall become members of the City's Tier III CalPERS plan. The City shall contract with CalPERS and enroll eligible employees in this hiring category in the CalPERS "2% at age 62" Miscellaneous Retirement System.

The City and employee enrolled in this CalPERS plan shall each pay fifty percent (50%) of the "normal cost rate", as defined in the Public Employees' Pension Reform Act (PEPRA), and as calculated by CalPERS. The "normal cost rate" is subject to annual change as ordered by CalPERS.

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ARTICLE 8: HOLIDAYS AND LEAVES

Section 8.1 Eligibility for Paid Leaves

Temporary and seasonal employees are not eligible for any paid leave time.

Permanent employees of this Unit regularly scheduled to work less than an average eighty (80) hour bi-weekly pay period will earn each paid leaves at a rate proportionate to their number of permanently scheduled work hours.

Section 8.2 Holiday Leave

Permanent regular employees of this Unit shall receive the following eleven (11) 8-hour days of paid holiday leave each calendar year:

New Year's Day	Martin Luther King, Jr. Day
Lincoln's Birthday	Presidents' Day
Memorial Day	Independence Day
Labor Day	Veterans' Day
Thanksgiving Day	Friday after Thanksgiving Day
Christmas Day	

Holidays falling on non-work days will be observed on the nearest regular work day.

Section 8.3 Personal or "Floating" Leave

In addition to the holidays listed under Section 8.2, all members of this Unit shall receive twenty-four (24) hours of paid Personal Leave in each fiscal year. Said leave hours will be credited on July 1st of each year and shall be taken at the employee's discretion, with the advance consent of their supervisor. If one's Personal Leave hours are not taken or exhausted by the end of the fiscal year (June 30th), the remaining hours are forfeited.

Permanent regular employees working less than a 40-hour work week shall receive paid Personal Leave hours on a pro-rata basis based on their number of regularly scheduled work hours per week.

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Section 8.4 Vacation Leave

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Permanent regular employees of this Unit shall be entitled to earn annual paid vacation leave with pay.

A. Vacation leave credit for a 40-hour work week employee shall be accrued on the following basis:

- | | | |
|----|-----------------------------|-----------------------|
| 1. | Month 1 through Month 24: | 6.67 hours per month |
| 2. | Month 25 through Month 48: | 8.00 hours per month |
| 3. | Month 49 through Month 96: | 10.00 hours per month |
| 4. | Month 97 through Month 180: | 13.33 hours per month |
| 5. | Month 181 and thereafter: | 16.67 hours per month |

B. Vacation leave credit for permanent regular employees working less than a 40-hour week shall be credited as in Section "A" above on a pro-rata basis based upon the number of hours regularly scheduled to work per week.

C. Vacation leave may be used as earned, subject to the advance approval of one's department manager, based on staffing requirements.

D. Vacation leave may only be used in increments of one-quarter (0.25) hour or more.

E. Vacation leave may be accrued to a maximum number of hours equivalent to eighteen (18) times one's current monthly accrual rate.

F. Upon leaving City employment, the employee will be paid for all accrued, unused vacation leave up to one's maximum annual accrual allowed in sub-section "E".

G. An employee may elect once per fiscal year to convert accrued vacation leave hours into accrued sick leave hours before the end of the fiscal year, at a conversion rate of one (1) hour of accrued vacation into one-half (0.5) hour of sick leave, provided the employee's accrued vacation leave balance exceeds their annual vacation leave accrual specified in sub-section A above at the time of conversion.

Section 8.5 Sick Leave

A| Paid sSick leave is earned at the rate of eight (8) hours for each month worked. Permanent regular employees working less than a 40-hour work week shall earn

paid sick leave hours on a pro-rata basis based on their number of hours regularly scheduled to work per week.

- B. Maximum accrual of sick leave is limited to nine-hundred sixty (960) hours of unused leave.
- C. Unused sick leave shall not be paid off in cash or any other form of compensation upon separation from City employment.
- D. Up to twenty-four (24) hours of accrued sick leave may be used by an employee to attend a funeral of close family members, with the approval of the City Manager.
- E. Employees may use accrued sick leave for non work-related disabilities or illnesses up to the effective or commencement date of short-term or long-term disability benefits.
- F. A physician's report may be required by one's department manager for extended periods of sick leave usage by an employee in this Unit, or if in the determination of the City Manager, the employee exhibits greater than average, or unusual patterns or circumstances in their use of sick leave.
- G. Employees unable to return to work within six (6) months of the date of disability (whether work or non work-related) may be separated from City employment, unless an extension is approved by the City Manager, and except as otherwise restricted by state or federal law.
- H. Employees who have accumulated two-hundred forty (240) hours or more of accrued sick leave may be credited, at the employee's written request, with two (2) additional vacation leave hours for each consecutive three (3) month period in which no paid sick leave was used by the employee.

Section 8.6 Management Leave

In lieu of earning overtime or compensatory time off, department managers (as designated by the City Manager) will be granted up to a maximum of one-hundred twenty (120) hours of paid management leave each fiscal year. The amount available to each management employee may vary, at the discretion of the City Manager. Management leave hours will be credited to the designated manager's leave time account at the commencement of each fiscal year in the total number of hours granted by the City Manager to that employee. Management leave must be used within the fiscal year in which it is earned, and unused leave will not be paid in cash or any other form of compensation upon separation from City employment.

Section 8.7 Work Furlough Days

Effective 01 July 2013, two (2) work furlough days, defined as City Hall operations closed for the entire regular work day and employees of this Group are off work and unpaid for each day, shall occur during the term of this Agreement. The actual two (2) unpaid Work Furlough Days will be determined by and between this Group and the City Manager in advance regarding which work days are subject to furlough. In the event of unresolved disagreement over the designated furlough days, the City Manager's decision shall be final with no right of appeal.

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The City will calculate and implement the two (2) unpaid work furlough days into bi-weekly pay deductions in the annualized regular base pay of the employees in this Group, retroactive to 01 July 2013. No "true-up" in employee compensation is due or owed by either the City or the employee should an employee of this Group leave during the term of this Agreement.

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ARTICLE 9: OVERTIME

Section 9.1 Regular Overtime

The City will compensate eligible regular non-management employees for each one-quarter hour (0.25) of overtime worked at the rate of one and one-half times (1.5) the employee's base hourly rate including applicable FLSA-required compensation. Overtime is defined as hours worked in excess of eighty (80) hours per pay period, or hours worked in excess of a regularly-scheduled shift. Employees working partial or reduced schedules will not be eligible for overtime until their hours worked exceed the regular work hours noted in Article 4. Authorization of the employee's supervisor must be obtained prior to the working of overtime hours, except in emergency situations. Compensation for overtime shall be in the form of cash payment, or if requested by the employee and approved by their supervisor, in the form of compensatory time off (CTO) that shall also accrue at the rate of one and one-half (1.5) times the actual overtime hours worked.

For purposes of calculating overtime and compensatory time, all paid leave shall be considered as hours worked.

Section 9.2 Compensatory Time Off

A maximum of one hundred (100) hours of compensatory time off (CTO) may be accrued by each eligible employee of this Unit, except when additional hours are approved by the City Manager for a recognized or specific operational need or situation. Whenever possible and in the discretion of one's supervisor, overtime shall be compensated with compensatory time off. Compensatory time off may be used by written request of the employee filed at least three (3) days in advance with the appropriate supervisor. Management will make every effort to comply with time

off requests of the employee and shall not arbitrarily assign employees to compensatory time off.

ARTICLE 10: BILINGUAL PAY

The City has the sole and exclusive right to determine and designate which Employees, and how many Employees, are eligible to receive bilingual pay of \$75.00 per month. Designated Employees will be required to demonstrate conversational fluency in a language (e.g. Spanish) as determined by the City Manager based on community/public needs and organizational usage. The City may administer a competency test to certify fluency of the Employee in the designated language. Any such certification shall be a condition prior to Employee qualifying for monthly bilingual pay.

ARTICLE 11: AUTOMOBILE ALLOWANCE

Certain Employees' duties require that each have continuously available transportation for City business or work-related purposes. Each Employee position designated below shall provide an operable personal vehicle for use for normal business and personal use. The Employer agrees to provide each designated Employee with a monthly automobile allowance as specified below:

<u>Position</u>	<u>Monthly Auto Allowance</u>
Chief of Police	\$370.00
Community Development Director	\$345.00
Assistant to the City Manager	\$345.00

Each Employee shall be responsible for all operation expenses, maintenance expenses, repair expenses, replacement cost and insurance for the personal automobile used for this purpose. Employee shall at all times maintain adequate insurance for the automobile and shall inform his/her insurer that the automobile is used for City business and personal purposes. Each Employee shall maintain and provide to the City a valid Certificate of Insurance demonstrating comprehensive automobile liability coverage for the vehicle used and naming the City of Clayton as an additional insured on the applicable insurance policy.

ARTICLE 12: TERM OF AGREEMENT

Except ~~as~~ indicated herein, this Agreement shall be effective commencing 01 July 20~~1306~~ and continue up to and through 30 June 20~~1409~~.

IN WITNESS THEREOF, this Agreement is entered into by the following authorized representatives this ____ day of ~~Decem~~October 20~~1306~~, pursuant to the provisions of CA Government Code Section 3500, et. seq. for presentation to and adoption by the City Council of Clayton, California.

CLAYTON UNDESIGNATED MISCELLANEOUS CITY EMPLOYEES (UNIT)

By: _____
Unit Representative

By: _____
Unit Representative

CITY OF CLAYTON, CA (CITY)

By: _____
City Manager

#

Agenda Date: 11/5/13

Agenda Item: 6c



Approved: _____

Gary A. Napper
City Manager/Executive Director

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY CLERK/ HR MANAGER

DATE: November 5, 2013

SUBJECT: Multi-Year Agreement with Konica Minolta Business Solutions (Konica Minolta) for a Konica Minolta Bizhub C654e Copier Lease and Maintenance Agreement

RECOMMENDATION

Authorize the City Manager to enter into a 36-month lease agreement with Konica Minolta Business Solutions for a new fixed lease and maintenance agreement for a Konica Minolta Bizhub C654e copier.

BACKGROUND

In November 2010, the Council approved a 3 year (36 month) lease agreement for a Konica Minolta C652 document copier with Caltronics Business Systems. The 3-year lease expires on December 23, 2013. The copier is located on the third floor of City Hall and is used for all agenda copying, notices, letters; basically all copying done for the administration of the City. This copier also serves as a printer for the Administrative staff.

The Konica Minolta machine has performed well and met the City's expectations and needs. Today's monthly cost of the lease equipment is \$398.78 plus tax and the maintenance contract is \$296 (based on an average of 15,000 black and white copies at \$0.0069 and 3,500 colored copies at .055), for a total monthly cost of \$694.78 (\$8,337 per year).

Staff requires machines to have the following capabilities: color copying, stapling, 2/3 hole punching, tri-folding, and the ability to print on thick paper for posters. By inclusion of these features on the current copier, previous City expenses for outsourcing these jobs were eliminated.

NEW LEASE PROPOSALS

With the current copier lease expiring staff contacted vendors in hopes of finding that lease prices and maintenance contract prices had fallen in the last 36 months. Staff's inclination was correct and almost all of the vendors provided prices which were lower than the current contract. In August, September, and October 2013 staff contacted five (5) vendors regarding options for copier leases and maintenance agreements.

Copier Recommended – Konica Minolta C654e

Staff recommends Council approve the multi-year lease and maintenance agreement with Konica Minolta Business Solutions for a replacement Konica Minolta C654e, a copier similar in speed to the City's current machine. This copier is only a slight upgrade from the current model, therefore staff will have no problems during the transition as the layout of the machine is identical. There was an option to lease a C754e which copy 75 pages per minute for black and white copies but staff does not believe this slight upgrade is worth the increased cost at this time.

This copier will save staff time due to high speed production, coupled with a 36 month lease, will allow the City to maintain a highly functioning copier for the duration of the lease. This also allows the City the opportunity to replace the copier in three years with an even more efficient and better priced unit as the price for technological advances has become more competitive. Advances in copier products on the market are ever changing and a shorter lease term will allow the City to continue to access the best deals on the market.

Since staff has previously worked with Konica Minolta Business Solutions and were satisfied with their service and because they provided the best price of the machine, staff is recommending the City Council approve the contract. Konica Minolta also locked in the lease price and maintenance agreement price for the term of the lease.

Alternative Lease Options

TaylorMade also provided a quote for a Kyocera TASKalfa 6550ci (similar speed to the Konica machine) and a 5550ci machine which has a slightly slower copying speed than the machine being quoted by Konica Minolta. While either of these machines would likely be functional for the City the price was slightly higher than the recommended lease and maintenance agreement.

Caltronics, Smile Business Solutions, and Xerox also provided pricing as shown on the attached spreadsheet but the pricing was considerably higher than the recommended option.

FISCAL IMPACT

The current lease the City has with Konica Minolta is a 36 month lease that ends on December 23, 2013. Konica Minolta has provided a fixed lease and maintenance rate therefore the prices are set for the duration of the contract.

There is \$8699 (\$724.91 per month) budgeted in Fiscal Year 2013-2014 for the current copier lease and maintenance agreement. If the City enters into a lease with Konica Minolta for the C652 copier the City will pay approximately \$546.65 before taxes producing a considerable savings this fiscal year and over the term of the contract.

Konica Minolta will provide return of the current machine at a cost of \$400 to the City.

Conclusion

Staff recommends the City Council authorize the City Manager to enter into a 36 month lease agreement with Konica Minolta Business Solutions for its C654e copier.

Attachments: Spread Sheet of Alternatives (2 pages)
Lease Agreement from Konica Minolta (2 pages)

Current Copier		Starting Rate
Konica C652		
<i>Konica Minolta (36 month lease)</i>		
Maintenance Agreement 15,000 copies/ .0069 per page		\$398.78
Click Charges 3,500 colored copies/ .055 per page		\$103.50
		\$192.50
	Total	\$694.78

A. Lease Options (Average Use Calculation) 36 Month Lease

Konica Minolta (Konica C654e)		
Lease		\$296.65
Maintenance Agreement 15,000 copies/ .005 per page		\$75.00
Click Charges 3,500 colored copies/.05 per page		\$175.00
	Total	\$546.65

Konica Minolta (Konica C754e)		
Lease		\$327.58
Maintenance Agreement 15,000 copies/ .005 per page		\$75.00
Click Charges 2,500 colored copies/.05 per page		\$175.00
	Total	\$577.58

TaylorMade (Kyocera TASKalfa 5550ci)		
Lease		\$341.10
Maintenance Agreement 15,000 copies/ .007 per page		\$105.00
Click Charges 3,500 colored copies/ .046 per page		\$161.00
	Total	\$607.10

TaylorMade (Kyocera TASKalfa 6550ci)		
Lease		\$396.55
Maintenance Agreement 15,000 copies/ .007 per page		\$105.00
Click Charges 3,500 colored copies/ .046 per page		\$161.00
	Total	\$662.55

Caltronics (Konica C654e)		
Lease		\$448.28
Maintenance Agreement 15,000 copies/ .006 per page		\$90.00
Click Charges 3,500 colored copies/.05 per page		\$175.00
	Total	\$713.28

Caltronics (Konica C754e)	\$519.88
Maintenance Agreement 15,000 copies/ .006 per page	\$90.00
Click Charges 3,500 colored copies/.05 per page	\$175.00
Total	\$784.88

<i>Smile Business Products (Sharp MX-6240N)</i>	
Lease	\$423.29
Maintenance Agreement 15,000 copies/ .0087 per page	\$140.45
Click Charges 3,500 colored copies/ .0535 per page	\$187.25
Total	\$750.99

Xerox (X560)	
Lease	\$920.56
Maintenance Agreement 15,000 copies/ .0099 per page	\$148.50
Click Charges 3,500 colored copies/ .049 per page	\$171.50
Total	\$1,240.56

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KONICA MINOLTA

Premier Advantage Agreement

APPLICATION NUMBER

AGREEMENT NUMBER

This Premier Advantage Agreement ("Agreement") is written in "Plain English". The words you and your, refer to the customer (and its guarantors). The words Lessor, we, us and our, refer to Konica Minolta Premier Finance, a program of Konica Minolta Business Solutions U.S.A., Inc., its subsidiaries and affiliates. (Supplier)

CUSTOMER INFORMATION

FULL LEGAL NAME			STREET ADDRESS	
CITY OF CLAYTON			6000 HERITAGE TRAIL	
CITY	STATE	ZIP	PHONE*	FAX
CLAYTON	CA	94517	925 673 7300	
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	E-MAIL	
			GNAPPER@CLCLAYTON.CA.US	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

*By providing a telephone number for a cellular phone or other wireless device, you are expressly consenting to receiving communications (for NON-marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Lessor and its affiliates and agents. This Express Consent applies to each such telephone number that you provide to us now or in the future and permits such calls. These calls and messages may incur access fees from your cellular provider.

CUSTOMER ONE GUARANTEE

The Konica Minolta equipment leased in this Agreement is covered under Konica Minolta's Customer One Guarantee. A copy of the Guarantee can be obtained at your local branch or www.kmbs.konicaminolta.us.



MAKE / MODEL NO. / ACCESSORIES (including Software Description and Supplier / Licensor if applicable)

1 - BIZHUB C654E

☐ See attached 'Schedule A' for additional Equipment / Accessories / Software

TERM AND PAYMENT SCHEDULE

TERM IN MONTHS	# of payments	Payment Frequency	Payment Amount (plus applicable taxes)	Advance Payment (plus applicable taxes)
36	36	☐ Quarterly ☒ Monthly	\$ 296.65	\$
Payment includes 0 B&W pages per month		Overages billed MONTHLY at \$ 0.00500 per B&W page		
Payment includes 0 Color pages per month		Overages billed MONTHLY at \$ 0.05000 per Color page		

☐ See attached Pool Billing Schedule

END OF LEASE OPTIONS: You will have the following options at the end of the original term, provided the Lease has not terminated early and no event of default under the Lease has occurred and is continuing. 1. Purchase the Equipment for the Fair Market Value as determined by us. 2. Renew the Lease per paragraph 1 (on reverse). 3. Return Equipment as provided in Paragraph 6 (on reverse).

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT: THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

Konica Minolta Premier Finance			
LESSOR	AUTHORIZED SIGNER	TITLE	DATED

CUSTOMER ACCEPTANCE

CITY OF CLAYTON	X	
FULL LEGAL NAME OF CUSTOMER (as referenced above)	AUTHORIZED SIGNER	DATED
94-1568979	GARY A. NAPPER	CITY MANAGER
FEDERAL TAX I.D. #	PRINT NAME	TITLE

CONTINUING GUARANTEE

As additional inducement for us, Konica Minolta Premier Finance to enter into the Agreement, the undersigned ("you") unconditionally, jointly and severally, personally guarantees that the customer will make all payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we may make other arrangements including compromise or settlement with you and you waive all defenses and notice of those changes and presentment, demand, and protest and will remain responsible for the payment and obligations of this Agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is necessary for us to proceed legally to enforce this guarantee, you expressly consent to the jurisdiction of the court set out in paragraph 14 and agree to pay all costs, including attorney's fees incurred in enforcement of this guarantee. It is not necessary for us to proceed first against you before enforcing this guarantee. By signing this guarantee, you authorize us to obtain credit bureau reports for credit and collection purposes.

	X	
PRINT NAME OF GUARANTOR	SIGNATURE (NO TITLES)	DATED

To help the Government fight the funding of terrorism and money laundering activities, Federal Law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What this means is, when you open an account, we will ask for your name, address and other information that will allow us to identify you; we may also ask to see identifying documents.

See reverse side for additional terms and conditions

KMPF0005 - US 06/10/13

1. **LEASE AGREEMENT:** You agree to lease from us the personal property described under "MAKE/MODEL/ACCESSORIES" and as modified by supplements to this Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. To the extent the Equipment includes intangible property or associated services such as periodic software licenses and prepaid database subscription rights, such property shall be referred to as the "Software". You agree to all of the terms and conditions contained in this Agreement and any Schedule, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supercedes all other writings, communications, understandings, agreements, any purchase order and any solicitation documents and related documents. This Agreement may be modified only by written Agreement and not by course of performance. This Agreement becomes valid upon execution by or for us. The Equipment is deemed accepted by you under this Agreement unless you notify us within three (3) days of delivery that you do not accept the Equipment and specify the defect or malfunction. In that event, at our sole option, we or our designee will replace the defective item of Equipment or this Agreement will be canceled and we or our designee will repossess the Equipment. You agree that, upon our request, you will sign and deliver to us, a delivery and acceptance certificate confirming your acceptance of the Equipment leased to you. The "Billing Date" of this Agreement will be the twentieth (20th) day following installation. You agree to pay a prorated amount of 1/30th of the monthly payment times the number of days between the installation date and the Billing Date. This Agreement will continue from the Billing Date for the Term shown and will be extended automatically for successive one (1) month terms unless you (a) send us written notice, between ninety (90) days and one hundred fifty (150) days before the end of any term, of your decision to return or purchase the Equipment or renew this Lease or (b) you do not purchase or return the Equipment, as specified in your notice, within ten (10) days after the end of the term. Leases with \$1.00 purchase options will not be renewed. The periodic renewal payment has been set by mutual agreement and is not based on the cost of any component of this lease. THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO LESSEE. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You authorize us to insert or correct missing information on this lease including your proper legal name, serial numbers, other numbers describing the Equipment and other omitted factual matters. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignee or third parties having an economic interest in this Agreement or the Equipment.

2. **RENT:** Rent will be payable in installments, each in the amount of the Monthly Payment (or other periodic payment) shown plus any applicable sales, use and property tax. If we pay any tax on your behalf, you agree to reimburse us promptly along with a processing fee. Subsequent rent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. Your obligation to make all Monthly Payments (or other periodic payments) hereunder is absolute and unconditional and you cannot withhold or offset against any Monthly Payments (or other periodic payments) for any reason. You agree that you will remit payments to us in the form of company checks (or personal checks in the case of sole proprietorships), direct debit or wires only. You also agree cash and cash equivalents are not acceptable forms of payment for this Agreement and that you will not remit such forms of payment to us. WE BOTH INTEND TO COMPLY WITH ALL APPLICABLE LAWS. IF IT IS DETERMINED THAT YOUR PAYMENTS UNDER THIS AGREEMENT RESULT IN AN INTEREST PAYMENT HIGHER THAN ALLOWED BY APPLICABLE LAW, THEN ANY EXCESS INTEREST COLLECTED WILL BE APPLIED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING UNDER THIS AGREEMENT OR WILL BE REFUNDED TO YOU. IN NO EVENT WILL YOU BE REQUIRED TO PAY ANY AMOUNTS IN EXCESS OF THE LEGAL AMOUNT.

3. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the designated Equipment and accessories, maintenance by Supplier including inspection, adjustment, parts replacement, drums and cleaning material required for the proper operation, as well as toner, developer, copy cartridges and printheads. All supplies are the property of Supplier until used. If your use of supplies exceeds the typical use pattern (as determined solely by Supplier) for these items by more than 10%, or should Supplier, in its sole discretion, determine that Supplies are being abused in any fashion, you agree to pay for such improper or excess use. Paper must be separately purchased by you. A page is defined as one meter click and varies by page size as follows: 8.5"x11" = 1 click, 11"x17" = 2 clicks, 18"x27" = 3 clicks, 27"x36" = 4 clicks and 36"x47" = 5 clicks. You agree to provide Supplier free and clear access to the equipment and Supplier will provide labor or routine, remedial and preventive maintenance service as well as remedial parts. All part replacements shall be on an exchange basis with new or refurbished items. Emergency service calls will be performed at no extra charge during normal business hours (defined as 8:30am to 5:00pm, Monday through Friday, exclusive of holidays observed by Supplier). Overtime charges, at Supplier's current rates, will be charged for all service calls outside normal business hours. Supplier will not be obligated to provide service or repairs in the event of misuse or casualty and will charge you separately if such repairs are made. If necessary, the service and supply portion of this Agreement may be assigned. We may charge you a Supply Freight Fee to cover our costs of shipping supplies to you. You acknowledge that (a) the Supplier (and not Lessor or its assignees) is the sole party responsible for any service, repair or maintenance of the Equipment and (b) the Supplier (not Lessor or its assignees) is the party to any service maintenance agreement.

4. **OWNERSHIP OF EQUIPMENT:** We are the owner of the Equipment and have sole title (unless you have a \$1.00 purchase option) to the Equipment (excluding Software). You agree to keep the Equipment free and clear of all liens and claims. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to, hard drives, disk drives or any other form of memory.

5. **WARRANTY DISCLAIMER:** WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS". You acknowledge that none of Supplier or their representatives are our agents and none of them are authorized to modify the terms of this Agreement. No representation or warranty of Supplier with respect to the Equipment will bind us, nor will any breach thereof relieve you of any of your obligations hereunder. You are aware of the name of the manufacturer or supplier of each item of Equipment and you will contact the manufacturer or supplier for a description of your warranty rights. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or Supplier of the Equipment. THIS AGREEMENT CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. You agree that the Customer One Guarantee is a separate and independent obligation of Supplier to you, that no assignee of the Lessor shall have any obligation to you with respect to the Guarantee and that your obligations under this Agreement are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim you may have against Supplier with respect to the Customer One Guarantee.

6. **LOCATION OF EQUIPMENT:** You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, if you do not purchase the Equipment, you will return the Equipment to a location we specify at your expense, in retail resalable condition (normal wear and tear acceptable), full working order, and in complete repair.

7. **LOSS OR DAMAGE:** You are responsible for the risk of loss or for any destruction of or damage to the Equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid Monthly Payments (or other periodic payments shown) for the full Agreement term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at four percent (4%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney in fact to execute in your name any insurance drafts or checks issued due to loss or damage to the Equipment.

8. **COLLATERAL PROTECTION AND INSURANCE:** You are responsible for installing and keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. During the term of this Agreement, you agree that you will (1) insure the equipment against all loss or damage naming us as loss payee; (2) obtain liability and third party property damage insurance naming us as an additional insured; and (3) deliver satisfactory evidence of such coverage with carriers, policy forms and amounts acceptable to us. All policies must provide that we be given thirty (30) days written notice of any material change or cancellation. If you do not provide evidence of acceptable insurance, we have the right, but no obligation, (a) to obtain insurance covering our interest (and only our interest) in the Equipment for the lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be canceled by us at any time. In that event you will be required to pay us an additional amount each month for the insurance premium and an administrative fee. The cost may be more than the cost of obtaining your own insurance. You agree that we, or one of our affiliates, may make a profit in connection with the insurance we obtain. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims or, (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the original equipment cost to cover our credit risk, administrative costs and other costs, as would be further described on a letter from us to you and on which we may make a profit. If you later provide evidence that you have obtained acceptable insurance, we will cancel the insurance we obtained or cease charging the surcharge.

9. **INDEMNITY:** We are not responsible for any loss or injuries caused by the installation or use of the Equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment. We reserve the right to control the defense and to select or approve defense counsel. This indemnity survives the expiration or termination of this Agreement.

10. **TAXES AND FEES:** You agree to pay when invoiced all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. You agree to (a) reimburse us for all personal property taxes which we are required to pay as Owner of the Equipment or to remit to us each month our estimate of the monthly equivalent of the annual property taxes to be assessed. If you do not have a \$1.00 purchase option, we will file all personal property, use or other tax returns and you agree to pay us a processing fee for making such filings. You agree to pay us up to \$75.00 on the date the first payment is due as an origination fee. We reserve the right to charge a fee upon termination of this Agreement either by trade-up, buy-out or default. Any fee charged under this Agreement may include a profit and is subject to applicable taxes.

11. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement and/or the Equipment without notice. You agree that if we sell, assign, or transfer this Agreement and/or the Equipment, the new lessor will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new Lessor will not be subject to any claims, defenses, or set offs that you may have against us whether or not you are notified of such assignment. The cost of any Equipment, Software, services and other elements of this Agreement has been negotiated between you and the Supplier. None of Lessor's assignees will independently verify any such costs. Lessee's assignees will be providing funding based on the payment you have negotiated with Supplier. You are responsible for determining your accounting treatment of the appropriate tax, legal, financial and accounting components of this Agreement.

12. **DEFAULT AND REMEDIES:** (a) If you do not pay any lease payment or other sum due (b) if you break any of your promises in the Agreement or any other Agreement with us or (c) if you, or any guarantor of your obligations become insolvent or commence bankruptcy or receivership proceedings or have such proceedings commenced against you, you will be in default. If any part of a payment is more than three (3) days late, you agree to pay a late charge of ten percent (10%) of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may do any one or all of the following: (i) instruct Supplier to withhold service, parts and supplies and / or void the Customer One Guarantee; (b) terminate or cancel this Agreement and require that you pay, AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY, the sum of: (i) all past due and current Monthly Payments (or other periodic payments) and charges; (ii) the present value of all remaining Monthly Payments (or other periodic payments) and charges, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the term of this Agreement (or any renewal thereof); and (c) require you to return the Equipment to us to a location designated by us (and with respect to any Software, (i) immediately terminate your right to use the Software including the disabling (on-site or by remote communication) of any Software; (ii) demand the immediate return and obtain possession of the Software and re-lease the Software at a public or private sale; and/or (iii) cause the Software supplier to terminate the Software license, support and other services under the Software license). We may recover interest on any unpaid balance at the rate of four percent (4%) per annum but in no event more than the lawful maximum rate. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Lessor or its Assignee or any other law. You agree to pay our reasonable costs of collection and enforcement, including but not limited to attorney's fees and actual court costs relating to any claim arising under this Agreement including, but not limited to, any legal action or referral for collection. If we have to take possession of the Equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES FOR ANY REASON WHATSOEVER. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. All of our rights are cumulative. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive lessee's rights under Article 2A (508-522) of the UCC.

13. **UCC FILINGS:** You grant us a security interest in the Equipment if this Agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument in order to show our interest in the Equipment.

14. **CONSENT TO LAW, JURISDICTION, AND VENUE:** This Agreement shall be deemed fully executed and performed in the state of Lessor or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of the Lessor or its Assignee's principal place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Lessor. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Lessor in relation to such matters. BOTH PARTIES WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US.

15. **LESSEE GUARANTEE:** You agree, upon our request, to submit the original of this Agreement to the Lessor via overnight courier the same day of the facsimile or other electronic transmission of the signed Agreement. Both parties agree that this Agreement signed and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. You waive the right to challenge in court the authenticity of a faxed or other electronically-transmitted signed copy of this Agreement and agree that the faxed or other electronically-transmitted copy containing your faxed or other electronically-transmitted signature and our manual or electronic signature shall be considered the sole original for all purposes, including without limitation, any enforcement action under paragraph 12.

16. **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with any billing procedures designated by us, including notifying us of the meter reading on the Billing Date. If meter readings are not received, we reserve the right to estimate your usage and bill you for that amount. At the end of the first year of this Agreement and once each successive twelve-month period, we may increase your payment, and the per-page charge over the pages included (Overage) by a maximum of ten percent (10%) of the existing charge, or if less, the maximum amount permitted by applicable law.

17. **COMPUTER SOFTWARE:** Notwithstanding any other terms and conditions of this Agreement, you agree that as to Software only: a) We have not had, do not have, nor will have any title to such Software, b) You have executed or will execute a separate software license Agreement and we are not a party to and have no responsibilities whatsoever in regards to such license Agreement, c) You have selected such Software and as per Agreement paragraph 5, WE MAKE NO WARRANTIES OF MERCHANTABILITY, DATA ACCURACY, SYSTEM INTEGRATION OR FITNESS FOR USE AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SUCH SOFTWARE, SYSTEMS INTEGRATION, OR OTHERWISE IN REGARDS TO SUCH SOFTWARE. CUSTOMER'S LEASE PAYMENTS AND OTHER OBLIGATIONS UNDER THIS LEASE AGREEMENT SHALL IN NO WAY BE DIMINISHED ON ACCOUNT OF OR IN ANY WAY RELATED TO THE ABOVE SAID SOFTWARE LICENSE AGREEMENT OF FAILURE IN ANY WAY OF THE SOFTWARE.



EQUIPMENT REMOVAL AUTHORIZATION

Customer: CITY OF CLAYTONPick Up Address: CITY OF CLAYTON, 6000 HERITAGE TRAIL, CLAYTON, CA, 94517

Equipment being removed from Customer's Location:

Make: <u>KONICA MINOLTA</u>	Model: <u>BIZHUB C652</u>	Serial Number: <u>A0P0011003383</u>
Make: _____	Model: _____	Serial Number: _____
Make: _____	Model: _____	Serial Number: _____

☐ Customer Owned Asset:

Customer represents and warrants that it has good title to the equipment, free and clear of any lien, mortgage, encumbrance or security interest of any kind. Customer agrees to defend, indemnify and hold Konica Minolta Business Solutions U.S.A., Inc. ("KMBS") harmless from any loss, damage claim, liability or expense of any kind (including, but not limited to, court costs and attorney's fees) arising or resulting from a breach of this representation and warranty of good title and/or the authority, expressed or apparent, of Customer to trade-in or transfer the equipment. Upon signing this Agreement, Customer surrenders possession of the equipment and all components contained therein to KMBS. Customer further agrees that the surrendered equipment will be available for pick-up at the same time that any new equipment is delivered. If the surrendered equipment is not available for pick-up at time of new equipment delivery, customer will be invoiced an additional charge for the separate pick-up.

☒ Lease Company Owned Asset:Lease Company Name: DLL Lease #: 25079777☐ Upgrade to Return KMBS will resolve current lease obligation. Asset belongs to the Lease Company. KMBS will ship back to the Lease Company at no expense to Customer.☐ Upgrade to Keep KMBS will resolve current lease obligation. Asset belongs to KMBS unless otherwise stated below.☐ Buyout to Keep KMBS will resolve current lease obligation. Asset belongs to KMBS unless otherwise stated below.

☒ End of Lease Return
Storage of Equipment
Less than 90 Days

Asset belongs to the Lease Company. KMBS will return equipment listed above to the respective leasing company upon receipt of a written Return Authorization Letter and Shipping Instructions. In the event KMBS does not receive a Return Authorization Letter and Shipping Instructions within 90 days of equipment pick up from Customer's location, and Customer has not made additional arrangements with KMBS for storage, the equipment listed above will be returned to Customer's location of pick up with no further obligation to KMBS.

Upon shipment of equipment, KMBS will invoice Customer \$ 400.00 for associated shipping charges.

☐ End of Lease Return
Storage of Equipment
Greater than 90 Days

Asset belongs to the Lease Company. KMBS agrees to hold the Equipment for Customer, at KMBS' cost for storage only, until Customer or Lease Company provides KMBS with a written Return Authorization Letter and Shipping Instructions, but in no event shall KMBS continue to hold the equipment after _____ ("Storage Termination Date"). Upon receipt of the leasing company's Return Authorization Letter and Shipping Instructions, KMBS will return equipment listed above to the respective leasing company. In the event KMBS does not receive a Return Authorization Letter and Shipping Instructions before the Storage Termination Date, KMBS will return the equipment listed above to Customer's location of pick up with no further obligation to KMBS.

Upon shipment of equipment, KMBS will invoice Customer \$ _____ for associated shipping charges.

KMBS Market VP
Approval Required
for this option.

Comments:

ORIGINATING VENDOR WAS CALTRONICS

In addition to the terms and conditions incorporated above, KMBS shall have no liability and Customer shall hold KMBS harmless for any damage or loss to the equipment listed above, regardless of cause, once it has left Customer's pick up location. The undersigned represents that he/she is an authorized representative of the Customer and has authority to bind Customer to this Agreement.

Customer

Name _____

Please print

Signature _____

Date

Title _____

Konica Minolta Business Solutions U.S.A., Inc.

Name Michael Young

Please print

Signature M. Young

Date

Title Account Mgr

LEASE COMPANY USE

☐ Approved Customer has fulfilled its obligation on current lease.☐ Contingent Approval Customer has lease balance of \$ _____ which needs to be satisfied.

RA # _____ Shipping Instructions _____

Name _____ Signature _____ Title _____ Date _____



Agenda Date: 11/5/13

Agenda Item: 6f

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 05 NOVEMBER 2013

**SUBJECT: AUTHORIZATION TO APPLY FOR COUNTY PARK FUNDS (\$29,000)
REPLACEMENT MULTI-SPORT SCOREBOARDS, COMMUNITY PARK**

RECOMMENDATION

It is recommended the City Council, by minute motion, authorize the City's application for \$29,000 in County Park Dedication Funds from Contra Costa County to assist in funding the removal, purchase and installation of three (3) new multi-sport scoreboards in Clayton Community Park; and approve the allocation of \$7,500 from the City's Deferred Maintenance Fund to fulfill the estimated Project Budget of \$36,500.

BACKGROUND

In January 2012 and again in September 2012, the City Council received staff recommendations to fund the replacement of the three (3) inoperable and antiquated scoreboards located at the sports fields of Clayton Community Park. The three (3) existing scoreboards were originally purchased by the Clayton Business and Community Association (CBCA) in February 1995 and installed in March of that same year by the City's Maintenance Department. The approximately 19-year old scoreboards have weathered a legacy of generations playing on those sports fields, and each unit has experienced lots of use, wear and tear, vandalism, maintenance repairs and retrofits.

By 2005 the Maintenance Department incurred significant maintenance problems with the internal components of the scoreboards including unusable lamp sockets, dead control boards and dysfunctional circuits. In 2007 the two (2) smaller scoreboards located in the Park's upper fields failed to operate at all, and the large one on lower Field #1 had many lamps inoperable due to faulty circuitry and boards. The majority of scoreboard manufacturers only provide a 5-year warranty on the product; these scoreboards have certainly outlasted the warranty period threshold.

Scoreboards now available in the market today are LED-based, far more vandal resistant, and much more energy efficient. Trying to repair the City's current scoreboards continues to prove very costly, finding replacement parts near impossible, and patrons of our sports fields

often have a less than optimum experience at our Community Park due to the malfunction or inoperability of a field scoreboard staring blankly back at them.

The City Council's decision from the September 2012 public meeting was not to fund the scoreboards' replacement at this time but with instruction to staff to search instead for funding partners for this recreational-enhancement project.

PROBABLE FUNDING PARTNER

In July 2013, County Supervisor Karen Mitchoff sent a letter (ref. Exhibit 1) to Mayor Pierce indicating her office determined there is approximately \$29,000 held by Contra Costa County that was collected from building projects [impact fees] in the unincorporated areas of the County which surround the City of Clayton [within her supervisory district]. Supervisor Mitchoff inquired whether the City of Clayton could potentially put to use these County Park Dedication Funds to improve or enhance park and recreational opportunities within our city.

On July 31st, Mayor Pierce and the City Manager met with Supervisor Mitchoff, members of her staff and Mr. Robert Calkins, Program Manager with Contra Costa County responsible for the disposition of these funds. Collectively, and in recognition that \$29,000 is an insufficient amount to construct a park, the assembled officials agreed the replacement of the defunct scoreboards at Clayton Community Park would satisfy the regulations associated with use of County Park Dedication Funds since county residents also use and play in the City's park. The County requested the City prepare a Project Budget for official approval of the County Board of Supervisors at one of its subsequent public meetings.

SCOREBOARDS REPLACEMENT PROJECT

Using research and resources compiled for previous staff reports, Maintenance Supervisor John Johnston updated the information and expense details regarding the removal and disposal of the old scoreboards, purchase of the new scoreboards and wireless remote controllers, and costs associated with the installation of the three (3) new scoreboards. The Project Proposal is attached (ref. Exhibit 2) that indicates the scoreboards and equipment will cost \$17,557 with the balance related to removal and installation expenses for a total Project Budget of \$36,457.

Installation timeline would be demolition in December 2012, preparation and mounting of the new scoreboards in January 2014, and completion of the Project in February 2014. This time line would accommodate use of the new scoreboards for the Clayton Valley Little League opening season of 2014.

FISCAL IMPACT

In the previous staff recommendations, the estimated Project expense of \$31,650 was proposed using monies from the City's Deferred Maintenance Fund. In harmony with the City Council's last directive on this park recreational enhancement, leveraging \$29,000 in County Park Dedication Funds in exchange for \$7,500 in local Deferred Maintenance Funds

seems to be a beneficial and cost-effective transaction. The City must agree to maintain the new scoreboards and provide the electrical expenses associated with their use by the terms of the County Park Dedication Fund requirements. Staff is confident such added expense can be managed as well as partially recouped through City park user fees.

According to County staff, the City must advance its funds to complete the entire Project and then submit documentation to the County for reimbursement of the \$29,000 in County Park Dedication Funds. There are sufficient monies available in the City's Deferred Maintenance Fund (\$54,117) to address this reimbursement requirement plus underwrite the \$7,500 Project Budget gap.

Exhibits: 1. Letter from County Supervisor Karen Mitchoff [1 pg.]
2. Project Proposal memo [4 pp.]

Karen Mitchoff

Supervisor, District IV
Contra Costa County
Board of Supervisors

**Contra
Costa
County**

2151 Salvio Street, Suite R
Concord, CA 94520

Phone: (925) 521-7100
Fax: (925) 646-5202

Received

JUL 01 2013

City of Clayton*cc: Gary*

July 1, 2013

Mayor Julie Pierce
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

Dear Mayor Pierce,

Julie,

In a recent review of Park Dedication Funds, I learned that there is approximately \$29,000 that is being held by Contra Costa County that was collected from building projects in unincorporated areas of the County that are surrounded by the City of Clayton. Since it is the County's policy to utilize County Park Dedication Funds to meet local and regional park needs I would like to discuss possible uses of the funding in Clayton with you. While \$29,000 is not enough to create a new park, and the restriction on this funding is that they can't be used for maintenance, I am hoping that together we can find the best use of this money in Clayton.

Please contact my scheduler, Lisa Chow, at 925-521-7100 or lisa.chow@bos.cccounty.us to set up a meeting. I'd be happy to come to your city offices if that would make it more convenient for you and any other staff members you would like to invite.

Sincerely,

Karen

Karen Mitchoff
Supervisor, District IV



PROJECT PROPOSAL

TO: Gary Napper City Manager

FROM: John Johnston Maintenance Supervisor

DATE: 10-23-2013

SUBJECT: Clayton Community Park Scoreboards

Project Goals

The City of Clayton intends to install 3 scoreboards at the Clayton Community Park for use by multiple athletic leagues utilizing the city's 3 athletic fields. The city has one large multisport field in the lower portion of the park, Field #1, and two smaller multisport fields on the upper portion of the park, Fields #2 and #3. Through much research, staff has come up with what it considers are the best multi-sport scoreboards to accommodate baseball, softball, and soccer, while utilizing some of the existing structures at the park and minimizing the City's cost for this project. This project will allow many more users to enjoy the city's athletic fields, while meeting the field requirements for each respective sport.

Scoreboard Details

Each scoreboard will be using the latest in energy efficiency and technology. All 3 scoreboards will feature bright energy efficient LEDs with 18" to 21" high visibility digits for easier viewing. The face panels are made from shatter resistant polycarbonate to minimize vandalism and reduce maintenance costs. All 3 scoreboards will also come with a 5 year guarantee against defects in materials and workmanship. The Field #1 scoreboard will come with interchangeable soccer and baseball captions to accommodate soccer leagues playing in the fall, and baseball in the spring. The scoreboards on Fields #2 and #3 will have a Game Timer with Home and Guest score boxes that can be utilized for both Baseball/Softball and Soccer. Each scoreboard will come equipped with one wireless remote that can be operated by each user, and the city will purchase one spare remote to replace any lost or malfunctioning remotes to assure the scoreboards are available for all users throughout the season.

Scope of Work

Phase 1 of this project will require the removal of existing scoreboards, posts, and electrical wiring, connectors and or boxes.

Phase 2 will consist of pouring concrete footings for the new I-beam post installation, and the mounting of the new scoreboards.

Phase 3 will include the installation of all electrical wiring, connections including new shut-off boxes located at each scoreboard, weather proof boxes behind the dugouts, complete with an on-off switch and power outlet for wireless remote charger and possible pitching machine.

Project Cost

Estimated Costs Phase 1

Contract Labor	\$1,000.00
Debris Disposal	<u>\$800.00</u>
Estimated Total Costs	\$1,800.00

Estimated Costs Phase 2

Scoreboards & Equipment	\$17,557.00
4 each S18 / I-beams	\$3,000.00
Engineers Design	\$1,000.00
Concrete footings	\$1,000.00
Crane and operator	\$1,600.00
Contract Labor	<u>\$6,000.00</u>
Estimated Total Costs	\$30, 157.00

Estimated Costs Phase 3

Contract Labor	\$2,500.00
Materials	<u>\$2,000.00</u>
Estimated Total Costs	\$4,500.00

Phase 1	\$1,800.00
Phase 2	\$30,157.00
Phase 3	<u>\$4,500.00</u>
Estimated Total Project Costs	\$36,457.00

Project Timeline

Phase 1

December 2013

Phase 2

January 2014

Phase 3

January to February 2014

Estimated Completion Date

February 2014

SCOREBOARDS™ OUTDOOR SCOREBOARD 8414 FOOTBALL	
OVERALL DIMENSION	6' high x 14' wide x 4.75" deep.
INFORMATION DISPLAYED	Game Time, Home Score, Guest Score, Time Outs Left, Down, To Go, Ball On, Quarter
DIGITS	Bright Red, 7-Segment LEDs
TIMER	21" High Digits, Shall register 0:00 - 99:59
SCORING	18" High Digits, Shall register 0-99.
QUARTER	18" High Digits, Shall register 1-4.
DOWN	18" High Digits, Shall register 1-4.
TO GO	18" High Digits, Shall register 1-99.
BALL ON	18" High Digits, Shall register 1-99.
CAPTIONS	White vinyl captions.
CONSTRUCTION	4" extruded aluminum case, .093" thick. Face panels are 22 GA Galvaneal, finished in choice of colors (Black, Dark Blue, Bright Blue, Violet, Maroon, Red, Dark Green, Green, custom colors available).
ELECTRONICS	100% solid state, microprocessor controlled system.
SERVICING	Front access for ease of servicing. Plug in modules for ease of replacement.
MICROPROCESSOR CONTROL CONSOLE	Extruded Aluminum, high impact low profile microprocessor control console, latest state of the art, user friendly. Size: 13.25" wide x 5" high x 9" deep. Weights: 6 lbs. Microprocessor to be supplied with 25 feet of cable (hardwire). Microprocessor control console with membrane keyboard provides for direct entry of all information. Radio Control is available.
JUNCTION BOX	One junction box 5" x 3" with cover and plug. (Hardwire)
DATA CABLE	Two (2) twisted pair, direct burial.
POWER REQUIREMENTS	115 VAC. One 20A circuit is recommended.
INSTALLATION	May be installed on two posts. Mounting brackets are supplied with scoreboard.
WEIGHT	Net 350 lbs. / Shipping 450 lbs.
WARRANTY	Five year guarantee against defects in materials and workmanship. Factory repair service for parts in warranty. Union label.

SCOREBOARDS™ OUTDOOR SCOREBOARD 8389 Baseball		
OVERALL DIMENSION	8' high x 8' wide x 4.75" deep.	
INFORMATION DISPLAYED	Home Score, Guest Score, Inning, Ball, Strike, Out, Hit/Error	
DIGITS	7-Segment, Bright Red LEDs.	
SCORING	18" High Digits, Shall register 0-99.	
INNING	16" High Digits, Shall register 1-19.	
TIME/GAME TIME	18" High Digits, Displays Game Time in Minutes or Time of Day.	
BALL	3" Bulls Eye Indicators.	
STRIKE	3" Bulls Eye Indicators.	
OUT	3" Bulls Eye Indicators.	
HIT/ERROR	3" Bulls Eye Indicators.	
CAPTIONS	White vinyl letters.	
CONSTRUCTION	4" extruded aluminum case, .093" thick. Face panels made from shatter resistant polycarbonate (Black, Dark Blue, Bright Blue, Violet, Maroon, Red, Dark Green, Green, custom colors available).	
ELECTRONICS	100% solid state, microprocessor controlled system.	
SERVICING	Front access for ease of servicing. Plug in modules for ease of replacement.	
MICROPROCESSOR CONTROL CONSOLE	Extruded Aluminum, high impact low profile microprocessor control console, latest state of the art, user friendly. Size: 13.25" wide x 5" high x 9" deep. Weights: 6 lbs. Microprocessor to be supplied with 25 feet of cable (hardwire). Microprocessor control console with membrane keyboard provides for direct entry of all information. Radio Control is available.	
JUNCTION BOX	One junction box 5" x 3" with cover and plug. (Hardwire)	
DATA CABLE	Twisted pair, direct burial RJ45 Connectors.	
POWER REQUIREMENTS	115 VAC, 60 Hz Minimum one 20A circuit is recommended.	
INSTALLATION	May be installed on two posts. Mounting brackets are supplied with scoreboard.	
WEIGHT	Net 210 lbs. / Shipping 260 lbs.	
WARRANTY	Five year guarantee against defects in materials and workmanship. Factory repair service for parts in warranty. Union label.	



Agenda Date: 11/5/13

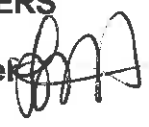
Agenda Item: 11a

Approved:


Gary A. Napper, City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Laura Hoffmeister, Asst. to the City Manager 

MEETING DATE: November 5, 2013

SUBJECT: Presentation of the 2012-13 Annual Citizens Oversight Report by the Trails and Landscape Committee for Measure B, Citywide Landscape Maintenance District

REQUEST

Consider and accept the Annual Report for 2012-13 from the Citizens Oversight Committee [Trails and Landscape Committee (TLC)] as stipulated in Measure B as approved by the voters for the Community Facilities District Funding of the City of Clayton roadway landscaping, trail and openspace maintenance (Landscape Maintenance District).

BACKGROUND

Measure B was passed by the voters of Clayton in June 2007 which established special district funding for the Citywide Landscape Maintenance District. The measure called for the preparation of an Annual Report by the Citizens Oversight Committee to be prepared and submitted to the City Council. The Trails and Landscaping Committee (TLC) is the name used to refer to the Citizens Oversight Committee called for in the measure. The TLC has prepared the attached Annual Report for the City Councils consideration and acceptance. The TLC independently prepared the report and at their October 28, 2013 meeting reviewed and unanimously approved the report to the City Council (vote 8-0, 2 absent).

The report provides information and highlights of the past fiscal year's activities.

Attachments:

Citizens Oversight Committee FY 12-13 Annual Report for the Citywide Landscape Maintenance District

Laura/TLC annual report12-13.ccr



City of Clayton

Trails and Landscape Committee

Annual Report 2012-2013

Message from the Chair:

The Trails and Landscape Committee has some new faces for 2013. I'm pleased to announce the addition of three new members to the committee: Don Fitzgerald, Clayton Smith and Ted Sudderth and returning member Bob Steiner. We are only one member shy of the maximum allowed on the TLC. I'm pleased to see that the prior Chair's message for more Claytonians' to serve on this committee has worked!

The new members are eager to roll up their sleeves and provide meaningful contributions to the TLC. I would like to thank Bob Steiner for agreeing to serve another term on the TLC. Bob now holds the distinct honor of being the longest tenured member of the TLC. Bob's leadership has been instrumental in getting me up to speed in my new role as the Chair. We also have a new Vice Chair – Ryan Lowe. I also want to acknowledge Jake Pauline as he has been a significant contributor to the success of the TLC. His leadership will be sorely missed. I'm looking forward to working with the new and existing committee members along with Laura Hoffmeister and Mark Janney to ensure that we all execute on our commitments to the TLC going forward!

The following Annual Report is for the 2012 – 2013 fiscal year. This report contains a detailed account of the expenditures of revenues collected by Measure B. All revenue collected by this measure is used on the Landscape maintenance District (LMD). Measure B required the formation of a Citizen Oversight Board to assure that Measure B funds are being utilized for their intended purpose. The Citizen Oversight Committee is made up of citizens of Clayton that are appointed by the City Council to serve two year terms. The committee will advise the council on LMD projects and maintenance reports review & submit recommendations on future budgets and present an annual report for use by the Council and the citizens of Clayton.

There will be a renewed emphasis on the Adopt-A-Trail program beginning in FY 2013-2014, with new members Ted Sudderth and Don Fitzgerald volunteering to lead the program. This program is designed to attract sponsors (families, individuals or businesses) who either make an annual financial pledge and/or a commitment to supply a work group to augment the efforts of the maintenance staff with regard to trail maintenance on one of eleven (11) trail segments. Posted at the head of each adopted trail is a plaque bearing the name of both the financial and the work-group sponsor. The bi-annual financial sponsorship is \$1,000, while work group sponsorship is \$200 per year.

Regards,
Larry Casagrande
Chair

LANDSCAPE MAINTENANCE DISTRICT CELEBRATES ITS SIXTH YEAR:

The Citywide Landscape Maintenance District (“District”) ended its Sixth year of operation on June 30, 2013. It operates and maintains the public roadway landscaping and its irrigation system, the trail system, and the “Clayton fountain.” It also provides weed abatement and fire breaks in the open spaces. The District does not include any of the city parks/sports fields, the City Hall and Library Landscape , or the downtown Grove Park which are funded by other taxes.

Measure B, passed by voters in June 2007, established a Citizens’ Oversight Committee that is commonly known as the Trails and Landscaping Committee (“TLC”) which advises the City Council and staff on matters concerning the District budget, priorities, and responsibilities. The TLC consists of up to eleven 11 non-paid, volunteer citizens of Clayton and the Vice Mayor who serves as the City Council’s non-voting representative in an ex-officio liaison capacity. The TLC currently meets quarterly to oversee the operation of the District.

2013-2014 TLC MEMBERS:

Citizens and their respective terms who are currently serving as members of the TLC:

Hank Strafford	(Ex-Officio)
No Alternate	(Ex-Officio-Alternate)
Larry Casagrande (Chair)	December 2011 - December 2013
Ryan Lowe (Vice Chair)	December 2012 - December 2014
Alyse Smith	December 2011 - December 2013
Robert Erich	December 2011-December 2013
Bob Steiner	June 2012 – December 2014
Anthony Chippero	June 2011 - December 2013
Don Fitzgerald	December 2012 – December 2014
Harun Simbirdi	June 2011 – December 2013
Clayton Smith	December 2012 – December 2014
Ted Sudderth	December 2012 – December 2014

TLC Recommendations, Projects, and Work Product Review 2012-2013

- ✓ TLC regularly receives and reviews reports on maintenance staff activities see attached City Maintenance Quarterly Report Update covering the periods: 5/21/12-11/19/12, 11/19/12-3/25/13, and 3/25/13-5/20/13. Some of the more significant issues in the reports include, but were not limited to:
 - Acknowledged that the landscape project along the Clayton Road median from Mitchell Canyon Road to Oakhurst Drive is completed, as well as Daffodil hill.
 - Removal of trees in the open space that were causing damage or were a danger to residential property, in the areas of Stranahan, Mitchell Canyon and Bigelow.
 - The on-going management and repair of the entire irrigation system within the Landscape District.
 - A new four year contract with a private contractor for weed abatement and fire control.
 - Status report regarding the energy efficiency of the Clayton Fountain Water Feature pumps.
- ✓ Re-enforced the committee's commitment to expanding the Adopt-A-Trail program.
- ✓ Reviewed Incoming and outgoing correspondence between citizens and staff regarding various concerns and observations relating to landscaping and trail issues.
- ✓ Reviewed and approved the proposed landscape district budget for FY 2012-2013.
- ✓ Once again, complimented the City Maintenance staff for the commendable job they do in effectively managing the available water supply and the maintaining the entire irrigation system.

ADOPT-A-TRAIL PROGRAM:

The Adopt-a-Trail program continues to improve with TLC members working as volunteers to support the effort. The program aims to:

- Augment financing provided by Measure B
- Make the trails cleaner
- Celebrate the trails' sponsors and volunteers
- Foster civic pride through volunteerism, philanthropy, and cleanliness

The TLC has identified several trail segments for adopt. Each segment can have two adopters: a financial adopter and clean-up adopter.

Please see the APPENDIX section of this report for a current listing of adopters.

TLC RECOMMENDS BUDGET FOR FISCAL YEAR 2012-2013 TO CITY COUNCIL:

The TLC submitted a proposed budget to the City Council, which was based on the existing FY 2012-2013 assessment, subject to adjustment by the Consumer Price Index (CPI), but capped to a 3% maximum increase per Measure B. Subsequently, the CPI was published at an increase of 2.1% and in July 2012, the City Council adopted a total annual assessment of \$955,711 encompassing all residential parcels or non-residential parcel acre. *A copy of the adopted budget and further explanation of Fund 210 is included in the APPENDIX section of this report.*

COMMUNITY OUTREACH:

Both the TLC and the District continue to reach out to the public to keep citizens informed of their activities in a variety of ways, which include:

- Inviting the public to attend quarterly TLC meetings
- Requesting comments and questions via email to cityinfo@ci.clayton.ca.us
- Posting meeting minutes at the City website at www.ci.clayton.ca.us
- Presenting summaries of TLC meetings at City Council meetings
- Publishing quarterly reports of maintenance staff activities
- Submitting articles about the District to the Clayton Pioneer newspaper

[Thanks to the Clayton Pioneer newspaper for publishing articles about the activities relating to Clayton's trails and landscaping. The articles, which appeared during the last fiscal year, are included in the *APPENDIX* section of this report].

APPENDIX

- 2012-2013 Budget
- City Wide Landscaping Maintenance District Fund No. 210
- City Maintenance Quarterly Report(s) - Trails and Landscaping
- Adopt a Trail Sponsors
- Articles published in the *Clayton Pioneer* during fiscal year 2012-2013
- Trails and Landscape Committee Informational brochure

City of Clayton
 Landscape Mtn District CFD 2007-1 Fund 210
 Estimated Budget 2012/13

Account Number	Account Name	2010-11 Actual 6/30/2011	2011-12 Adopted Budget	2011-12 Projected 6/30/2012	2012-13 Proposed Budget
7111	Salaries/Regular	192,086	162,632	162,632	162,632
7112	Temporary Help	67,947	94,150	94,150	94,150
7218	LTD Insurance	1,182	1,057	955	1,138
7220	PERS Retirement	38,167	35,592	35,592	36,868
7231	Workers Comp Insurance	5,827	2,679	2,679	9,966
7232	Unemployment Insurance	4,980	6,999	6,999	5,449
7233	FICA and Medicare	8,823	9,561	9,561	9,561
7246	Benefit Insurance	37,021	31,176	31,175	31,175
7311	General Supplies	33,441	40,000	40,000	43,000
7316	Landscape Replacement Material	-	20,000	20,000	20,000
7335	Gas & Electric Serv.	25,526	29,000	24,000	25,000
7336	Water Service	127,291	180,000	180,000	180,000
7342	Machinery/ Equip Maint.	14,807	9,000	9,000	9,500
7343	Vehicle Maintenance	8,331	8,334	12,464	12,000
7344	Vehicle Gas, Oil, and Supplies	12,140	9,000	10,000	10,500
7381	Property Tax Admin Cost	3,737	3,737	3,737	3,737
7412	Engineering Inspection	1,428	-	1,423	-
7418	Other Prof. Services	106,687	141,181	141,367	156,555
7486	CERF Charges/Depreciation	12,836	13,500	13,800	13,500
7620	Project/Program costs	277,702	330,000	478,111	-
7615	Property Taxes	2,332	2,370	2,388	2,398
8101	Transfer to General Fund	28,918	30,756	30,756	30,756
8111	Transfer to CIP Fund	-	50,000	50,000	-
Total Expenses		1,011,865	1,210,723	1,358,508	857,885

4604	Clayton LMD Assessment	910,571	936,064	936,064	855,711
5601	Interest	18,712	5,000	8,000	5,000
5606	Unrealized Inv Gain/Loss	(5,000)			
Total Revenue		924,283	941,064	944,064	860,711
Annual Balance (Shortfall)		(87,582)	(269,669)	(414,454)	102,826
Beginning Fund Balance		617,163	529,581	529,581	115,127
Ending Fund Balance		529,581	259,912	115,127	217,953

Account Number	Account Name	2010-11 Actual 6/30/2011	2011-12 Adopted Budget	2011-12 Projected 6/30/2012	2012-13 Proposed Budget
7419	Wildland Resource Mgmt	46,550	1,600	1,600	1,600
	Envirotech Enterprises	44,708	53,416	53,416	53,416
	Warner Brothers -Tree trimming	15,900	15,000	15,000	15,000
	Warner Bros Svc 1 x per yr+2 x trails	30,885	35,000	35,000	35,000
	NBS Admin Fees+Dot letters	3,868	3,624	3,800	3,800
	Martel Water Systems	475	1,000	1,000	1,000
	Rodent Control	8,151	7,500	7,500	7,500
	Advertising for TEMP labor/Live Scene	146	1,000	1,000	2,000
	Sprayer Sales Company (w/ treatment)		2,241	2,241	2,241
	Water Feature Extra + repair contingency	1,157	5,000	5,000	5,000
	Water Feature \$850x12	7,800	7,800	7,800	7,800
	Sub Division/City Entry Signs	-	8,000	8,000	8,000
	Daffodil Hill Landscape Min Supplies/water	-	-	-	12,830
	EBRCSA-Radio Min PW radio's	-	-	-	1,368
	Total	188,540	141,181	141,357	198,656
7311	Herbicides		16,000	16,000	16,000
	Fertilizer		7,000	7,000	7,000
	Irrigation		15,000	15,000	15,000
	Misc Supplies		2,000	2,000	5,000
			40,000	40,000	43,000
7520	Reserve Projects				
	Trail Resurface - Bruce Lee Trail \$50k		50,000.00		
	Trail Crack sealing/repair \$10k		10,000.00		
	CL Rd Median/Roadway Re-Landscape \$328,011k		328,011.00		
	Irrigation Central Controller System \$30k		30,000.00		
	Tree Replacement Trimming \$10k		10,000.00		
	Jeffrey Ranch Re-landscaping \$2.5K		2,500.00		
	Keller Ridge Tree Replacement \$16.6K		16,600.00		
	Daffodil Hill \$29k		29,000.00		
			476,111.00		

Extra to run pump for fountain

10 events (31 days @ \$100=\$4000.)

Art n Wine, Memorial Day, 4th of July, Halloween Parade/Ghost Walk, Veterans Day, Xmas Tree Lighting,

Presidents Day, Thanksgiving, Garden Tours, Oktoberfest

Citywide Landscape Maintenance District — Fund No. 210

In June 2007, Clayton voters approved a replacement real property special tax to continue funding the operation and maintenance of their citywide public landscaped areas. This annual tax is restricted to costs associated with: arterial and specified roadway medians and parkways, the trails system, the annual open space noxious weed abatement in Oakhurst hills, the annual open space and trails weed abatement for fire and public safety, landscape and turf irrigation and the monthly maintenance and special occasion operation of the "Clayton Fountain".

Maintenance of City Parks *is not* included as an authorized expense under the District's Act; park maintenance obligations fall to the City's General Fund. *Citywide public landscaping services have always been funded by a special revenue tax levied on private properties throughout the City.* The District is completing its 5th year of a 10-year approved operation (Measure B), and its citizens' oversight committee (Trails and Landscaping Committee, or TLC) meets periodically to ensure the promised maintenance standards and efficiencies are achieved with these special-purpose tax revenues.

Pursuant to the terms of voter-approved Measure B, the special tax rate may be modified annually by the change in the Consumer Price Index (CPI; San Francisco —Bay Area) from April to April. In no event shall the tax rate be increased by more than 3% each year. The CPI change (from April 2011 to April 2012) posted at 2.1%. The District's revenue projection has been increased by that factor accordingly and is set at a total of \$955,711 for FY 2012-13, an annual increase of \$19,657. Adding the interest earnings of \$5,000 pushes the total revenue budget to \$960,711. Pursuant to its oversight charge, the citizens' TLC considered the CPI change and the District's budget at its meeting on May 21st and adopted a motion to recommend the City Council implement the 2.1% CPI annual rate adjustment.

The Landscape Maintenance District has aggressively been installing improvements to the City's roadway landscaping over the course of the past two (2) years. An accounting of the District's activities and improvements is listed below, which included appropriations from the District's reserves in May 2010 (\$260,000) and more recently to fund the Clayton Road Median Project, complete the beautification of Daffodil Hill, and install plants in the terraced walls west of the CVS Pharmacy:

a. Oakhurst Drive decorative pavers in narrow medians plus plants (done)	\$ 70,000
b. Tree replacements on Keller Ridge Drive (partially complete)	\$ 16,600
c. Deferred Tree Trimming (done)	\$ 20,000
d. Clayton Fountain renovation and replanting project (done)	\$ 70,000
e. Restore plants: Oakhurst Dr., old Marsh Creek Rd., Clayton Rd. (partia1)	\$ 45,000
f. Marsh Creek Circle replanting/headlight glare mitigation (done)	\$ 19,400
g. Replant Jeffry Ranch Court island (not done yet)	\$ 2,500
h. Clayton Road Median Re-Landscaping Project (under progress)	\$263,072
Completion of Daffodil Hill Beautification Project (under progress)	\$ 22,250

CVS Terrace Retaining Wall Landscaping (under progress)	\$ 27,640
i. Trail Resurfacing, remainder of Bruce Lee Trail (with Street Project)	\$50,000
l. Master Remote Computer Controller for all irrigation Systems (not yet)	\$ 30,000
m. Trail Crack-Sealing and Minor Repairs (with Street Project)	\$ 10,000
n. Tree Replacement and Trimming (in progress)	<u>\$ 10,000</u>
Total:	\$656,462

The installation and commencement of these significant landscape restoration and District improvement projects illustrate the success of the District in managing the voter's preference for a "pay-as-you-go" ballot tax measure. The defeated Measure "0" (2005) would have issued a revenue bond in its initial year to attack the public improvements sooner but conservative Clayton voters disliked the higher annual assessment and the bonded indebtedness of the District. Entering the District's 6th year of operation has allowed the accumulation of reserves to accomplish many of the same objectives, just slightly later than some might have wished.

Noteworthy expenses of the District include its annual weed abatement Citywide (\$35,000 before the fire season), and a huge expense of \$53,416 to abate noxious and exotic weeds in the Oakhurst Hills (a condition of project approval for the Oakhurst residential development). Metered water service is left at its historical expense of \$180,000 per year yet it can fluctuate wildly depending on seasonal climates and strange weather patterns. However, as landscaping improvements are installed they are accompanied by irrigation system upgrades and efficiencies in irrigation, which temper this expense allocation and cause operational savings.

Personnel services for this labor-intensive work accounts for 40% of the District's budget this year (\$350,939), up 10% from last year's portion of 30% caused by increases in employee pension system rates, workers' compensation rates, and the amount of time the crews spend on District tasks. Whenever possible, tasks within the District are assigned to temporary seasonal personnel that are less expensive labor (e.g. trimming), which shifts the permanent City Maintenance personnel (5) to activities requiring journeyman-level experiences (e.g. irrigation line and system repairs).

As approved by Measure "B" voters, the District's budget includes an annual expense of \$20,000 (Account 7316) for the purchase of replacement plants. The District also contributes its annual allocation of \$13,500 to the City's Capital Equipment Replacement Fund (CERF), from which Maintenance vehicles and equipment are purchased for use in maintaining the Landscape District. An expense of \$31,402 (3.6% of annual District revenue) is transferred to the City's General Fund to pay for administration and overhead activities of the City (e.g. telephones; payroll processing; accounts receivable and payable; District direction) attributable to the District's annual operations.

Consistent with the District's stated mission to maintain and improve the Landscape District, it is recommended we continue our aggressive program to further enhance the appearance and sustainability of the District's plants and landscaping. Given the magnitude of previously-assigned landscape improvement projects and tasks noted above that remain incomplete, no monies from the District are proposed for transfer this year to the City's Capital Improvement Project Budget. This fact should not be misconstrued that no additional projects or improvement ideas for the

District are forthcoming; rather, it is a tacit admission the District needs to finish previously-prioritized projects before undertaking new improvements.

With all of these actions, the District's ending fund balance on 30 June 2013 will still be a healthy \$217,307, which equates to a reserve of 23% of its annual tax revenue. The reserve status is confirmation the City does not siphon "surplus" monies of the District into its General Fund but uses the special tax revenues for its intended purposes.

-END-

WORK UPDATE TRAILS & LANDSCAPING

5/21/12 to 11/19/12

- Spot spray herbicides and pull weeds in the Landscape District Citywide
- Turn off all irrigation systems in the Landscape District. Over the past summer made numerous repairs to the irrigation system within the Landscape District. The problems we're seeing are from maturing trees crushing pipes to parts failing because of an aging system. These problems will only get worse as time passes and will use up more man hours and resources to keep the systems operating.
- The Landscape project along Clayton Road median from Mitchell Canyon Road to Oakhurst Drive was completed along with Daffodil Hill.
- Had a major irrigation failure (a threaded ninety cracked at the control valve) at the Clayton Water Fountain at the beginning of July which flooded the pump vault. The water caused major damage to some of the relays and the filter pump that needed replacement. All in all it could have been much worse; we were able to dry out the majority of the electrical parts. Now all systems are up and working for the Water Fountain.
- The Clayton Entry signs were taken in to the original artist that constructed them and refurbished over the summer. They have been returned and rehung; he is now working on the informational signs that hang under the Entry signs. Also the City commissioned for him to make a spare entry sign in case one of the two get damaged beyond repair in the future.
- Continued our semi-annual trimming of the Landscape over the summer along Oakhurst Drive, Clayton Road, Marsh Creek Road, and along neighborhood streets. Still have the medians and part of Clayton Road to complete for a full trim cycle.
- Crack seal portions of the trail along El Molino Drive (Donner Creek)
- Removed trees in the open space that were causing damage or were a danger to resident property. The areas were Stranahan, Mitchell Canyon, and Bigelow



QUARTERLY REPORT UPDATE TRAILS & LANDSCAPING

11/19/12 to 3/25/13

- Spot spray herbicides and pull weeds in the Landscape District Citywide. Also applied pre-emergent to the Landscape Citywide.
- Started to turn on Irrigation systems in the Landscape District over the past few weeks. Over the winter months made numerous repairs to the irrigation system within the Landscape District. The problem we continue to see is from maturing trees crushing pipes to parts like valves failing because of an age. These problems will only get worse as time passes and will use up more man hours and resources to keep the systems operating.
- Water Fountain had more electrical problems with the main panel needing replacement that feeds all the electricity to the Fountain. After this was repaired we found the Geyser Pump had failed so the pump motor was replaced with a higher energy efficient one. See staff report that was given to the Clayton City Council in your packet for more information on the pumps and their energy usage.
- The Clayton Entry signs now have the new and refurbished informational signs rehung underneath them, completing the entry signs.
- Continued our semi-annual trimming of the Landscape over the winter along Oakhurst Drive, Clayton Road, Center Street, and trimming some of the Crape Myrtle trees.
- Removed trees in the open space that were causing damage or were a danger to residential property on East Myrick Court. Also did sight trimming along Clayton Road at Mitchell Canyon Road for the signal.
- Lower the flood lights for the downtown informational signs so they will be less prone to vandalism.
- Replace the 8 tulip trees that had died in the Clayton Road median by the Westwood subdivision with 8 new Sycamore trees.



MAINTENANCE WORK UPDATE TRAILS & LANDSCAPING

March 25, 2013– May 20, 2013

- Spot spray herbicides and pull weeds in the Landscape District Citywide.
- Continued to turn on Irrigation systems in the Landscape District. Crews are repairing the irrigation system from major replacement of valves to replacing sprinkler heads within the Landscape District.
- Continued our semi-annual trimming of the Landscape over the last month along Oakhurst Drive in the median, downtown area, and along Clayton Road by Westwood subdivision.
- Removed trees in the open space that were causing damage or were a danger to residential property on Stranahan Circle. Also did trimming along Eagle Peak Drive from Oakhurst Drive to Miwok Way of deadwood from the Ash trees and thinned the plum trees.
- Enter into a new four year contract for the Weed abatement (for fire) with Warner Bros. Tree Service. Work has started with a June 7 forecasted finish to all the abatement work. City crews have also started the Cities part of the weed abatement using the Cities tractor.
- The upgrades to a center irrigation system continued with the installation of a base radio at the Maintenance offices and upgrades to the field to the DX controllers.

Adopt a Trail updated as of 6/30/13

Adopters/Revenues

<u>Name</u>	<u>Sponsor Type</u>	<u>Trail Section</u>	<u>Amount Recvd</u>	<u>Date \$ Recvd</u>	<u>Ag. recvd</u>	<u>Start Date</u>	<u>Expiration Date</u>	<u>current status</u>
Pauline Family Black Diamond Electric	Volunteer Labor Financial	Cardinet Trail (Liberty - Lydia Ln Pk) Cardinet Trail (Liberty - Lydia Ln Pk)	\$200 \$1000	2/1/2011 2/1/2011	Yes	3/1/2011 3/1/2011	3/1/2012 3/1/2012	expired expired
Passport2Clayton (P2C) Passport2Clayton (P2C)	Volunteer Labor Financial Sponsor	Bruce Lee Trail (Upper Easley Trail) Bruce Lee Trail (Upper Easley Trail)	\$200 \$1000	2/1/2011 2/1/2011	Yes	3/1/2011 3/1/2011	3/1/2012 3/1/2012	expired expired
Employees of CD Federal Credit Union Discovery Builders	Volunteer Labor Financial Sponsor	Blue Oak Trail Blue Oak Trail	\$200 \$1000	2/9/2011 2/17/2011	Yes	3/1/2011 3/1/2011	3/1/2012 3/1/2012	expired expired
Siegel Family Diablo Ford	Volunteer Labor Financial Sponsor	Lower Easley Trail Lower Easley Trail	\$200 \$1000	2/1/2011 2/1/2011		3/1/2011 3/1/2011	3/1/2012 3/1/2012	expired expired
Dan Pauline Bannister Electric	Volunteer Labor Financial Sponsor	Cardinet Trail (Lydia Ln Pk - Westwood Pk) Cardinet Trail (Lydia Ln Pk - Westwood Pk)	\$200 (from CBCA) \$1000	2/1/2011 8/7/2009	Yes	3/1/2011 3/1/2011	3/1/2012 3/1/2012	expired expired

Available
Available

<u>Adopt a Trail Expenses</u>	<u>purpose</u>	<u>Amount</u>
3/8/2009	19.5 hrs maintenance temp labor make/ install signs	\$219.00
4/17/2009	materials for sign posts	\$1527.34
6/23/2009	signs printing (bay area barricade)	\$98.87
6/30/2009	t-shirts	\$289.51
8/9/2009	wood for future sign posts (Dolan's Lumber)	\$595.15
8/9/2009	sign printing (Bay Area Barricade)	\$10.93
5/14/2010	Clayton Pioneer Ad	\$200.00
8/31/2011	sign re-screening	\$10.82
8/31/2011	Signs (Bay Area Barricade)	\$209.35
8/31/2011	27 hrs maintenance reg/temp labor make/install signs	\$1116.80
11/30/2011	Oak tree lights (trail by library)	\$3305.98
11/30/2011	electric wire and parts for oak tree lights (trail by Library)	\$437.00
12/30/2011	17 hrs reg/temp labor install oak tree lights (trail by library)	\$697.00
Total Expenses to date		\$8717.75

Donations

Renewal and New as of 3/1/11	\$5050
Prior balance	\$4200
	\$9250

6/30/2013 Account Balance: \$9250-\$8715.75 = \$532.25

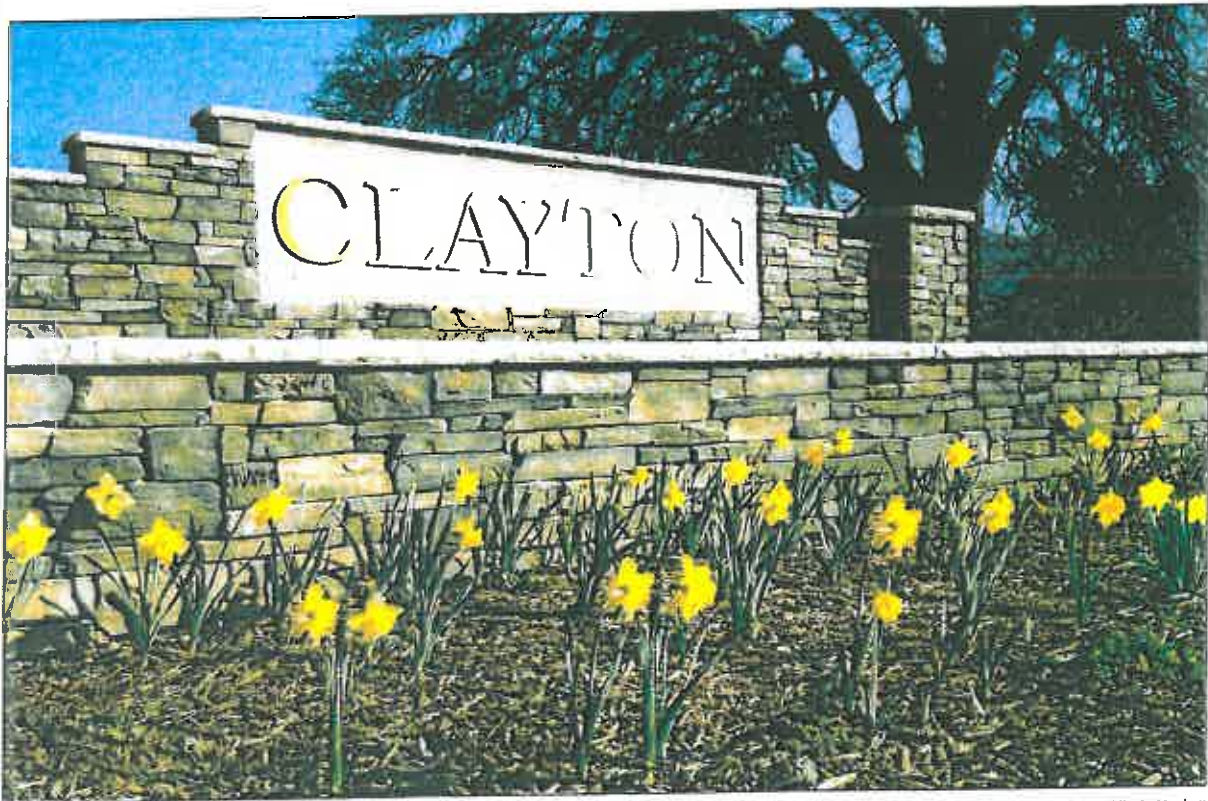
IT'S YOUR PAPER

BBQ lunch
at

.com

March 29, 2013

Daffodil Hill blooms again



Nicole Hockett

A COMMUNITY-WIDE LANDSCAPING EFFORT of the city's gateway at Marsh Creek and Clayton Roads is paying off this month with the return of the daffodils – a sure sign that spring has arrived. The \$60,000 project nurtured by the Clayton Valley Garden Club and financed by the city of Clayton and a grant from the Clayton Business and Community Association was completed last fall when the Garden Club planted more than 200 daffodil bulbs, a tradition that began sometime around 2000 and gave the hill its nickname.

Trails and Landscape Committee revs up Adopt-a-Trail program

This year, in addition to their regular responsibilities, the Trails and Landscape committee has agreed to place additional emphasis on the Adopt-a-Trail program. This program is designed to attract sponsors (families, individuals or businesses) who either make an annual financial pledge and/or a commitment to supply a work group to augment the efforts of the maintenance staff with regard to trail maintenance on one of our eleven (11) trail segments. Posted at the head of each adopted trail is a plaque bearing the name of both the financial and the work-group sponsor. The annual financial sponsorship is \$1,000, while work group sponsors pay \$250 per year.

ADVISORS TO CITY COUNCIL

A provision of Measure B requires the city council to appoint an oversight committee to help the city implement the voter approved plan, and to manage the current and future needs of the LMD. The eleven person committee is directly responsible for compiling and submitting, annually, to the City Council, a report including, but not limited to, a review and comments on the district's annual operating budget, a review of the detailed Quarterly Maintenance Reports submitted by the City's maintenance staff, as well as any recommendations the committee believes are relevant, and in the best interest of the city's trails and landscaping activities.

The volunteers serving on this committee are appointed by, and serve as advisors to, the



NEWLY APPOINTED MEMBERS of the City of Clayton's Trails and Landscape Committee (Citizens Oversight Committee).
Standing - Clayton Smith, Larry Casagrande (Chair), Ryan Lowe (Vice Chair), Ted Sudderth, Don Fitzgerald. Seated - Robert Erich, Bob Steiner, Alyse Smith, Anthony Chippero

City Council in matters relating to the activities covered by the public Landscaping and Maintenance District (LMD). The LMD was formed in 2007 by the passage of Measure B, and

is funded by a special 10-year parcel tax.

Anyone interested in participating in the Adopt-a-Trail program please contact Chairperson, Larry Casagrande at (925) 693-0073.

CLAYTON PIONEER - July 26, 2013

Letters to the Editor

Kudos to city

It occurred to me while I was walking on one of our fabulous trails that someone needs to be thanked for all the "mowing" of the weeds etc. that need constant maintenance. I was watching the guys who were trimming the trees along Clayton Road and wondering if they ever get the thanks they deserve. And a big shout-out to the people who drive the street sweepers and pick up our garbage! Thanks to all of you who make Clayton the best place in the world to live! You are appreciated!

Alexandria Lafferty

CLAYTON'S TRAILS & LANDSCAPE COMMITTEE (TLC)

Formed by the Clayton City Council in August 2007

Comprised of up to 11 volunteer members of the Clayton community

Helps the city implement the voter-approved plan to manage the current and future needs of the citywide Landscape Maintenance District

Helps to manage and support Clayton's Adopt-A-Trail program



Serves as a financial oversight committee and provides short and long term implementation guidance to city staff and the City Council

The Landscape Maintenance District consists of roadway edges and roadway median landscaping, trail maintenance, and fire abatement on trails and open space (city parks and the Clayton fountain operation are not included in the district)

Funds can only be used for spending within the Landscape Maintenance District

GET INVOLVED!

The Trails and Landscape Committee meets quarterly on the 3rd Monday of the month at 7pm at the Clayton Library

Clayton residents are encouraged to attend these meetings to provide public opinion and ask questions

Meeting agendas are posted online, City website at www.ci.clayton.ca.us

Printed copies at

City Hall, 8600 Heritage Trail
Clayton Library, 8125 Clayton Road
Olm's Bulletin Board, 1026 Diablo St.

Please direct any questions or concerns to the City of Clayton via the website or address above



2013 Trails & Landscape Committee Members

Larry Casagrande (chair)

A.J. Chipchase

Robert Birch

Don Fitzgerald

Ryan Lowe (Vice Chair)

Harun Sim Miki

Alayne Smith

Clayton Smith

Bob Steiner

Lee Spahrath



Trails & Landscape Committee 2013

THE LANDSCAPE MAINTENANCE DISTRICT: CLAYTON'S "FRONT YARD"

- The Landscape Maintenance District covers:
- over 2 million square feet of landscape
 - 40,700 square feet of lawns and flowerbeds
 - Almost 3,000 city trees
 - 515 acres of open space
 - 7 miles of creek side trails
 - 20 miles of open space trails
 - Approximately 50 street islands and medians

The District uses the equivalent of only three full time staff along with seasonal and volunteer workers

HOW IS THE DISTRICT FUNDED?

Measure B, a special 10-year special parcel tax passed by Clayton voters in June 2007 funds the District

Measure B is the only source of funding for the Landscape District supplies, electricity, irrigation, water, and labor

Funds may only be used for voter approved Landscape District expenses

Trails & Landscape Committee

ADOPT-A-TRAIL

If you are one of the many Clayton residents that enjoy our trail system you can further help the Landscape Maintenance District and beautify Clayton's trails by adopting a Trail

This program aims to:

- Augment financing provided by Measure B
- Provide a venue for volunteers that help Clayton maintain and enhance its trail network
- Make the trails cleaner

- Celebrate the sponsors and volunteers that help Clayton keep the trail network one of the distinguishing characteristics of our community
- Foster civic pride through volunteerism, philanthropy, and cleanliness

If you are interested in participating in this program or would like additional information please contact Ted Sudderth at tsd@aol.com



TLC's STRATEGIC FOCUS

- Remove unwanted expenditures and control costs with strict oversight
- Create equity in the District
- Implement cost effective measures to improve irrigation and infrastructure
- Invest in modern equipment to increase maintenance efficiency and effectiveness
- Implement seasonal and situational based labor to minimize costs

STANDARDS & PRIORITIES FOR THE DISTRICT

- Mandatory firelines
- Woods trimmed along major trails and creeks twice a year
- Trees trimmed for safety purposes
- Irrigation breaks repaired as necessary
- Public roadway landscaping trimmed twice a year
- Landscape areas fertilized once a year as necessary



Agenda Date: 11/5/13

Agenda Item: 11b

Approved:

Gary A. Napper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: NOVEMBER 5, 2013

SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE NO. 451
AMENDING PORTIONS OF THE CLAYTON MUNICIPAL CODE
CONCERNING CODE ENFORCEMENT PROCEDURES AND
REGULATIONS (ZOA-05-13).

RECOMMENDATION

Staff recommends that the City Council receive any public comment; have the City Clerk read the Ordinance by title and number only and waive further reading; following the City Clerks reading the City Council may adopt Ordinance No. 451 (Attachment 1).

BACKGROUND

At its October 15, 2013, City Council meeting the attached Ordinance was introduced (see Attachment 2). No members of the public spoke on the proposed ordinance amendments. With City Council direction to clarify the fine for second violations of local building and safety code to be per day, the Council then approved the introduction and first reading (by title only) of the Ordinance amending portions of the Clayton Municipal Code concerning code enforcement procedures and regulations, as recommended by staff and the Planning Commission.

DISCUSSION

The purpose of the proposed Ordinance to amend the Clayton Municipal Code are intended to implement a fairer cost recovery procedures as well as update code enforcement procedures to more current practices. After approval of the Ordinance, staff will bring back an amendment to the City's Master Fee Schedule to add a time and material deposit fee for Appeals of Administrative Citations.

Attachments:

1. Ordinance No. 451 – Amending Code Enforcement Procedures and Regulations.
2. October 15, 2013, City Council Staff Report (without attachments).

ORDINANCE NO. 451

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON,
AMENDING CHAPTERS 1.14, 1.18, 1.20, 8.08 AND 17.72 OF THE CLAYTON
MUNICIPAL CODE REGARDING CODE ENFORCEMENT
(ZOA-05-13)**

THE CITY COUNCIL

City of Clayton, California

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

WHEREAS, the City Council believes that enforcement of the Clayton Municipal Code, other ordinances adopted by the City, conditions of entitlements and terms and conditions of City agreements are matters of local concern and serve important public purposes;

WHEREAS, this Ordinance will update and streamline the City's various code enforcement tools and procedures to help protect the public health, safety and welfare.

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

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Amendment. Sections 1.14.010, 1.18.010, 1.18.020, 1.18.040, 1.18.080 and 1.18.100 and Subsection C of Section 1.20.010 of the Clayton Municipal Code are hereby amended to read in full as set forth in Exhibit A, incorporated by this reference. Section 1.18.150 of the Clayton Municipal Code is hereby deleted and of no further force or effect. Sections 1.20.020 and 1.20.030 of the Clayton Municipal Code are hereby added to read in full as set forth in Exhibit A.

Section 3. Amendment. Chapter 8.08 of the Clayton Municipal Code is hereby amended to read in full as set forth in the attached Exhibit B, incorporated by this reference.

Section 4. Amendment. Chapter 17.72 of the Clayton Municipal Code is hereby amended to read in full as set forth in the attached Exhibit C, incorporated by this reference.

Section 5. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

Section 6. Conflicting Ordinances Repealed. Any ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

Section 7. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 2 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular public meeting of the City Council of the City of Clayton held on October 15, 2013.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on November 5, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Julie K. Pierce, Mayor

ATTEST

Laci J. Kolc, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on October 15, 2013, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on November 5, 2013.

Laci J. Kolc, City Clerk

EXHIBIT A

Amendment. Section 1.14.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

1.14.040 Optional Courtesy Notification of Violation and Reinspection.

If a violation of the code is verified in accordance with Section 1.14.030, the responsible City personnel or a designated enforcement officer may at his or her discretion notify the owner and occupant of the property on which the violation has occurred in writing, by regular mail, of the nature of the violation and the specific code sections violated and provide the owner and occupant between ten (10) to twenty (20) days to correct the violation depending upon the nature and/or severity of the violation.. Such courtesy notice shall state that a citation will be issued unless the violation is discontinued. In mailing the courtesy notice, the City shall rely on the most recent ownership and address information available from the County Assessor.

Following the expiration of the courtesy notice period, the property shall be reinspected by the responsible City personnel or a designated enforcement officer. Any on-site reinspection shall be conducted in accordance with Chapter 1.12 of this code. If the violation has been corrected, no further action shall be taken.

Amendment. Section 1.18.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.010 Issuance of Administrative Citation.

Notwithstanding the provisions of Chapters 1.14 and 1.22 of the Municipal Code, whenever a City employee or any other person designated by the City, City Manager, or by law with authority to enforce ordinances or the Municipal Code determines that a violation of an ordinance or the Municipal Code has occurred, that designated employee or other person shall have the authority to issue an administrative citation to any person responsible for the violation. A responsible person includes any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes, permits or maintains a violation of this code, its adopted codes or applicable state codes. In the case of a continuing violation where the violation pertains to signage, building, plumbing, electrical, or other similar structural or zoning

issues, that do not create an immediate danger to health or safety, the City shall provide the responsible person with a reasonable time as indicated on the citation to correct or otherwise remedy the violation to the reasonable satisfaction of the City employee or other person who issued the citation prior to the imposition of a fine. Each administrative citation shall contain the following information:

- A. The date of the violation and correction date, if applicable.
- B. The address or description of the location where the violation occurred.
- C. A description of the violation, including the section(s) of the ordinance or Municipal Code that was violated.
- D. An order prohibiting the continuation or repeated occurrence of the ordinance or Municipal Code violation described in the citation.
- E. The amount of the administrative fine.
- F. A description of the administrative fine payment process, including time for payment.
- G. A description of the administrative citation hearing process, including the requirements to request a hearing.
- H. The name and signature of the employee or other person issuing the citation.

Amendment. Section 1.18.020 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.020 Amount of Administrative Fines.

The amount of administrative fines shall be as follows:

- A. An administrative fine not exceeding one hundred dollars (\$100) per day for a first violation.
- B. An administrative fine not exceeding two hundred dollars (\$200) per day for a second violation of the same ordinance or Municipal Code section within twelve (12) months. However, a second violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding five hundred dollars (\$500) per day.

C. An administrative fine not exceeding five hundred (\$500) per day for each additional violation of the same ordinance or Municipal Code section within twelve (12) months. However, a third violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding one thousand dollars (\$1,000) per day.

Amendment. Section 1.18.040 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.040 Appeal Hearing Request.

A. Any person receiving an administrative citation may request an appeal hearing to contest the citation. Any request for an appeal hearing must be filed in writing with the City Clerk within thirty (30) days of issuance of the citation and shall state the appellant's reason and grounds for the appeal. The hearing request shall be included with a deposit of the fine amount and the appeal hearing fee as set by resolution of the City Council.

B. Any person who requests a hearing who is financially unable to make the advance deposit of the fine and appeal fee as required in this Section may file a request for deposit waiver. The request shall be filed with the city manager at or before the hearing request is filed. The city manager or designee shall issue the deposit waiver if the cited party submits to the city manager or designee a sworn affidavit, or declaration under penalty of perjury, together with any supporting financial documents or materials, demonstrating to the satisfaction of the city manager or designee, the person's actual financial inability to deposit with the city the full amount of the fine and appeal fee in advance of the hearing. The city manager or designee shall issue a written determination listing the reasons for his or her determination to issue or not issue the deposit waiver. The written determination of the city manager or designee shall be final, and shall be served upon the person who applied for the deposit waiver. In the event the deposit waiver is rejected, the person requesting hearing shall pay the advance deposit of the fine and appeal fee within three (3) business days of the determination. Failure to do so shall abandon the hearing request.

Amendment. Section 1.18.080 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.080 Payment of Fine after Final Administrative Decision.

A. If the final administrative decision of the Hearing Officer affirms the issuance of the administrative citation, then the fine and appeal fee amount on deposit with the city shall be retained by the city.

B. If the Hearing Officer determines that the administrative citation should be upheld and the fine and appeal fee have not been deposited pursuant to an advance deposit hardship waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine and fee.

C. If the Hearing Officer determines that the administrative citation should be canceled or reduced and the fine was deposited with the city, then the city shall promptly refund the amount.

Amendment. Section 1.18.100 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

Section 1.18.100 Recovery of Administrative Fines and Costs.

On behalf of the City, the city manager may collect any past-due administrative citation fine, appeal fee, or late payment charge by use of all available legal means and the choice of one remedy does not affect the city's ability to use alternative remedies. This includes recovery through small claims court and the placement of the amounts as a lien or special assessment upon real property owned by the person. The City shall follow the procedures set forth in Chapter 8.08 for collecting unpaid fines, charges and fees as liens or special assessments.

Amendment. Subsection C of Section 1.20.010 of the Clayton Municipal Code is hereby amended to read in full as set forth below:

C. Except in cases where a different penalty is prescribed by ordinance, any person convicted of an infraction for violation of an ordinance of the City of Clayton is punishable pursuant to California Government Code Section 36900 by the following:

1. A fine not exceeding one hundred dollars (\$100) per day for a first violation.
2. A fine not exceeding two hundred dollars (\$200) per day for a second violation of the same ordinance within one year. However, a second violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding five hundred dollars (\$500) per day.
3. A fine not exceeding five hundred dollars (\$500) per day for each additional violation of the same

ordinance within one year. However, a third violation of the same provision of a local building and safety code within one year shall be subject to a fine not exceeding one thousand dollars (\$1,000) per day.

Amendment. Section 1.20.020 of the Clayton Municipal Code is hereby added to read in full as set forth below:

Section 1.20.020 Civil Action.

The city attorney, by and at the request of the city council or city manager, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this code, including its adopted codes, or any ordinance as provided by law. The city attorney, by and at the request of the city council or city manager, may institute an action in any court of competent jurisdiction to collect a civil debt owing to the city. Attorneys' fees may be recoverable in such action pursuant to Section 1.20.030.

Amendment. Section 1.20.030 of the Clayton Municipal Code is hereby added to read in full as set forth below:

Section 1.20.030 Attorneys' Fees and Costs.

A. Notwithstanding anything in this code to the contrary, the city may only recover its attorneys' fees in any administrative proceeding or special proceeding commenced by the city to abate a public nuisance, to enjoin violation of any provision of its ordinances and this code, including its adopted codes, or to collect a civil debt owing to the city, if the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In these cases, the prevailing party shall be entitled to recover all costs incurred therein. These costs shall include reasonable attorneys' fees and costs of suit, expressly including, the payment of any third party hearing officer's fees and costs. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

B. The city shall be considered a prevailing party entitled to attorneys' fees under subsection A when it can demonstrate that:

1. Its proceeding was the catalyst motivating the defendant to provide the primary relief sought;

2. The proceeding was meritorious and achieved its result by "threat of victory;" and
3. The city reasonably attempted to settle the matter before initiating the proceeding.

EXHIBIT B

Chapter 8.08

NUISANCES

Sections:

- 8.08.010 Specific nuisances prohibited.
- 8.08.020 Abatement--By repair, rehabilitation, demolition or removal.
- 8.08.025 Abatement Immediate
- 8.08.030 Abatement--City not restricted.
- 8.08.040 Property owner responsibilities.
- 8.08.050 Notice to abate nuisance conditions.
- 8.08.060 Manner of conducting abatement hearing.
- 8.08.070 Issuance of decision, findings and order.
- 8.08.080 Abatement by enforcement officer if nuisance is not abated.
- 8.08.090 Abatement by owner/responsible party.
- 8.08.100 Abatement--Record of cost.
- 8.08.110 Liability for administrative abatement costs.
- 8.08.120 Lien procedure.
- 8.08.130 Special assessment procedure
- 8.08.140 —Recording notices.
- 8.08.150 Order for treble costs of abatement.
- 8.08.160 Abatement--Civil or criminal proceedings.
- 8.08.170 Violation of abatement order--Penalty.

Section 8.08.010 Specific Nuisances Prohibited.

It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in the city to maintain such premises in such manner that any of the following conditions are found to exist thereon:

- A. Buildings or structures which are abandoned, boarded up, partially destroyed, left unreasonably in a state of partial construction and/or unused for a period in excess of six (6) months;
- B. Unpainted buildings causing dry rot, warping and termite infestation;
- C. Broken windows constituting hazardous conditions and inviting trespassers and malicious mischief;
- D. Overgrown vegetation causing detriment to neighboring properties or property values;
- E. Dead trees, dry dead shrubs, combustible refuse and waste, or any material growing upon the streets, sidewalks, or upon private property within the city, which by reason of their size, manner of growth, and location, obstruct a public right of way, endanger public health or safety,

or constitute a fire hazard to any building, improvements, crops or other property, or when dry will, in reasonable probability, constitute such a fire hazard.

F. Attractive nuisances dangerous to children in the form of :

1. Abandoned and broken equipment,
2. Hazardous pools, ponds and excavations, and
3. Neglected machinery;

G. Broken or discarded furniture and household equipment in yard areas for unreasonable periods;

H. Clotheslines in front yard area;

I. Any violation of chapter 17.76 of this code;

J. Packing boxes and other debris stored in yards and visible from public streets for unreasonable periods;

K. Neglect of premises:

1. To spite neighbors, or
2. To influence zone changes, or
3. To cause a detrimental effect upon nearby property or property values, or
4. Which results in paper, refuse, trash and other debris being blown upon or otherwise carried to adjacent privately or publicly owned properties or public streets and deposited and scattered thereon;

L. Maintenance of premises in such condition as to be detrimental to the public health, safety or general welfare or in such manner as to constitute a public nuisance as defined by Civil Code Section 3480;

M. Property including but not limited to building exteriors which are maintained in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same causes appreciable diminution of the property values of surrounding property or is materially detrimental to proximal properties and improvements. This includes but is not limited to the keeping or disposing of or the scattering over the property or premises of any of the following:

1. Lumber, junk, or debris, or
2. Abandoned, discarded or unused objects or equipment such as furniture, stoves, refrigerators, freezers, cans or containers, or
3. Stagnant water, or excavations, or

4. Any device, decoration, design, fence, structure, clothesline or vegetation which is unsightly by reason of its condition or its inappropriate location;

N. Maintenance of premises so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties;

O. Property maintained (in violation to others) so as to establish a prevalence of depreciated values, impaired investments, and social and economic maladjustments to such receipts from such particular area are inadequate for the cost of public services rendered therein.

P. Anything that is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or that unlawfully obstructs the free passage or use, in the customary manner, of any stream or any public park, sidewalk, pathway, square, street, highway, or other public place.

Q. Any activity that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors, including but not limited to the following (for the purposes of this subsection, "vector" means any animal capable of transmitting the causation agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates):

1. Any artificial alteration of property, excluding water, from its natural condition, resulting in it supporting the development, attraction, or harborage of vectors, with the presence of vectors in their developmental stages on the property being prima facie evidence that the property is a public nuisance; or
2. Any water that is a breeding place for vectors, with the presence of vectors in their developmental stages in the water being prima facie evidence that the water is a public nuisance.

R. Any violation of title 17 (zoning) of this code, the provisions of any code adopted by reference by this code; permits issued by the City; conditions of development approval; or ordinances and regulations adopted by the City.

S. Repeated disruptive activities including, but not limited to, disturbances of the peace and quiet of the neighborhood of which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area, public drunkenness, drinking in public, harassment of passerby, sale of stolen goods, public urination or defecation, theft, assaults, battery, acts of vandalism, excessive littering, illegal parking, loud noises, traffic violations, curfew violations, or police detentions and arrests.

T. Any use of land in the incorporated area of the city not permitted under title 17 (zoning) of this code or any building or structure erected, constructed, altered, moved or maintained contrary to title 17 (zoning) of this code.

Section 8.08.020 Abatement--By repair, rehabilitation, demolition or removal.

All or any part of premises found, as provided in this chapter, to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair pursuant to the procedures set forth in this chapter.

Section 8.08.025 Abatement Immediate.

Notwithstanding and in addition to any other remedy available under this Chapter, or any other Municipal Code section or City ordinance, or other federal, state or local law regulation, if a public nuisance as defined in this Chapter exists and constitutes an immediate threat to public health or safety, the City may summarily and without hearing abate such nuisance at the expense of the persons creating, causing, committing, or maintaining the nuisance. The expense of abatement of the nuisance may be collected in the same manner as other abatement costs in this Chapter. Notice of the summary abatement shall be provided to the owner or any other responsible party as provided for in this Chapter the same day or as soon as practical. Such notice shall include a provision authorizing the owner or responsible party to dispute the existence of the nuisance conditions before the hearing officer in the same manner as a general nuisance hearing.

Section 8.08.030 Abatement--City not restricted.

The procedures set forth herein shall not in any manner, however, limit or restrict the city from enforcing city ordinances or abating public nuisances in any other manner provided by law.

Section 8.08.040 Property owner responsibilities.

It shall be the duty of the owner, and of responsible party occupying or having charge or control of any parcel of land, improved or unimproved, to maintain such parcel of land free of any nuisance and/or nuisance conditions at all times. The same responsibility extends to the public rights-of-way or public land, related to any vehicle, vessel, structure, machinery, container, refuse, debris or other item found to be or having been under the charge or control of a property owner, responsible party, or last registered or documented owner. Any owner or responsible party shall be responsible for the removal or correction of any nuisance or nuisance conditions and the costs for such removal or correction.

Section 8.08.050 Notice to abate nuisance conditions.

A. When the enforcement officer finds that a nuisance condition exists upon any premises in the city, he or she may, or upon the direction of the city council or city manager shall, serve a notice to abate upon the owner or responsible party in possession or having control of the premises upon which the condition exists, directing him or her to abate or cause the nuisance condition(s) upon the premises to be abated on or before a specified compliance date. The notice shall also state that the responsible party may file a written request for a hearing with the city clerk to dispute the alleged conditions within thirty days of the notice.

B. The enforcement officer shall post one copy of the notice in a conspicuous place on the property in question and shall deliver one copy of the notice to the owner or responsible party in possession or control of the property upon which the nuisance condition exists either in person or by certified mail, with a return receipt requested.

C. The failure of the owner or responsible party to actually receive the notice shall not affect in any manner the validity of any proceedings pursuant to this chapter.

D. In the event the responsible party files a timely request for an abatement hearing, the city clerk shall schedule the hearing. The hearing shall be conducted within forty-five days of receipt of the request unless otherwise agreed to in writing by the parties. The city clerk shall send written notice of the location, time and date of the hearing at least ten days in advance of the hearing date.

E. In the event the responsible party fails to appeal the notice, the nuisance conditions shall be deemed confirmed. Such failure shall also constitute a failure to exhaust available administrative remedies.

Section 8.08.060 Manner of conducting abatement hearing.

In the event a hearing is timely requested pursuant to section 8.08.050, the hearing shall be conducted pursuant to the following procedures:

A. At the time and place designated in the notice of hearing, the hearing officer shall hear and consider all relevant evidence, including but not limited to, applicable staff reports, oral evidence, physical evidence and documentary evidence regarding the alleged nuisance, and proposed method of abatement. The hearing may be continued from time to time.

B. Failure of the owner or responsible party to appear at the hearing shall be deemed a waiver of the right to a hearing and an admission by the owner or responsible party of the existence of the nuisance condition charged. In the event of such failure to appear, the hearing officer may order that the nuisance condition be abated by the enforcement officer. Such failure to appear shall also constitute a failure to exhaust available administrative remedies.

C. The city shall bear the burden of proof to demonstrate, by a preponderance of the evidence, that a nuisance exists and that the proposed mechanism for abatement is appropriate. The city need not demonstrate that the proposed mechanism for abatement is either the most appropriate or least expensive.

D. The hearing shall not be conducted according to the formal rules of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. However, irrelevant or unduly repetitious evidence may be excluded.

E. Prior to conclusion of the hearing, if the owner or responsible party is present, the hearing officer may request the owner or responsible party to sign a consent to enter and perform work. The permission given shall be used only if the nuisance condition is determined to exist and is not abated by the schedule of correction specified in the hearing officer's decision.

F. If the owner or responsible party does not provide written consent, entry onto the property may be made by obtaining verbal permission from the owner or a responsible party, or by means of an inspection warrant, or by any other lawful manner.

G. The City Manager shall designate the hearing officer(s) for nuisance hearings. Hearing officers may be employees of the City, including the City Manager, or any other person qualified to hear such matters.

Section 8.08.070 Issuance of decision, findings and order.

A. Within ten days after the conclusion of the hearing, the hearing officer shall issue a written decision. The decision shall set forth the factual findings made by the hearing officer, a conclusion as to whether a nuisance condition exists, the manner of abatement, including an order that such nuisance (if one is found to exist) be abated by the city and a schedule of correction or the date by which the abatement shall be completed.

B. If the hearing officer determines that a nuisance exists which has not been corrected within the time period specified in the notice to abate nuisance conditions, the hearing officer shall so find in the decision, and may include in the decision any or all of the following:

1. An order to correct, including a schedule of correction where appropriate;
2. An order to pay abatement costs, including administrative costs incurred to date, as provided in this chapter.

C. Failure to issue a decision in ten days shall not affect the validity of such decision.

D. The decision shall be mailed by certified mail with a return receipt requested to the owner and shall be mailed to the enforcement officer. A copy of a summary of the decision and any order it contains shall also be posted on the property by the enforcement officer in a conspicuous location.

Section 8.08.080 Abatement by enforcement officer if nuisance is not abated.

Upon receipt of the hearing officer's decision if: (i) no schedule of correction has been issued, or (ii) upon the failure of the property owner to comply with such schedule if a schedule was included, if the nuisance condition has not been abated the enforcement officer shall forthwith abate, or cause to be abated, the nuisance condition upon the premises. The enforcement officer is authorized to enter upon private property for this purpose, consistent with the provisions of the U.S. Constitution.

The cost of abatement shall become a personal obligation of the property owner and responsible party and may be collected in any legal manner, expressly including as lien or special assessment pursuant to the procedures set forth in this Chapter.

Section 8.08.090 Abatement by owner/responsible party.

A. Any owner or responsible party may, at his/her/its own expense and prior to the scheduled abatement hearing, abate a declared nuisance condition in accordance with the

provisions of the notice sent by the enforcement officer; provided that all necessary permits are first obtained. If the enforcement officer determines that the nuisance condition has been abated prior to the hearing, the hearing proceedings shall be terminated. If any abatement referenced in this section takes place after the specified compliance date, but prior to date set for hearing, termination of the hearing shall only take place upon the owner or responsible party's payment of outstanding penalties, administrative and/or abatement costs.

B. Any owner or responsible party may also request the city to abate a declared nuisance condition on his/her/its property. However, the owner or responsible party making the request shall be responsible for the payment of all penalties, abatement costs and/or administrative costs incurred by the city. The request for the city to perform the abatement shall be in writing and include a written consent to enter and perform work. Any such request shall be deemed an agreement to pay for the costs of such abatement, including but not limited to any penalties, administrative costs, and an agreement that such costs may be collected as a lien upon the property. The abatement hearing proceedings shall thereafter be terminated.

Section 8.08.100 Abatement--Record of cost.

In the event the city abates the nuisance, the enforcement officer shall keep an account of the cost (including incidental expenses) of abating such nuisance on each separate lot, or parcel of land where the work is done and shall create an itemized report in writing showing the cost of abatement and rehabilitating, demolishing or repairing of the premises, buildings or structures, including any salvage value relating thereto. The term "incidental expenses" shall include, but not be limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work, and the costs of printing and mailing required under this chapter. Costs shall be recovered through a lien, special assessment or other procedures as permitted by law. Liens and special assessments may only be imposed if the property owner received the notice to abate.

Section 8.08.110 Liability for administrative abatement costs.

A. In addition to liability for the costs of abatement itself pursuant to Section 8.08.100 and this section of this chapter, the owner and/or responsible party shall also be liable for any expenses and administrative abatement costs incurred by the city, county or any related agency incurred after the initial inspection and identification of the nuisance. Administrative costs shall be included in the records and reports in the same manner as abatement costs under Section 8.08.100

B. The administrative costs may include any and all costs incurred by the city in connection with the matter before the hearing officer, including but not limited to, costs of investigation, city staffing costs incurred in preparation for the hearing and for the hearing itself, including but not limited to the fees and costs of the city's consultants, and costs for all re-inspections necessary to enforce the notice to abate nuisance conditions.

C. In the event that the city is entitled to recover its attorneys' fees and costs, such fees and costs shall be collected at the same time and pursuant to the same procedures as administrative costs pursuant to this section.

Section 8.08.120 Lien procedure.

In the event the City decides to collect abatement costs as a lien, it shall impose such lien pursuant to this section:

A. Upon receipt of the itemized report referenced in Section 8.08.100, the city clerk, or his or her designee, shall serve notice of the lien in the same manner as summons in a civil action in accordance with Code of Civil Procedure Section 415.10 *et seq.* If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation in Contra Costa County. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including therein the first day. Publication shall be made on each day on which the newspaper is published during the ten day period.

B. The notice shall inform the owner of the pending lien and inform the property owner of the public hearing where the city council will consider imposing the itemized report as a lien against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and directing the city clerk to record a lien against the property in the Contra Costa County recorder's office and, from the date of recording, shall have the force, effect and priority of a judgment lien.

D. The lien shall identify:

1. The amount of the lien;
2. The city as the agency on whose behalf the lien is imposed;
3. The date of the abatement order or notice;
4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and
5. The name and address of the recorded owner of the parcel.

E. In the event that the lien is discharged, released or satisfied, through either payment or foreclosure, notice of the discharge containing the information specified in subsection D shall be recorded by the city clerk.

F. A lien may be foreclosed by an action brought by the city for a money judgment.

G. The city may recover from the property owner any costs incurred in the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

Section 8.08.130 Special assessment procedure.

In the event the City decides to collect abatement costs as a special assessment, it shall impose such special assessment pursuant to this section:

A. The property owner shall be invoiced for the amount stated in the itemized report referenced in Section 8.08.100 which shall be due within thirty days. The invoice shall be sent certified mail to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. If payment is not received, the itemized report shall be submitted in writing to the city clerk no sooner than fifteen days of the invoice due date. Any such report may include the abatement costs, fees and penalties for any number of properties and abatements, whether or not such properties are contiguous.

B. If the invoice is not timely paid, the city clerk shall provide written notice to the property owner by certified mail, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall inform the owner of the pending special assessment, including the information set forth in subsection C, and the date, time and location of the public hearing where the city council will consider imposing the itemized report as a special assessment against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and assessing the report as a special assessment against the property. The city clerk shall then provide all documentation necessary to the county to enter such assessment. After entry, the assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

D. Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the city may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

E. Notices or instruments relating to the special assessment shall be entitled to recordation.

Section 8.16.140 Recording notices.

The enforcement officer may record and file any notices related to nuisance abatement proceedings in the office of the county recorder, as permitted pursuant to Government Code Section 38773.5.

Section 8.16.150 Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this chapter, except for conditions abated pursuant to section 17980 of the Health & Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 38773.7. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the city.

Section 8.08.160 Abatement--Civil or criminal proceedings when.

Nothing in this chapter shall be deemed to prevent the city council from ordering the city attorney to commence a civil or criminal proceeding to abate a public nuisance under applicable Civil or Penal Code provisions as an alternative to the proceedings set forth in this chapter.

Section 8.08.170 Violation of abatement order--Penalty.

Any person violating any abatement order issued pursuant to the provisions of this chapter is guilty of a misdemeanor or infraction as provided for in Section 1.02.010..

EXHIBIT C

Chapter 17.72

ENFORCEMENT AND PENALTY

Sections:

17.72.010 Nuisance declared-- Remedies cumulative.

17.72.020 Violation--Penalty.

17.72.010 Nuisance declared-- Remedies cumulative.

A. No land in the incorporated area of the city shall be used for any purpose not permitted under this title nor shall any building or structure be erected, constructed, altered, moved or maintained contrary to this title. Any use of land, building, or structure contrary to this title is unlawful and a public nuisance.

B. The remedies provided for in this chapter shall be cumulative and not exclusive.

17.72.020 Violation--Penalty.

Any person violating this title is guilty of a misdemeanor and on conviction shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than six months, or by both.



Agenda Date: 10/15/13

Agenda Item: 9(a)

Approved:

Gery A. Nepper
City Manager

STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: OCTOBER 15, 2013

SUBJECT: CONSIDERATION OF AN ORDINANCE AMENDING PORTIONS OF THE CLAYTON MUNICIPAL CODE CONCERNING CODE ENFORCEMENT PROCEDURES AND REGULATIONS (ZOA-05-13).

RECOMMENDATION

Staff recommends the City Council receive and consider the staff report, receive any public comment; by motion have the City Clerk read the Ordinance (Attachment 1) by title and number only and waive further reading; and following the City Clerk's reading, the City Council by motion approve the introduction and first reading of the Ordinance.

BACKGROUND

A recent code enforcement case and associated appeal hearing brought attention and focus on the City's antiquated code enforcement procedures and regulations and the need to cleanup some procedural wording, establish and clarify responsibilities and incorporate better cost recovery measures. Due to the infrequency of having to invoke such proceedings, the recent incident brought to light the need to update our procedures. For example, the referenced appeal hearing cost the City \$1,200 for an independent appeal hearing officer, non-inclusive of additional significant City Attorney and staff hours. The current administrative appeal fee of \$53 did not come close to recovering the actual cost impacts this appeal hearing imposed on the City (i.e. general taxpayer) concerning a single property owner issue. Plus, the City prevailed on this code enforcement matter yet current Municipal Code procedures did not allow the City (or a prevailing party) to recover some or all of its costs.

The proposed Ordinance amendments are intended to implement a fairer cost recover procedure as well as update code enforcement procedures to more current practices.

DISCUSSION

The proposed City-initiated Ordinance to amend portions of the *Clayton Municipal Code* would specifically amend sections of Chapter 1.14 Enforcement, Chapter 1.18 Administrative Citations, Chapter 1.20 General Penalty, Chapter 8.08 Nuisances and Chapter 17.72 Enforcement and Penalty. The following is a summary of proposed section amendments, while the specific amendments are fully contained in the Exhibits of the attached draft Ordinance.

Chapter 1.14 Enforcement

The proposed amendments to this Chapter would provide an option for the Code Enforcement Officer to issue a Courtesy Notice of Violation with a correction period of between ten (10) and twenty (20) days depending upon the nature and/or severity of the violation, versus the current 20 day only provision. Staff often receives comments from complaining parties that it takes too long for some types of violations to be resolved, such as boats or RV's parked in driveways or garbage cans on the street. This amendment will still allow staff to issue a Courtesy Notice of Violation, but will provide the City options to seek shorter time periods for voluntary compliance.

Chapter 1.18 Administrative Citations

The proposed amendments to this Chapter would expand upon, define and/or address the following areas:

- Define and clarify the responsible person for violations.
- Increase the administrative fines for repeat violations to the maximum limits provided by State law.
- Expand upon, define and clarify the appeal process of administrative citations.
- Expand upon, define and clarify the payment of fines and recovery costs related to an administrative decision of the appeal hearing officer.
- Provide and define a process for the potential waiver of advance deposits of the fine and appeal fee for those persons who are financially unable to, as required by State law.

Chapter 1.20 General Penalty

The proposed amendments to this chapter would establish and define the process for the City to initiate civil action (i.e. file a lawsuit) on cases and to recover attorney's fees and costs related to administrative citations.

Chapter 8.08 Nuisances

The proposed amendments to this Chapter would expand upon, define and/or address the following areas:

- Incorporate and reference specific sections in the Zoning Code related to nuisances and penalties.
- Clarify the City's ability to seek cost recovery of violations that require immediate abatement.
- Clarify a property owner's responsibility to abate and correct a nuisance violation.
- Expands, defines and clarifies the City's abatement authority and process of nuisance violations.

- Establish an abatement hearing process for nuisance violations.
- Expand upon, define and clarify the nuisance appeal process including notice of decisions, findings, failure to abate and owner/responsible party.
- Establish liability of costs, a lien procedure to collect abatement costs, special assessment procedures and the ability to treble the costs of abatement for repeat nuisance offenses.

Chapter 17.72 Enforcement and Penalty.

The proposed amendments to this Chapter would clean up redundancy between Code sections.

The proposed amendments to the *Clayton Municipal Code* have been drafted and reviewed by the City Attorney and City staff. A final "clean" copy of the amendments are contained and shown in their entirety in the Exhibits of Attachment 1. Attachment 2 displays the amendments in a redlined version to allow the City Council and the public to fully examine all the proposed text deletions and additions.

CEQA

Pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty there is no possibility the proposed amendments to the *Clayton Municipal Code* may have a significant effect on the environment, and therefore it is not subject to CEQA.

FISCAL IMPACT

Some staff time as well as printing cost have and will be associated with the preparation of this Ordinance. If approved, staff will bring back an amendment to the City's Master Fee Schedule to add a time and material deposit fee for Appeals of Administrative Citations, which would in turn allow for better cost recovery of Administrative Citation Appeal Hearings for the prevailing party.

Attachments:

1. Draft Ordinance No. 451 – Regarding Code Enforcement Procedures and Regulations
2. Redlined Version of Proposed Ordinance



Agenda Date: 11/5/13

Agenda Item: HC

Approved:

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 05 NOVEMBER 2013

**SUBJECT: CITY COUNCIL ANNUAL TOWN HALL MEETING WITH
CLAYTON BUSINESS OWNERS & COMMERCIAL PROPERTY OWNERS**

RECOMMENDATION

It is recommended the City Council provide the following directions to staff concerning its fifth (5th) annual meeting with the Clayton business community to be held on a date in November or December 2013, as determined by the City Council:

1. Determine the scope of Agenda items for roundtable discussion with Town Center property and business owners;
2. Determine the date and time for the meeting to be held in Hoyer Hall at the Clayton Community Library; and
3. By motion call a City Council Special Meeting for the determined date, time and location.

BACKGROUND

Following the second year "Concerts in The Grove" in 2009, the City Council initiated a morning study session with invited property owners and business persons of the Clayton Town Center. Each segment of our business community was individually notified of the outreach meeting and the special meeting was held on 24 November 2009 (Tuesday) at 9:00 a.m. The City pre-determined a week day morning meeting would garner greater attendance by busy business owners. Forty-nine (49) invitations were mailed out in 2009 with 8 business persons ultimately in attendance representing 6 businesses.

At the conclusion of the 2009 inaugural meeting, all in attendance expressed support for further annual meetings of this nature. The City Council instructed staff to plan for an annual

study session with its business community on matters of mutual interest and concern. Consequently, in 2010 the second annual meeting was held by the City Council on Tuesday, 23 November 2010 with sixteen (16) Clayton business owners in attendance. The 2010 notification was broadened to include business owners in the "Clayton Station" shopping center with one hundred and one (101) invitations mailed out by the City. The 3rd annual Town Hall-style meeting was held on 06 December 2011 and had twenty-seven (27) business owners and interested residents in attendance. The 4th annual Town Hall meeting with this segment of the community occurred on 27 November 2012 and had eighteen (18) business owners and persons in attendance.

POTENTIAL DISCUSSION ITEMS FOR CONSIDERATION

For the 2013 annual meeting, staff offers the following topics for consideration and seeks additional subjects as desired by the City Council:

- A. Feedback on the ten (10) 2013 Saturday Night "Concerts in The Grove" and on the five (5) Thursday Night "Concerts in The Grove".
- B. Roundtable discussion: promotion of a healthier local business economy.
- C. Roundtable discussion: issues of concern or potential partnership between the commercial sector and the City?
- D. Other topics.

It is necessary for the City Council to select a convenient date and time to hold the meeting, allowing for sufficient notice by the City to Town Center and Clayton Station property and business owners. Calendars for the months of November and December 2013 are attached to this staff report indicating the availability of Hoyer Hall for the morning session. Each of the previous four (4) study sessions was held on a Tuesday morning starting at 9:00 a.m.

FISCAL IMPACT

Nominal costs are incurred by the City to prepare and mail meeting notices to the intended participants and to set up/take down the chairs and tables in the Community Library Meeting Room (Hoyer Hall).

- Attachments:
- 1. November and December 2013 calendars [2 pp.]
 - 2. Minutes of the 27 November 2012 Special Meeting [4 pp.]

~ November 2013 ~							December ▶
◀ October	Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1	2
3		4	5 City Council Meeting	6	7 Hoyer Hall booked ALL DAY	8 Hoyer Hall booked ALL DAY	9 Hoyer Hall booked ALL DAY
10	10 Hoyer Hall booked ALL DAY	11 Holiday City Hall Closed	12 Planning Commission Meeting	13	14	15	16 Hoyer Hall booked 3pm-8pm
17		18	19 City Council Meeting	20 Hoyer Hall booked 1pm-3pm	21	22	23
24		25	26 Planning Commission Meeting	27	28 Holiday City Hall Closed	29 Holiday City Hall Closed	30

~ December 2013 ~							January ▶
◀ November	Sun	Mon	Tue	Wed	Thu	Fri	Sat
1		2	3 City Council Meeting	4	5	6	7
8		9 Hoyer Hall booked 6pm-9pm	10 Planning Commission Meeting	11 Hoyer Hall booked 4pm-9pm	12 Hoyer Hall booked 4pm-9pm	13	14
15		16	17 City Council Meeting	18	19	20	21
22		23	24 Planning Commission Meeting	25 Holiday City Hall Closed	26	27	28
29		30	31	Notes:			

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

Attachment 2

TUESDAY, November 27, 2012

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 9:02 a.m. by Mayor Geller in Hoyer Hall of the Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Councilmembers Pierce, Shuey, Stratford (arrived at 9:03 a.m.) and Councilmember-Elect Jim Diaz. Staff present: City Manager Gary Napper, Police Chief Dan Lawrence, Community Development Director David Woltering, and City Clerk Laci Jackson.

2. **PUBLIC COMMENT ON NO AGENDA ITEMS**- None.

3. **TOWN HALL MEETING**

The following business owners and community members were present: Steve Barton, Dennis Mitchell, Dolores Austin (Clayton Club Saloon), Tom Payne (Prosperitas Wealth Management), Barbara and Leroy Carney (Frontier Beauty Salon, TLC Pet Grooming), Sue White (Accurate Business Services), Kent Ipsen, Jared Josephson, Clayton Perry, C.J. Fowlie (Skipolini's Pizza), Shane Carley (Kaliball/ Wranglers), Doug Van Wyck (State Farm), Matt Mazzei (Mazzei Realty), Joe Medrano (IMC Insurance and P2C Foundation), and Tamara Steiner (Clayton Pioneer).

3. **Town Hall Roundtable**

- (a) Open Forum discussion between business community and City Council to address issues, concerns or matters of mutual interest:

Suggested Topics

1. Critique of the 2012 Concerts in The Grove Saturday series (10 concerts).
Suggestions for the 2013 series?
- 2 Evaluation of the inaugural Thursday 2012 Concert in The Grove series (5 concerts). Suggestions?

Mayor Geller stated the Saturday night concerts have been held at the same time and place for the last 5 years. He stated they are popular and the public donated nearly \$16,000 this year to fund the concerts. He stated the first concert is typically held the weekend following the Clayton Art and Wine Festival and the last concert is held in mid-September.

Steve Barton stated he has been very happy with the concert series. He stated even though some neighbors have spoken out about the noise he believes it is a good community event. He stated his business saw a small increase in business with the Thursday night concerts.

Jim Diaz, Councilmember-Elect, stated there is a desire to start the Thursday night concerts later and end them earlier. He stated there was also discussion about reducing the number of weeknight concerts to stimulate interest. The goal is to use more local entertainers and possibly consider a vocal talent show.

Councilmember Shuey stated he believes the talent show is a good idea and the Charter High School might be interested in participating. He stated he received a text from Ed Moresi and he favored continuing the Thursday night concerts.

Tom Payne stated the Saturday night concerts are good but he did not see the numbers at the Thursday night concerts.

Mayor Geller stated some citizens believe the City has too many events and it is a balancing act in trying to provide the best for all citizens.

Dennis Mitchell stated he would like to see the business have coupons as a way of attracting donations for the event. Steve Barton agreed it would be good to have one piece of paper with many coupons on it. He stated it would not be a large expense. Dennis Mitchell stated he would work on seeing who wants to participate in something like this for next year.

Councilmember Shuey stated he is curious if the weeknight concerts should be attempted again? Joe Medrano stated the weeknight concerts bring more people downtown. Steve Barton stated he was not sure having a VIP section was necessary. Mr. Medrano stated they were unsure how busy the concerts were going to be when they floated the concept of VIP seating.

Dennis Mitchell stated it was worth trying another year. Jim Diaz stated he is exploring concerts funding options.

3. Ideas for a healthier local business economy.

4. Other topics.

Mayor Geller asked the group how the Oktoberfest and Art and Wine Festival went? Steve Barton stated they are great events.

Joe Medrano asked if businesses are interested in exploring the idea of a synthetic ice rink to bring downtown for the whole day of the Tree Lighting, if it was sponsored and taken care of? He stated the cost for the weekend is about \$8,000.

Kent Ipsen stated a synthetic ice rink is good idea. Dennis Mitchell agreed but stated it would be more effective if it was open longer than one weekend.

Councilmember Stratford asked if there were other ideas to help businesses? What could the City do to help?

Mayor Geller stated if the business community joined together they could advertise more effectively. Steve Barton stated the only way to do that is to mandate participation and the CBCA is the logical place for this type of group to form. Jim Diaz suggested the businesses collaborate with the Oakhurst Country Club because already they have a business group which meets regularly.

Mayor Geller asked if anyone noticed the improvements to the Farmers' Market (PCFMA)?

CJ Fowlie stated after Farmers' Market he is picking up trash and he would like to be able to contract the person in charge. He did note there were improvements after the Assistant to the City Manager spoke to the PCFMA.

Mayor Geller stated the market seems successful and there has been positive feedback. Councilmember Pierce stated the PCFMA does have an email list and they are good at promoting the Clayton Farmers' Market.

Kent Ipsen asked if the bocce courts had been discussed recently. Mayor Geller stated funding has been problem. Kent Ipsen stated the difficult thing is the approved location by City Hall is detached from downtown.

Sue White asked if the produce store was still coming to the Flora Square building? Mayor Geller responded no.

Kent Ipsen asked if is the City in the position to buy the Clayton Community Church property? Mayor Geller stated he could not comment.

Shane Carley, Associate Head Coach for San Francisco City baseball team, stated he is trying to bring a summer collegiate baseball league to Clayton. He stated he and his investors are looking at Field 1 of the Clayton Community Park; he stated they would like to put up a fence and hold 30-33 home games in Clayton. He stated on top of that he would like to start new leagues. He stated the Clayton Wranglers would be the non-profit and would sell programs, shirts and tickets to spectators. He stated he has his own Limited Liability Corporation that would pay for the upgrades. Councilmembers recommended he work with staff on such details.

Councilmember Shuey asked if holding this meeting one time per year is sufficient? Tamara Steiner stated she would be really interested in knowing why not all businesses are participating in this meeting? She stated she and Steve Barton would try to find out why more people were not attending the meeting.

4. **CLOSED SESSION-** 10:48 a.m. On call by Mayor Geller the Council moved into Closed Session for the following purpose:

- (a) *Government Code Section 54957(b) (1).*
[Annual] Performance Evaluation of Public Employee
Title: City Manager

Report out from Closed Session: Mayor Geller indicated the City Council met to discuss the purpose of Closed Session and that no reportable action was taken.

6. **ADJOURNMENT**– On call by Mayor Geller the meeting adjourned at 11:45 a.m.

Respectfully submitted,

Laci J. Jackson, City Clerk

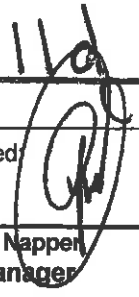
APPROVED BY CLAYTON CITY COUNCIL

Howard Geller, Mayor



Agenda Date: 11-5-13

Agenda Item: 11d

Approved: 

Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 05 NOVEMBER 2013

**SUBJECT: COUNCIL MEMBER REQUEST TO DISCUSS REAL PROPERTY LISTING
WITH A COMMERCIAL REAL ESTATE BROKER**

RECOMMENDATION

Following City Council discussion of the topic raised by Council Member Geller, that Council provide any policy direction to staff concerning whether to list City real property for sale with a commercial real estate broker.

BACKGROUND

At the conclusion of its October 15th regular public meeting, Council Member Howard Geller requested an item for the next City Council meeting to discuss the merits of the City hiring a commercial real estate broker to list and market the City's real property for sale. Consistent with City guidelines regarding "Future Agenda Items", the matter has been placed on this agenda for City Council discussion.

CITY PROPERTIES FOR SALE

At this time, the City has several real property holdings it is interested in selling to further economic development in its Clayton Town Center.

The City's most recent acquisition involved the purchase of a 1.67 acre vacant site located on Main Street behind the Clayton Community Church offices (APN 118-560-010). The land currently has two (2) City-ordered signs on the property declaring the property is for sale and to call City Hall for further details. The land is zoned as Planned Development ("PD") with a General Plan designation of Town Center Commercial ("TC"). The City has a long-held vision of the property being developed as a Mixed Use with retail commercial on ground floor and either commercial/business offices or housing units on the second floor. The City paid \$1.040 million for the real property in April 2013 and currently has one (1) offer to buy the land by a private development party. Since the City wishes to retain control of the actual land development in addition to sale of the land, any prospective sale would involve a

Development Agreement (DA) to guide the land use entitlement process and procure a desired commercial and/or mixed use project.

The second site the City has for sale is the land and associated land use entitlement permits for three (3) separate parcels located on Oak Street between High and Center Streets. Known as the "Creekside Terrace Project", the real properties involve Assessor Parcel Numbers (APNs) 119-050-008 (12,631 sq. ft. of sloped vacant land west of Mitchell Creek), APN 119-050-009 (8,710 sq. ft. of improved property with a dilapidated bungalow building), and APN 119-050-034 (11,760sq. ft. of improved property with a second unsafe bungalow building which was once leased to the PERMCO engineering firm). The property presently has a sign on it announcing it is "For Sale" along with a colored rendering of the approved entitlement project for ground floor retail commercial space and seven (7) second floor housing units. This property is under active negotiations for sale/purchase and development by a private developer.

COMMERCIAL REAL ESTATE BROKER

To aid the City Council's discussion of the requested item, staff conversed with agents/brokers with Colliers International to obtain answers to some general interest questions regarding this option. Many cities and local governments do retain the professional services of a commercial real estate broker to lease or sell publicly-owned real properties within their community.

As an example only: attached to this Memo is a copy of a traditional Agreement utilized by Colliers International when securing the rights to list and market commercial real estate properties. According to a Colliers International broker, the company typically assumes all fees/expenses to list, advertise, and market the property for sale. More complex sales can involve a Development Agreement and a waiting period with the buyer's deposit into escrow while the prospective developer secures local land use entitlements for the development. Commissions are paid to the broker upon close of escrow and normally range between 5%-6% of the sales price but can go as high as 10%. The commission fee is negotiated at time of list agreement.

Should the City Council desire to examine the option to list one or more of the City's real properties for sale, staff envisions several commercial brokers would become interested in such a contract (e.g. Colliers International; Grubb Ellis). The Council may want to consider having its Downtown Economic Development Ad-hoc Committee comprised of Mayor Pierce and Council Member Shuey become involved in that consideration and review of any proposals received, or it can leave the matter to City staff. The City Council must ultimately approve a commercial real estate broker agreement at a public meeting.

FISCAL IMPACT

According to information staff has been able to obtain to this point, there apparently is no cost to the City to secure the services of a commercial real estate broker to list and market for sale any real properties of the City. Payment for rendered professional services is

incurred when the listed real property actually sells and title is transferred from a closed escrow transaction, with payment in the form of a brokers' commission as a percentage of the sale price, usually 5%-6%.

Attachment: A. Colliers International, Sample Agreement [4 pp.]

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EXCLUSIVE AUTHORIZATION TO SELL

Pursuant to this Exclusive Authorization to Sell ("Agreement"), the undersigned _____ ("Client") hereby irrevocably grants to COLLIERS INTERNATIONAL ("Broker"), and its authorized agents, the exclusive right to negotiate a Sale of that certain real property hereinafter described ("Property"). The exclusive agency hereby created ("Agency") shall be for a period commencing on _____ ("start date") and ending at midnight on _____ ("end date") ("Initial Agency Period").

A. PROPERTY

The Property is located at _____, in the City of _____, County of _____, State of California and further described as approximately _____.

B. PRICE AND TERMS

The price and terms of the Sale of the Property shall be as follows: \$_____ or as negotiated by Client and the prospective purchaser of the Property with the assistance of Broker.

C. EXTENSION OF INITIAL AGENCY PERIOD

The Agency shall continue automatically for thirty (30) days from and after the end date of the Initial Agency Period and thereafter be extended again for additional thirty (30) day increments until the Agency is expressly revoked by Client in writing OR on the one year anniversary of the originally established end date, whichever occurs first. Client agrees to provide thirty (30) days notice to Broker before such express revocation shall be effective. The Agency can be extended beyond the one year anniversary date by the Client's written notice to Broker that Client agrees to extend the Agency to a new date certain. In this Agreement, "Agency Period" shall refer to the period of time from the start date to the end of the last extension of the Agency.

D. COMMISSION SCHEDULE AND PAYMENT

1. **AMOUNT OF COMMISSION:** The parties agree that the commission due to Broker under this Agreement shall be six percent (6%) of the gross sales price of the interest to be transferred.

2. **OBLIGATION TO PAY COMMISSION.**

2.1 During the Agency Period. During the Agency Period, Broker shall have earned and Client shall pay the commission to Broker if, during the Agency Period either (a) the Property or any interest therein is sold, transferred or conveyed by Client; (b) a purchaser is procured by or through Broker, Client or any other person or entity (including another real estate broker) and said purchaser is ready willing and able to purchase the Property or any interest therein, including but not limited to the granting of an option or right of first refusal on the terms stated above or other terms acceptable to Client; or (c) any contract for the sale, transfer or conveyance of the Property or any interest therein is made directly or indirectly with Client. For purposes of this Agreement, references to a "Sale" of the Property shall include any transaction involving a transfer of an interest in the Property, excepting a security interest in support of financing.

2.2 After the Agency Period. During the one (1) year period following the final expiration of the Agency Period, Broker shall have earned and Client shall pay the commission to Broker on any transaction that would otherwise qualify for a commission under 2.1 above, where the transaction involves specifically identified parties based on activity during the Agency Period. "Identified Parties" shall mean persons or entities that had contact with Broker during the Agency Period to receive information about the Property, to make an offer to purchase, or to negotiate for any interest in the Property. Within 30 days of the final expiration of the Agency Period, or as soon thereafter as possible to avoid prejudicing Client, Broker shall provide a list, in writing, of the Identified Parties to Client.

3. **TIME AND MANNER OF PAYMENT:** A commission that has been earned by Broker shall be payable in accordance with the following provisions:

3.1 For sales or exchanges: (a) if such transaction is closed through an escrow, upon the closing of said escrow; (b) if such transaction is closed without an escrow, upon the earlier of (i) recordation of a deed; or (ii) delivery of a deed or other instrument of conveyance.

3.2 For a contract or agreement of sale, joint venture agreement, business opportunity or other transaction not involving the delivery of a deed, upon the mutual execution of the agreement evidencing the transaction.

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E. CLIENT COOPERATION

Broker agrees to use all reasonable efforts to find a purchaser for the Property, and Client agrees to cooperate with Broker in causing a Sale of the Property to occur. Client shall immediately refer to Broker all inquiries of any party interested in purchasing the Property, a portion thereof or an interest therein and Broker shall diligently pursue all such referrals. All negotiations regarding the Sale of the Property shall be pursued through Broker or with Broker's knowledge as to the terms and parties. Client hereby authorizes Broker to accept a deposit from any prospective purchaser and to transfer such deposit to an escrow agent for the account of the purchaser for the purpose of consummating a Sale of the Property. If a Sale is not consummated, any deposits or payments, including payments for options, liquidated damages and other amounts retained by Client, shall be equally divided between Client and Broker, except that Broker's portion thereof shall not exceed the amount of the commission that would otherwise have been payable upon consummation of such transaction pursuant to the terms of this Agreement. All written offers received by Broker for the purchase of the Property shall be promptly reviewed and responded to by Client and Broker.

F. COOPERATING BROKERS

Client acknowledges that Broker is entitled and encouraged to solicit the cooperation of other real estate brokers. However, Broker may not enter into any commission arrangements with other brokers that would be inconsistent with the terms of this Agreement or which would increase the total amount of Client's liability hereunder, and Client's sole liability for commissions shall be as provided in this Agreement. Broker has no responsibility to pay a fee or commission to a cooperating broker, unless and until Client has paid the fee or commission to Broker.

G. NON-DISCRIMINATION

Both Client and Broker hereby acknowledge their understanding that it is illegal to refuse to present, sell or lease real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

H. CLIENT REPRESENTATIONS

Except as may be provided in an addendum to this agreement signed by both Client and Broker, Client hereby warrants and represents to Broker that (1) Client is the owner of record of the Property or has the legal authority to execute this Agreement on behalf of such owner of record, (2) no person or entity has any right to purchase or sell the Property or any portion thereof by virtue of any agreement, option or right of first refusal, (3) there are no delinquencies or defaults under any deed of trust, mortgage or other encumbrance of the Property, (4) the Property is not subject to the jurisdiction of any court in any bankruptcy, insolvency, conservatorship or probate proceeding, and (5) neither Broker nor any salesperson affiliated with Broker has made any promises or representations to or agreements with Client not contained herein on the subject matter of this Agreement.

I. DISCLOSURES, EXPERT MATTERS AND RESPONSIBILITIES OF CLIENT AND BROKER

1. **DISCLOSURES:** Owners of real estate must comply with California law for the disclosure of any and all known material facts concerning their property to prospective tenants or buyers as well as any other items required by California law. To meet this requirement, Broker recommends that Owners of real estate obtain legal advice from a qualified legal professional. Broker shall have no responsibility for property disclosures beyond the delivery and/or disclosure of information provided by the Owner or known to the Broker. Parties to a sale or lease transaction should not and will not rely on Broker with regard to matters of disclosure required by Owners, but instead will rely entirely on their own investigation and that of qualified professionals and experts.

Matters requiring disclosure may include, but are not limited to, the following: Natural Hazard Disclosures (including whether or not the property is located in a flood hazard area, fire hazard severity zone, forest fire risk area, earthquake fault zone, or a seismic hazard zone), toxic mold disclosures, known material defects, presence or proximity to hazardous materials, compliance with the Americans with Disabilities Act (ADA), compliance with zoning laws, whether or not the property is located in a special tax zone (such as a Mello-Roos Community Facilities District) or a special assessment district, as well as historic energy use and the existence and results of Certified Access Specialist (CASP) inspections.

2. DEFENSE, INDEMNITY AND HOLD HARMLESS

2.1 Client: Client shall defend, indemnify, and hold harmless Broker and each of its agents, employees, directors, shareholders, contractors and representatives from and against any and all losses, claims, allegations, liabilities, damages, costs and expenses (including, without limitation, reasonable attorneys' and experts' fees), caused by or arising in connection with: (i) information supplied by Client or Client's agents, employees, contractors or consultants regarding the Property; (ii) information not supplied by Client to Broker regarding the Property; (iii) the negligence or willful misconduct of Client or its agents, employees, contractors or invitees; and (iv) a breach of Client's obligations under this Agreement. Notwithstanding this provision, Client's obligation shall not extend to protect Broker against Broker's sole negligence or willful misconduct.

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2.2 Broker: Broker shall defend, indemnify, and hold harmless Client and each of its agents, employees, directors, shareholders, contractors and representatives against all losses, claims, allegations, liabilities, damages, costs and expenses, including, without limitation, reasonable attorneys' and experts' fees, to the extent they arise out of either (i) Broker's representation to a prospective purchaser of information which is false and material regarding the Property, which material information Broker knew to be false, or (ii) Broker's failure to provide a prospective purchaser with information known to Broker regarding a material defect concerning the Property, unless such representation or failure arises directly or indirectly from Client's representation or failure to disclose information to Broker. Notwithstanding this provision, Broker's obligation shall not extend to protect Client against Client's sole negligence or willful misconduct.

3. EXPERT MATTERS

3.1 There are a number of potentially significant matters related to commercial properties, which may be material to a particular transaction, the evaluation of which would require specialized expertise which is beyond the expertise and/or responsibility of the Broker ("Expert Matters"). Broker recommends that parties to a potential lease or sale transaction obtain the advice of qualified professionals and experts prior to the consummation of any transaction. Parties to a sale or lease transaction should not and will not rely on Broker with regard to Expert Matters, but instead will rely entirely on their own investigation and those of qualified professionals and experts.

3.2 Expert Matters may include, but are not limited to, the following: the use, generation, storage or presence of hazardous or toxic substances and underground storage tanks; natural hazards, such as fire, flood, or earthquake; building safety and structural integrity of roof, walls, and foundations or any improvements located on the Property; operation or condition of mechanical, plumbing, utility or life safety systems; mold, fungus, water damage, or effects of moisture; compliance with Americans with Disabilities Act (ADA); compliance with building and fire codes; tax, accounting, or legal effects or consequences of the proposed transaction; survey, linear or area measurements of the Property; availability of utilities and utility connections, adequacy, availability and condition of sewer lines and/or connections, public transportation, or other infrastructure; zoning and permitted land uses; insurance policies and premiums; architectural design or engineering; geotechnical/soil condition; termites or other pests or rodents; statements of income and expense or other financial statements; the financial soundness of a prospective tenant or subtenant; condition of title; or existing taxes, assessments or liens.

3.3 Broker has no responsibility to, has not made and will not make an independent investigation or determination with respect to any Expert Matters. Any information communicated by Broker regarding any of the Expert Matters arises from third party sources and has not been and will not be independently verified by Broker.

4. All of the provisions of this Section (I) shall survive the expiration or earlier termination of this Agreement.

J. DUAL AGENCY AUTHORIZED

Client agrees that Broker may represent a potential purchaser ("Purchaser") of the Property. In the negotiation of a potential Sale of the Property by Client, Client authorizes Broker to act as a dual agent representing both Client and Purchaser. When performing as a dual agent, Client agrees that Broker shall not disclose to Client the best terms upon which Purchaser is willing to purchase the Property, unless authorized to do so by Purchaser. Similarly, Broker agrees not to disclose to Purchaser the best terms upon which Client is willing to sell the Property, unless authorized to do so by Client.

K. MEDIATION OF DISPUTES

Broker and Client agree to mediate any dispute between them arising out of this Agreement prior to the initiation of any legal proceedings. If the parties cannot agree on a mediator, either party may petition the Superior Court of the County where the Property is located, which Court shall be authorized to appoint a mediator. The parties shall cooperate to promptly schedule the mediation. The mediator may conduct more than one session and both parties to the dispute shall pay fees equally. Matters that are within the jurisdiction of the small claims court are excluded from mediation. In the event a party pursues legal action without first seeking mediation, that party shall not be entitled to recover prevailing party attorney fees or costs.

L. GENERAL PROVISIONS

1. BINDING ON SUCCESSORS: The parties intend for and agree that their respective successors, assigns, heirs and transferees shall be bound by this Agreement.



2. **AMENDMENTS AND MODIFICATION:** No amendments to or modifications of this Agreement nor the termination of this Agreement shall be valid or binding unless made in writing and signed by both Client and Broker. Any purported amendment, modification or termination of this Agreement that is oral, or that is in writing but not signed by both Client and Broker, shall be void and of no effect whatsoever.
3. **ATTORNEY'S FEES, COSTS AND INTEREST:** If any claim or controversy arises concerning the performance or interpretation of this Agreement, the prevailing party shall be entitled to attorney's fees, court costs, expert witness fees and/or other expenses relating to said claim or controversy, through appeal, if any. For the purposes of this Agreement, "prevailing party" shall mean the party that received substantially the relief requested, whether by settlement, dismissal, summary judgment, mediation, arbitration, judgment or otherwise. If there is a failure to make any payment to Broker at the time required herein, the delinquent sum(s) shall bear interest at the rate of twelve percent (12%) per year or the maximum non-usurious interest rate for loans permitted by law, whichever is lower.
4. **ENTIRE AGREEMENT OF PARTIES:** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the Property. Both parties to this Agreement acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
5. **PARTIAL INVALIDITY:** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.
6. **GOVERNING LAW:** This Agreement will be governed by and construed in accordance with the laws of the State of California. In the event of any legal action, jurisdiction and venue shall be in the Superior Court of the State of California, for the County in which the Property is located.
7. **NOTICES:** Notices under this Agreement shall be provided to the other party by regular U.S. mail addressed to the last known address of the party.
8. **TIME:** The parties agree that time is of the essence with regard to the matters provided for in this Agreement.

M. OTHER TERMS AND CONDITIONS

The undersigned Client has read and understood and hereby agrees to be bound by the foregoing.

BROKER: Colliers Parrish International, Inc., dba Colliers International

By: _____ Date _____

Email: @colliers.com

By: _____ Date _____

Email: @colliers.com

Client:

By: _____ Date _____

Its: _____

By: _____ Date _____

Its: _____

Phone: _____ Fax: _____

Email: _____

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