



AGENDA

REGULAR MEETING

*** * ***

CLAYTON CITY COUNCIL

*** * ***

TUESDAY, November 16, 2021

7:00 P.M.

***** NEW LOCATION*****

This meeting is being held in accordance with AB 361, given the proclaimed state of emergency and the Contra Costa County Health Officer's recommendation for social distancing for public meetings, which is also consistent with Cal OSHA requirements for social distancing, the City Council will be participating in meetings via phone/video conferencing. The public is invited to watch and participate via the methods listed below:

Mayor: Carl Wolfe

Vice Mayor: Peter Cloven

Council Members

Jim Diaz

Holly Tillman

Jeff Wan

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review on the City's website at www.ci.clayton.ca.us
- 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 is available for review on the City's website at www.ci.clayton.ca.us
- 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) 673-7300.

Instructions for Virtual City Council Meeting – November 16

To protect our residents, officials, and staff, and aligned with the Governor’s executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

To follow or participate in the meeting:

1. **Videoconference:** to follow the meeting on-line, click here to register:

https://us02web.zoom.us/webinar/register/WN_bVlD0Hu8Q_qaj8HU0uQ23A

After clicking on the URL, please take a few seconds to submit your first and last name, and e-mail address then click “Register”, which will approve your registration and a new URL to join the meeting will appear.

Phone-in: Once registered, you will receive an e-mail with instructions to join the meeting telephonically, and then dial Telephone: 877 853 5257 (Toll Free)

2. using the *Webinar ID* and *Password* found in the e-mail.

E-mail Public Comments: If preferred, please e-mail public comments to the City Clerk, Ms. Calderon at janetc@ci.clayton.ca.us by 5 PM on the day of the City Council meeting. All E-mail Public Comments will be forwarded to the entire City Council.

For those who choose to attend the meeting via videoconferencing or telephone shall have 3 minutes for public comments.

Location:

Videoconferencing Meeting (this meeting via teleconferencing is open to the public)

To join this virtual meeting on-line click here:

https://us02web.zoom.us/webinar/register/WN_bVlD0Hu8Q_qaj8HU0uQ23A

To join on telephone, you must register in the URL above, which sends an e-mail to your inbox, and then dial (877) 853-5257 using the *Webinar ID* and *Password* found in the e-mail.

*** CITY COUNCIL ***

November 16, 2021

1. **CALL TO ORDER AND ROLL CALL** – Mayor Wolfe.

2. **MEETING PROTOCOL VIDEO**– City Clerk

3. **PLEDGE OF ALLEGIANCE** – led by Councilmember Diaz.

4. **CONSENT CALENDAR**

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

- (a) Approve the minutes of the City Council's regular meeting of November 2, 2021. (City Clerk) ([View here](#))
- (b) Approve the Financial Demands and Obligations of the City. (Finance) ([View here](#))
- (c) Adopt a Resolution of the City Council of the City of Clayton Allowing for Video and Teleconference Meetings during the COVID-19 State of Emergency Under AB 361. (City Manager) ([View here](#))
- (d) A Resolution of the City Council of the City of Clayton Approving and Authorizing the Execution of a One-Year Agreement in the Amount of \$40,500 Annually Through December 31, 2022, With Up to Two One-Year Extensions, With Matrix Association Management for Property Management and Maintenance Services for the Diablo Estates at Clayton Development (Subd. 7719) Being Funded by the Diablo Estates at Clayton Benefit Assessment District. (Assistant to the City Manager) ([View here](#))
- (e) Acquisition and Installation of Advance "Prepare to Stop" Warning Signs on Clayton Road Approaching Diablo View Middle School in an Amount not to Exceed \$50,000 (CIP #10448). (City Engineer) ([View here](#))
- (f) Consideration of a Resolution Approving the Final Subdivision Map (Tract Map 9536) and Authorizing Execution of a Subdivision Improvement Agreement for the Diablo Meadows Residential Development. (Community Development Director) ([View here](#))
- (g) Adoption of Resolutions Selecting Projects for Applications of Funds from the California Department of Parks and Recreation's Office of Grants and Local Services' (OGAL) Proposition 68 Per Capita and Recreational Infrastructure Revenue Enhancement (RIRE) Programs. (Community Development Director) ([View here](#))

5. RECOGNITIONS AND PRESENTATIONS

- (a) Proclamation declaring November 16, as “Dutch American Heritage Day” in Clayton. (Mayor Wolfe) ([View here](#))
- (b) Proclamation declaring December 10, as “Human Rights Day” in Clayton. (Mayor Wolfe) ([View here](#))

6. REPORTS

- (a) City Manager/Staff
- (b) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

7. PUBLIC COMMENT ON NON - AGENDA ITEMS

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

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

8. PUBLIC HEARINGS

- (a) Introduce and Waive First Reading of an Ordinance to Amend Clayton Municipal Code Section 17.36.080 and Chapter 17.95 entitled “Medical and Adult-use Cannabis Regulations” Relating to Cultivation of Cannabis for Personal Use (ZOA-01-2021). (Community Development Director) ([View here](#))

9. ACTION ITEMS

- (a) Adopt a Resolution Approving Program Parameters for the Clayton Cares Program and Appropriating American Rescue Plan Act (ARPA) Funding for Implementation. (City Manager) ([View here](#))
- (b) A Resolution of the City Council of the City of Clayton Electing to Become Subject to the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.) and Waive First Reading and Introduce an Ordinance Establishing Bidding Procedures in Accordance with the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.) (City Manager) ([View here](#))

10. **CLOSED SESSION** – None.

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

12. **ADJOURNMENT** - the next regularly scheduled City Council meeting will be December 7, 2021.

#

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

TUESDAY, November 2, 2021

1. **CALL TO ORDER THE CITY COUNCIL** – The meeting was called to order at 7:00 p.m. by Mayor Wolfe on a virtual web meeting and telephonically (877) 853-5257. Councilmembers present: Mayor Wolfe, Vice Mayor Cloven, and Councilmembers Diaz, Tillman, and Wan. Councilmembers absent: None. Staff present: City Manager Reina Schwartz, City Attorney Mala Subramanian, and City Clerk/HR Manager Janet Calderon.

2. **MEETING PROTOCOL VIDEO** – City Clerk.

3. **PLEDGE OF ALLEGIANCE** – led by Councilmember Diaz.

4. **CONSENT CALENDAR**

Councilmember Wan inquired as to why item 4(d) is on the agenda for City Council approval.

City Manager Schwartz advised this item is on the City Council agenda to provide notice of the dates.

It was moved by Vice Mayor Cloven, seconded by Councilmember Wan, to approve the Consent Calendar items as submitted. (Passed 5-0).

- (a) Approved the minutes of the City Council's regular meeting of October 19, 2021. (City Clerk)
- (b) Approved the Financial Demands and Obligations of the City. (Finance)
- (c) Adopted Resolution No. 61-2021 of the City Council of the City of Clayton Allowing for Video and Teleconference Meetings during the COVID-19 State of Emergency Under AB 361. (City Manager)
- (d) Approved Proposed Schedule for Calendar Year 2022 Saturday "Concerts in The Grove" series, provided County/State Health Regulations will allow. (City Clerk)

5. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificates of Recognition to public school students for exemplifying the "Do the Right Thing" character trait of "Respect" during the month of October. (Mayor Wolfe)

Mayor Wolfe and Mt. Diablo Elementary School Principal Katie Sanchez and teachers Ms. Hopkins and Ms. Erickson presented certificates to Jocelyn Jacques and Bailey McNeel-Caird.

Mayor Wolfe and Diablo View Middle School Principal Peter Fong presented certificates to Jacob Jeandheur and Stella Marks.

- (b) Proclamation declaring November 3, 2021 as “Shelter in Place Education Day”.
(Mayor Wolfe)

Mayor Wolfe briefly read the proclamation recognizing November 3, 2021 as “Shelter in Place Education Day” in the City of Clayton.

- (c) Proclamation declaring November, as “Native American Heritage” month in Clayton.
(Mayor Wolfe)

Mayor Wolfe briefly read the proclamation recognizing the month of November as “Native American Heritage” month in the City of Clayton.

6. REPORTS

- (a) City Manager/Staff

City Manager Reina Schwartz announced a vacancy on the Planning Commission due to a resignation of one of its members for a term ending June 2022.

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

Councilmember Wan spoke with consultants and emailed and called constituents.

Vice Mayor Cloven spoke with various residents regarding Clayton’s Housing Element, met with the City Manager and looking forward to the next meeting of the Trails and Landscaping Committee.

Councilmember Diaz met with the City Manager, attended the District 4 Workshop regarding re-districting of Contra Costa County, attended the Cal Cities East Bay division meeting, the Clayton Business and Community Association general membership meeting, and attended the Clayton Community Church Trunk or Treat event.

Councilmember Tillman listened to the Housing Element workshop, attended the Mount Diablo School District Board meeting, attended the Mount Diablo School District Anti-Bias/Anti-Racist subcommittee meeting, the Cal Cities East Bay Division meeting, the Clayton Business and Community Association general membership meeting, attended the Clayton Community Church Trunk or Treat event, and met with the City Manager.

Mayor Wolfe attended the Clayton Community Church Trunk or Treat event, met with the City Manager, received a note from a citizen regarding the repainting of the red curb and site lines located at CVS, attended the East Contra Costa Habitat Conservancy meeting, listened to the Housing Element workshop, responded to emails and voicemails from constituents, attended the National League of Cities Mayors’ Conference, and received resignation of Planning Commissioner Altwal.

7. PUBLIC COMMENT ON NON - AGENDA ITEMS

Scott Denslow thanked former Planning Commissioner Altwal for his service, participated in the Trunk or Treat hosted by Clayton Community Church and hopes this will continue to be an annual event, and expressed his support in continuing with Virtual City Council meetings.

Mayor Wolfe closed public comment.

8. PUBLIC HEARINGS – None.

9. ACTION ITEMS – None.

- (a) Presentation, Discussion & Direction to Staff Regarding Use of the American Rescue Plan Act (ARPA) Funds. (City Manager)

City Manager Reina Schwartz introduced Consultant Management Partners who presented the report.

Following questions by the City Council, Mayor Wolfe opened the item to public comment.

Gary Hood suggested the Council consider three priorities (business, household, citywide delayed maintenance) and distribution of funds by year end.

Larry Love expressed the need of increased funding for small businesses and urgency in disturbing funds.

Mayor Wolfe closed public comment.

By consensus of the City Council, staff is directed to return to the City Council with a recommended program for business and household assistance that allocates a portion of the City's overall ARPA funds, and defines the process and assistance amounts.

- (b) Update on SB 9 and SB 10 and Discussion of Next Steps. (City Attorney)

Recommendation: Discuss and direct

City Attorney Mala Subramanian presented the report.

Following questions by the City Council, Mayor Wolfe opened the item to public comment.

Dee Vieira inquired under SB9 is there an impact on the Ellis Act (legal process that allows property owners to permanently withdraw rental units from the rental market for up to 10 years) and would it affect one already in progress.

Gary Hood inquired under SB9 if there is a provision on any prior loans be paid in full prior to approval of any lot splits. He also found it interesting that a Home Owners Association (HOA) would have the ability to supersede State law.

Mayor Wolfe closed public comment.

By consensus of the City Council, staff directed the City Attorney to draft an ordinance in regards to SB9 and no action needed on SB10.

10. **CLOSED SESSION** – None.

11. **COUNCIL ITEMS** – None.

12. **ADJOURNMENT**– on call by Mayor Wolfe, the City Council adjourned its meeting at 10:34 p.m.

The next regularly scheduled meeting of the City Council will be November 16, 2021.

#

Respectfully submitted,

Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Carl Wolfe, Mayor

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STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: JENNIFER GIANTVALLEY, ACCOUNTING TECHNICIAN

DATE: 11/16/2021

SUBJECT: FINANCIAL DEMANDS AND OBLIGATIONS OF THE CITY

RECOMMENDATION:

It is recommended the City Council, by minute action, approve the financial demands and obligations of the City for the purchase of services and goods in the ordinary course of operations.

Attached Report	Purpose	Date	Amount
Open Invoice Report	Accounts Payable	11/9/2021	\$ 96,499.88
Payroll Reconciliation Summary	Payroll, Taxes	11/1/2021	\$ 89,427.53
	Total Required		\$ 185,927.41

Attachments:

1. Open Invoice Report, dated 11/9/21 (5 pages)
2. Payroll Reconciliation Summary report PPE 10/31/21 (1 page)

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
CalPERS Retirement	10/31/2021	10/31/2021	103121	Retirement PPE 10/31/21	\$18,520.01	\$0.00		\$18,520.01
				<i>Totals for CalPERS Retirement</i>	<i>\$18,520.01</i>	<i>\$0.00</i>		<i>\$18,520.01</i>
Justin Cesarin								
Justin Cesarin	11/9/2021	11/9/2021	PC10-21	PC stipend October 2021	\$120.00	\$0.00		\$120.00
				<i>Totals for Justin Cesarin</i>	<i>\$120.00</i>	<i>\$0.00</i>		<i>\$120.00</i>
Cintas Corporation								
Cintas Corporation	10/21/2021	10/21/2021	4099436493	PW uniforms through 10/21/21	\$55.22	\$0.00		\$55.22
Cintas Corporation	11/4/2021	11/4/2021	4100829176	PW uniforms through 11/4/21	\$59.91	\$0.00		\$59.91
Cintas Corporation	10/28/2021	10/28/2021	4100089912	PW uniforms through 10/28/21	\$59.91	\$0.00		\$59.91
				<i>Totals for Cintas Corporation</i>	<i>\$175.04</i>	<i>\$0.00</i>		<i>\$175.04</i>
Clayton Historical Society								
Clayton Historical Society	11/1/2021	11/1/2021	EH110921	EH Deposit refund	\$500.00	\$0.00		\$500.00
				<i>Totals for Clayton Historical Society</i>	<i>\$500.00</i>	<i>\$0.00</i>		<i>\$500.00</i>
Clean Street								
Clean Street	10/31/2021	10/31/2021	101355CS	Street sweeping October 2021	\$4,500.00	\$0.00		\$4,500.00
				<i>Totals for Clean Street</i>	<i>\$4,500.00</i>	<i>\$0.00</i>		<i>\$4,500.00</i>
CME Lighting Supply, Inc								
CME Lighting Supply, Inc	11/2/2021	11/2/2021	246401	Library light bulbs	\$351.91	\$0.00		\$351.91
				<i>Totals for CME Lighting Supply, Inc</i>	<i>\$351.91</i>	<i>\$0.00</i>		<i>\$351.91</i>
Comcast Business								
Comcast Business	11/5/2021	11/5/2021	110521	Internet 11/10/21-12/9/21	\$386.16	\$0.00		\$386.16
				<i>Totals for Comcast Business</i>	<i>\$386.16</i>	<i>\$0.00</i>		<i>\$386.16</i>
Contra Costa County - Office of the Sheriff								
Contra Costa County - Office of the She	10/28/2021	10/28/2021	CLPD-2109	Forensics/Toxicology September 2021	\$1,218.50	\$0.00		\$1,218.50
Contra Costa County - Office of the She	6/30/2021	6/30/2021	CL 20/21	CLETS Software/hardware fee FY 21	\$663.79	\$0.00		\$663.79
				<i>Totals for Contra Costa County - Office of the Sherif.</i>	<i>\$1,882.29</i>	<i>\$0.00</i>		<i>\$1,882.29</i>
Contra Costa County Public Works Dept								
Contra Costa County Public Works Dept	10/26/2021	10/26/2021	704375	Traffic signal maint September 2021	\$3,964.44	\$0.00		\$3,964.44
				<i>Totals for Contra Costa County Public Works Dept</i>	<i>\$3,964.44</i>	<i>\$0.00</i>		<i>\$3,964.44</i>
Covanta Stanislaus Inc								
Covanta Stanislaus Inc	10/15/2021	10/15/2021	367480STANI	PD special waste disposal	\$197.93	\$0.00		\$197.93
				<i>Totals for Covanta Stanislaus Inc</i>	<i>\$197.93</i>	<i>\$0.00</i>		<i>\$197.93</i>
Terri Denslow								
Terri Denslow	11/9/2021	11/9/2021	PC10-21	PC stipend October 2021	\$120.00	\$0.00		\$120.00
				<i>Totals for Terri Denslow</i>	<i>\$120.00</i>	<i>\$0.00</i>		<i>\$120.00</i>

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Pacheco Landscape & Pool Construction	10/29/2021	10/29/2021	CAP0398	Deposit refund	\$2,024.00	\$0.00		\$2,024.00
				<i>Totals for Pacheco Landscape & Pool Construction.</i>	<i>\$2,024.00</i>	<i>\$0.00</i>		<i>\$2,024.00</i>
Pacific Office Automation								
Pacific Office Automation	10/22/2021	10/22/2021	218000	Copier usage 9/20/21-10/19/21	\$50.51	\$0.00		\$50.51
				<i>Totals for Pacific Office Automation</i>	<i>\$50.51</i>	<i>\$0.00</i>		<i>\$50.51</i>
Pacific Telemanagement Svc								
Pacific Telemanagement Svc	10/28/2021	10/28/2021	2076629	Courtyard payphone November 2021	\$70.00	\$0.00		\$70.00
				<i>Totals for Pacific Telemanagement Svc</i>	<i>\$70.00</i>	<i>\$0.00</i>		<i>\$70.00</i>
Paysafe Payment Processing								
Paysafe Payment Processing	10/31/2021	10/31/2021	October21	OTC bankcard fee October 2021	\$338.69	\$0.00		\$338.69
Paysafe Payment Processing	10/31/2021	10/31/2021	October21	Online bankcard fee October 2021	\$388.63	\$0.00		\$388.63
				<i>Totals for Paysafe Payment Processing</i>	<i>\$727.32</i>	<i>\$0.00</i>		<i>\$727.32</i>
PG&E								
PG&E	10/28/2021	10/28/2021	102821	Energy 9/16/21-10/14/21	\$18,015.42	\$0.00		\$18,015.42
PG&E	10/21/2021	10/21/2021	102121	Energy 9/22/21-10/20/21	\$11.70	\$0.00		\$11.70
PG&E	10/22/2021	10/22/2021	102221	Energy 9/23/21-10/21/21	\$603.66	\$0.00		\$603.66
PG&E	10/22/2021	10/22/2021	102221	Energy 9/23/21-10/21/21	\$3,147.58	\$0.00		\$3,147.58
PG&E	10/15/2021	10/15/2021	101521	Energy 9/17/21-10/15/21	\$31.77	\$0.00		\$31.77
PG&E	10/22/2021	10/22/2021	102221	Energy 9/23/21-10/21/21	\$93.77	\$0.00		\$93.77
PG&E	10/22/2021	10/22/2021	102221	Energy 9/18/21-10/18/21	\$667.24	\$0.00		\$667.24
PG&E	10/21/2021	10/21/2021	102121	Energy 9/22/21-10/20/21	\$102.79	\$0.00		\$102.79
PG&E	10/1/2021	10/1/2021	100121	Energy 8/23/21-9/21/21	\$287.01	\$0.00		\$287.01
PG&E	11/1/2021	11/1/2021	110121	Energy 9/22/21-10/21/21	\$108.33	\$0.00		\$108.33
				<i>Totals for PG&E.</i>	<i>\$23,069.27</i>	<i>\$0.00</i>		<i>\$23,069.27</i>
Rex Lock & Safe, Inc.								
Rex Lock & Safe, Inc.	10/27/2021	10/27/2021	132483	CH door lever replacement	\$1,075.51	\$0.00		\$1,075.51
				<i>Totals for Rex Lock & Safe, Inc.</i>	<i>\$1,075.51</i>	<i>\$0.00</i>		<i>\$1,075.51</i>
Laura or Chris Simmons								
Laura or Chris Simmons	10/25/2021	10/25/2021	CAP402	Deposit refund	\$2,024.00	\$0.00		\$2,024.00
				<i>Totals for Laura or Chris Simmons</i>	<i>\$2,024.00</i>	<i>\$0.00</i>		<i>\$2,024.00</i>
Sprint Comm (PD)								
Sprint Comm (PD)	10/29/2021	10/29/2021	.703335311-239	PD cell phones 9/26/21-10/25/21	\$710.82	\$0.00		\$710.82
				<i>Totals for Sprint Comm (PD)</i>	<i>\$710.82</i>	<i>\$0.00</i>		<i>\$710.82</i>
Staples Business Credit								
Staples Business Credit	10/25/2021	10/25/2021	1638510977	Office supplies	\$345.24	\$0.00		\$345.24
				<i>Totals for Staples Business Credit</i>	<i>\$345.24</i>	<i>\$0.00</i>		<i>\$345.24</i>

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Stericycle Inc								
Stericycle Inc	11/1/2021	11/1/2021	3005753811	Medical waste disposal	\$68.29	\$0.00		\$68.29
				<i>Totals for Stericycle Inc</i>	<u>\$68.29</u>	<u>\$0.00</u>		<u>\$68.29</u>
Swenson's Mobile Fleet Repair								
Swenson's Mobile Fleet Repair	10/8/2021	10/8/2021	I003737	PW veh svc '06 F550	\$347.28	\$0.00		\$347.28
Swenson's Mobile Fleet Repair	11/5/2021	11/5/2021	I003821	PW veh svc '99 F450	\$220.28	\$0.00		\$220.28
Swenson's Mobile Fleet Repair	11/5/2021	11/5/2021	I003822	PW veh svc '15 F250	\$242.02	\$0.00		\$242.02
Swenson's Mobile Fleet Repair	11/5/2021	11/5/2021	I003823	PW veh svc '99 F450	\$144.02	\$0.00		\$144.02
Swenson's Mobile Fleet Repair	11/5/2021	11/5/2021	I003824	PW veh svc '07 F450	\$234.61	\$0.00		\$234.61
Swenson's Mobile Fleet Repair	11/2/2021	11/2/2021	I003811	PW veh svc '11 F250	\$179.42	\$0.00		\$179.42
				<i>Totals for Swenson's Mobile Fleet Repair</i>	<u>\$1,367.63</u>	<u>\$0.00</u>		<u>\$1,367.63</u>
Thor Doors and Construction, Inc								
Thor Doors and Construction, Inc	10/20/2021	10/20/2021	01-18285PR	Library door repair	\$281.88	\$0.00		\$281.88
				<i>Totals for Thor Doors and Construction, Inc</i>	<u>\$281.88</u>	<u>\$0.00</u>		<u>\$281.88</u>
Wex Bank-Fleet Cards								
Wex Bank-Fleet Cards	10/25/2021	10/25/2021	75353436	Vehicle fuel stmt end 10/25/21	\$5,530.02	\$0.00		\$5,530.02
				<i>Totals for Wex Bank-Fleet Cards</i>	<u>\$5,530.02</u>	<u>\$0.00</u>		<u>\$5,530.02</u>
Workers.com								
Workers.com	10/29/2021	10/29/2021	131217	Seasonal workers week end 10/24/21	\$4,948.73	\$0.00		\$4,948.73
Workers.com	10/22/2021	10/22/2021	131174	Seasonal workers week end 10/17/21	\$5,966.36	\$0.00		\$5,966.36
				<i>Totals for Workers.com</i>	<u>\$10,915.09</u>	<u>\$0.00</u>		<u>\$10,915.09</u>
GRAND TOTALS:					\$96,499.88	\$0.00		\$96,499.88

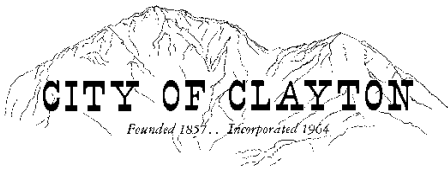
PAY-BL070-008 V7.1
GENRECSM BRANCH 31
CURRENT DATE 11/01/2021

2021-014-01
15:56:06

BL070 CITY OF CLAYTON
PAYROLL RECONCILIATION SUMMARY

PAGE 1
PERIOD ENDING 10/31/2021
CHECK DATE 11/05/2021

FEDERAL ID: 94-1568979	EMPLOYER TAX ID	TOTAL GROSS	SUBJECT GROSS	TAXABLE GROSS	RATE %	EMPLOYEE TAX WITHHELD	EMPLOYER TAX	THIRD PARTY SICK	TOTAL TAXES DUE
FEDERAL INC TAX - EMPLOYEE	94-1568979	102,114.49	87,668.42	87,668.42		12,128.48	0.00		12,128.48
SOCIAL SECURITY - EMPLOYEE	94-1568979	102,114.49	98,082.62	297.50	6.2000	18.45	0.00		18.45
MEDICARE - EMPLOYEE	94-1568979	102,114.49	98,082.62	98,082.62	1.4500	1,422.20	0.00		1,422.20
SOCIAL SECURITY - EMPLOYER	94-1568979	102,114.49	98,082.62	297.50	6.2000	0.00	18.45		18.45
MEDICARE - EMPLOYER	94-1568979	102,114.49	98,082.62	98,082.62	1.4500	0.00	1,422.20		1,422.20
FEDERAL SUB-TOTAL						13,569.13	1,440.65		15,009.78
FEDERAL UNEMPLOYMENT TAX	94-1568979	102,114.49	98,082.62	0.00	.6000	0.00	0.00		0.00
STATE INCOME TAX WITHHOLDING CA STATE	69813822	102,114.49	87,668.42	87,668.42		4,919.53	0.00		4,919.53
STATE W/H SUB-TOTAL						4,919.53	0.00		4,919.53
STATE UNEMPLOYMENT TAXES (EMPLOYER) CA SUTA	69813822	102,114.49	98,082.62	3,096.02	2.6000	0.00	80.50		80.50
SUTA SUB-TOTAL						0.00	80.50		80.50
COUNTY INCOME TAX WITHHOLDING									
COUNTY W/H SUB-TOTAL						0.00	0.00		0.00
CITY WITHHOLDING TAXES									
CITY W/H SUB-TOTAL						0.00	0.00		0.00
ALL OTHER TAXES Calif Training		102,114.49	98,082.62	3,096.02	.1000	0.00	3.09		3.09
OTHER W/H SUB-TOTAL						0.00	3.09		3.09
TOTAL TAX LIABILITY						18,488.66	1,524.24		20,012.90
=====									
PAYROLL LIABILITY TOTALS									
TOTAL NET DIRECT DEPOSITS						25	65,243.97		
TOTAL PARTIAL DIRECT DEPOSITS						2	900.00		
** YOUR ACCOUNT 0982504799	AT BANK 121000358	HAS BEEN DEBITED FOR					66,143.97	**	
TAX LIABILITY FROM ABOVE							20,012.90		
** YOUR ACCOUNT 0982504799	AT BANK 121000358	HAS BEEN DEBITED FOR					20,012.90	**	
TOTAL NET CHECKS						2	2,657.93		
TOTAL VENDOR ACH PAYMENTS						10	612.73		
** YOUR ACCOUNT 0982504799	AT BANK 121000358	HAS BEEN DEBITED FOR					612.73	**	
GRAND TOTAL PAYROLL CASH							89,427.53		



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: CITY MANAGER

DATE: November 16, 2021

SUBJECT: Adopt a Resolution of the City Council of the City of Clayton Allowing for Video and Teleconference Meetings during the COVID-19 State of Emergency Under AB 361

RECOMMENDATION

Adopt a Resolution of the City Council allowing for video and teleconference meetings during the COVID-19 state of emergency under AB 361.

BACKGROUND

AB 361 was recently passed by the State Legislature and signed by Governor Newsom and went into effect immediately. AB 361 continues many of the provisions related to the Brown Act that were in place under Executive Orders, which expired September 30, 2021 that allowed for video and teleconferencing during the state of emergency. Since AB 361 has been signed into law, the City can continue to meet virtually until such time as the Governor declares the State of Emergency due to COVID-19 over and measures to promote social distancing are no longer recommended.

On September 20, 2021, the Contra Costa County Health Officer issued recommendations for safely holding public meetings and strongly recommends on-line meetings. If in-person meetings need to occur, the County Health Officer recommends social distancing of six feet of separation between all attendees. The proposed resolution provides that the City Council and all subsidiary City boards and commissions may continue to hold video and teleconference meetings while the state of emergency is still in effect and physical distancing is recommended.

In order to continue to hold video and teleconference meetings, the City Council will need to review and make findings every thirty days that the state of emergency continues to directly impact the ability of the members to meet safely in person and that state or local officials continue to impose or recommend measures to promote physical distancing.

Subject: Resolution Allowing for Video and Teleconference Meetings during the COVID-19 State of Emergency Under AB 361

Date: November 16, 2021

Page 2 of 2

FISCAL IMPACT

None.

Attachment:

Resolution of the City Council Allowing for Video and Teleconference Meetings during the COVID-19 State of Emergency Under AB 361

RESOLUTION NO. ##-2021
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON
ALLOWING FOR VIDEO AND TELECONFERENCE MEETINGS DURING THE
COVID-19 STATE OF EMERGENCY UNDER AB 361

WHEREAS, on March 4, 2020, the Governor of the State of California proclaimed a State of Emergency for COVID-19;

WHEREAS, AB 361 was recently passed by the State Legislature and signed by Governor Newsom and went into effect immediately and allows the City to continue to meet virtually until such time as the Governor declares the State of Emergency due to COVID-19 over and measures to promote physical distancing are no longer recommended;

WHEREAS, on September 20, 2021 the Contra Costa County Health Officer issued recommendations for safely holding public meetings and strongly recommends on-line meetings and if in person meetings occur then recommends physical distancing of six feet of separation between all attendees;

WHEREAS, in light of this recommendation, the City Council desires for itself and for all other City legislative bodies that are subject to the Brown Act to continue to meet via video and/or teleconference; and

WHEREAS, pursuant to AB 361 the City Council will review the findings required to be made every 30 days.

NOW THEREFORE BE IT RESOLVED the City Council hereby finds on behalf of itself and all other City legislative bodies: (1) a state of emergency has been proclaimed by the Governor; (2) the state of emergency continues to directly impact the ability of the City's legislative bodies to meet safely in person; and (3) local officials continue to recommend measures to promote physical distancing.

BE IT FURTHER RESOLVED that the City Council and all other City legislative bodies will continue to meet via video and/or teleconference during the COVID-19 emergency.

PASSED AND ADOPTED by the Clayton City Council, State of California, on this 16th day of November 2021, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

**THE CITY COUNCIL OF CLAYTON,
CA**

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Laura Hoffmeister, Assistant to the City Manager

DATE: November 16, 2021

SUBJECT: Approve a Resolution Authorizing the City Manager to Execute an Agreement with Matrix Association Management for Property Management and Maintenance Services for the Diablo Estates subdivision (Subd. 8719), funded by the Diablo Estates Benefit Assessment District.

RECOMMENDATION

Adopt the attached Resolution to approve and authorize the City Manager to execute an agreement through December 31, 2022, with up to two (2) one-year extensions with Matrix Association Management for property management and maintenance services for the Diablo Estates Subdivision (Subd. 8719) funded by the Diablo Estates Benefit Assessment District.

BACKGROUND

When the Diablo Estates Subdivision was approved, the City Council allowed the developer to establish a Benefit Assessment District (BAD) as the funding mechanism to ensure maintenance of non-individual lot owner areas such as landscape/irrigation, fencing, entry sign, street lights, and street drainage vortex interceptors) instead of requiring the developer to establish a Homeowners Association (HOA). In the BAD, an annual Engineers report and levy are prepared and approved by the City Council. The individual lot owners are assessed annually on the property tax bill for the BAD, and some of the funds are used to pay for certain outside services of a management/maintenance company to provide, as the city does not have the staffing capacity to undertake these activities.

When the subdivision was completed, the City solicited for services and only one company submitted, Pinnacle. The City Council authorized the City Manager to execute the agreement with Pinnacle. Some years back Pinnacle changed name to Matrix Association Management. The original agreement has expired and there is a need to do a new agreement in order to continue the needed maintenance services. Matrix has provided the needed services and is agreeable to continue.

When Matrix was first selected as the only proposal in 2013 their monthly rate was \$4,099. It should be noted that in there has not been any rate increase by the contractor since 2017, with the monthly rate currently at \$4,532. **The proposed contract rate is \$3475 monthly or \$1,057 less than the current rate.** This reduction is possible as staff and Matrix reviewed the

scope of services and has determined that street light repairs do not need monthly attention and can be done as needed and funded as needed from the BAD. (Over the last seven years there have been only three street light repairs). Staff also had previously removed the weed abatement portion as it has been done by the Citywide contractor with a rate \$200 less than what Matrix could provide, and billed directly to the BAD. Additionally, the downslope wire fence and monument sign was not previously covered and has been included on as needed basis and funded through the BAD. The proposed agreement would be through December 31, 2022, with up to two (2) one-year extensions. As with the prior agreement, the terms allow for an annual (January) CPI increase not to exceed 4%.

Staff has worked closely with the project manager Ed Szaky with Matrix Association Management and he has been responsive to issues or concerns that have arisen. The company is licensed and insured to professionally perform such services.

FISCAL IMPACT

Funds for this contract are included in the Diablo Estates Benefit Assessment District engineers report and budget previously approved by the City Council.

Company- Matrix Association Management – See Scope of Services for Details	Monthly	Annually
Property Management Service	\$599	\$7,188
Landscape Maintenance, shrub and plant trimming, fertilization etc., irrigation maintenance; v-ditch cleaning; tree pruning/trimming of trees that are up to 12 feet tall,	\$1316	\$15,792
Filtration planter system testing and reporting	\$360	\$4,320
Storm Drain System Maintenance	\$1,100	\$13,200
Street Light Maintenance (i.e.: pole, lighting fixture, bulb, ballast, wiring) – (as needed with prior City Engineer approval separate cost, funded by BAD) BAD also pays separately PGE for street light energy cost		as needed cost separate
Entry Sign maintenance (as needed with prior City Engineer approval separate cost, funded by BAD)		as needed cost separate
Wire/wood down slope fence/gate maintenance and repairs (as needed with prior City Engineer approval separate cost, funded by BAD)		as needed cost separate

Company- Matrix Association Management – See Scope of Services for Details	Monthly	Annually
Trees that are over 12 feet tall will be structurally pruned by tree trimming company as needed with prior City Engineer approval separate cost, funded by BAD. (This does not mean that trees will be topped to maintain a 12-foot height but that landscape maintenance company are not allowed to trim trees over 12 feet tall and a tree trimming company must be used in those cases for structural pruning and trimming).		as needed cost separate
Annual weed abatement of slope area per CCFD Fire standards included as part of city-wide weed abatement services and this work funded by the BAD		N/A
Total	\$3,375	\$40,500

Attachments:

1. Resolution
2. Service Agreement
3. Scope of Services

RESOLUTION NO. ##-2021

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A ONE YEAR AGREEMENT, WITH UP TO TWO ONE-YEAR EXTENSIONS, WITH MATRIX ASSOCIATION MANAGEMENT FOR PROPERTY MANAGEMENT AND MAINTENANCE SERVICES FOR THE DIABLO ESTAES AT CLAYTON DEVELOPMENT (SUBD. 8719) BEING FUNDED BY THE DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT

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

WHEREAS, the duties of the Diablo Estates at Clayton Benefit Assessment District (“BAD”) include the maintenance of the “common” landscaping and irrigation along portions of Regency and Rialto Drives, various storm drainage conveyance and treatment facilities, on the undeveloped open slopes, and streetlighting; and

WHEREAS, in order to minimize the City’s administrative costs, the decision was made to contract with a property management type firm which would contract with and oversee the licensed contractors performing the duties of the BAD; and

WHEREAS, the City previously prepared a detailed Request for Proposals and solicited proposals from several firms; and

WHEREAS, only one proposal from Matrix (formerly known as Pinnacle Residential Services) was received; and

WHEREAS, the City Council approved Resolution 61-2012 and authorized the execution of the contract with Pinnacle (Matrix); and

WHEREAS, Matrix has been performing the services, and time is of the essence to ensure service continues uninterrupted, a need exists to continue to provide the services with Matrix.

NOW, THEREFORE, BE IT RESOLVED the City Council of Clayton, California does hereby authorize the City Manager to execute an agreement with through December 31, 2022 with up to two one-year extensions, in the amount of \$40,500 (annually) with annual December – December Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area, beginning in January 2022 subject to a maximum increase of 4% in any single calendar year for the Diablo Estates at Clayton Benefit Assessment District, with Matrix Association Management for Property Management and Maintenance Services for the Diablo Estates at Clayton Development (SUBD. 8719) funded by the Diablo Estates Benefit Assessment District.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Clayton, California at a regular public meeting of thereof held on November 16, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The City Council of Clayton, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

CITY OF CLAYTON
PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 16th day of November 2021, by and between the City of Clayton, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 6000 Heritage trail, Clayton. California 94517 ("City") and Matrix Association Management, with its principal place of business at 1415 Oakland Blvd. Suite 102, Walnut Creek, CA 94596 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional Property Management and maintenance services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional Property Management and maintenance services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional Property Management and maintenance services for the management and maintenance of certain facilities and improvements within the limits of the Diablo Estates at Clayton Benefit Assessment District as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Property Management services necessary, including but not limited to, the procurement and management all contractors necessary to maintain certain facilities and improvements within the limits of the Diablo Estates at Clayton Benefit Assessment District ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from the date of execution of this Agreement to December 31, 2022, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than five (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor: Control and Payment of Subordinates and Contractors. The Services shall be performed by Consultant or by Contractors under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel, including contractors, performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its elected officials, officers, employees, volunteers or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, invoices, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security **taxes**, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant, its Subordinates and/or contractors, shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to manage and oversee the contractors Consultant employs to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City, and conform to the following requirements:

3.2.3.1 Procurement of Contractors. Consultant shall ensure that the contractors for all of the Services as described in Exhibit "A" are retained pursuant to a competitive process(es) that ensure that at least two or more quotes/bids are obtained *prior* to award of any contract. Consultant shall also ensure that all such contractors obtain and/or possess all required licenses, permits, and/or approvals necessary to complete such work in accordance with applicable California law.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel or contractors, who

fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property, shall be promptly removed from the work by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: Edward Szaky, Principal.

3.2.5 City's Representative. The City hereby designates the City Manager or their designee, to act as its representative In all matters pertaining to the administration and performance of this Agreement (*City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all services and products provided by Consultant, but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained In Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager; City's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Edward Szaky, or their designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services. using his/her best skill and attention, and shall be responsible for all means. methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3 2.8 Standard of Care: Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and contractors it employs shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and contractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the work by the Consultant and shall not be re-employed to perform any of the Services.

3.2.9 Laws and Regulations. Consultant and its contractors shall keep themselves fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its elected officials, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance:

3.2.10.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(a) *Commercial General Liability.* Commercial General liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, and shall be no less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(b) *Automobile Liability Insurance:* Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence

(c) *Workers' Compensation:* Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(d) *Professional Liability.* N/A

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(A) The policy or policies of insurance required by Sections 3.2.10.2(a) and 3.2.10.2(c), Commercial General Liability, shall be endorsed to provide the following:

(1) Additional Insured: The City, its elected officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) The policy or policies of Insurance required by Section 3.2.10.2(b) Automobile Liability, and Section 3.2.10.2(e) Professional Liability; shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) The policy or policies of insurance required by Section 3.2.10.2(d), Workers' Compensation, shall be endorsed to provide the following:

(1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that Insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to Withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement. In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Contractors. All Contractors employed by Consultant shall either be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Contractors to purchase the appropriate Insurance in compliance with the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies. Consultant shall provide to City satisfactory evidence as required under Section 3.2.10.1 of this Agreement.

3.2.10.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (8) Instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall

protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and Incorporated herein by reference, and shall not exceed that set forth in Exhibit "C" without written approval of the City Council, City Manager or City Engineer as applicable. Extra Work may be authorized, as described below and set forth in Exhibit "C" if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice for the total annual fee along with a report of Inspection findings, maintenance accomplished and maintenance anticipated for the following month. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. For agreements in excess of \$30,000.00, the City Manager may approve additional work no more than one time in an amount not to exceed 10% of the last increase to compensation. Any additional work in excess of this amount must be approved by the City Council.

3.3.5 Emergency Work. In the case of emergency work required to mitigate an immediate threat to life or property and where, Consultant's subordinates and/or contractors cannot or will not provide the necessary services in a timely manner, the City may, at its sole discretion, cause such work to be undertaken and completed by the City's own personnel or contractor. In such case, the Consultant shall, upon receipt of an invoice from the City for such work, provide payment to the City within 15 days of receipt. Charges shall include City standard overhead and administrative costs. If the City determines that the emergency work was not due to work either performed or not performed by the Consultant or its contractors, Consultant *may* then invoice the City for reimbursement.

3.3.6 Rate Increases. As of January 1 of each calendar year, beginning in January 2022, annual rates set forth in Exhibit "C" may be increased in an amount not to exceed the annual increase in the Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area, for the previous December – December period subject to a maximum increase of 4% during that period.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	Matrix Association Management 1415 Oakland Blvd. Suite 102 Walnut Creek, CA 94596 ATTN: Edward Szaky
City:	City of Clayton 6000 Heritage Trail Clayton, CA 94517 ATTN: City Manager, Reina J. Schwartz

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality: N/A.

3.5.4 Harassment Policy. N/A

3.5.5 Fraud Policy. N/A

3.5.6 Cooperation: Further Acts. The Parties shall fully cooperate with one another. and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.7 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.8 Indemnification.

3.5.8.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, In law or equity, to property or persons, including wrongful death, in any manner arising out of, related to, or incident to any alleged acts, errors, omissions, active or passive negligence or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services. the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8; the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.8.2 Additional Indemnity Obligations. Consultant shall defend at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.8.1 that may be brought or instituted against City or its elected officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its elected officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its elected officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its elected officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its elected officials officers, employees, agents, or volunteers.

3.5.9 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.10 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County:

3.5.11 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.12 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.13 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.14 Construction: References: Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or Intent of this Agreement.

3.5.15 Amendment: Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.18 Invalidity: Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.19 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bonafide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no elected official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.20 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex, sexual orientation or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination

3.5.21 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code Which require every employer to be Insured against liability for Worker's Compensation or to undertake self-insurance In accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.23 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval pf City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF CLAYTON

MATRIX ASSOCIATION MANAGEMENT

By: _____
Reina J. Schwartz, City Manager

By: _____
Edward Szaky, Matrix

Attest

By: _____
Janet Calderon
City Clerk

EXHIBIT "A"
SCOPE OF SERVICES

PROPERTY MANAGEMENT SERVICES

The property management duties to be included in this contract shall generally include, but not necessarily limited to, the following:

- a) Contracting with, overseeing and being responsible for, various State-licensed contractors as needed to complete the maintenance services specified below. Consultant shall provide copies of all executed contracts (including detailed scopes of work, and work, manpower and payment schedules) and contractor insurance certificates;
- b) Periodic inspections of the property and improvements to verify current conditions and to ensure satisfactory performance of the various contractors hired by the Proposer to complete the maintenance duties specified in the maintenance document;
- c) Periodic inspections of the property and improvements to ensure satisfactory performance of the homeowners in providing the maintenance services specified below as being the homeowners' responsibility.;
- d) Preparation and submittal of a monthly report to the City Manager or their designee describing the findings of the periodic inspections, the maintenance work completed that month and anticipated for the following month;
- e) Satisfaction of Regional Water Quality Control Board requirements relating to the operation and maintenance of stormwater treatment facilities, including the preparation and submittal of annual reports.

COMMON LANDSCAPING (ALONG REGENCY AND RIALTO DRIVES)

DESCRIPTION AND DETAILED SCOPE OF WORK

Description

As part of the project's approval conditions, the Developer was required to install landscaping and irrigation over a strip of land adjacent to the sidewalks along the project's frontage on Regency and Rialto Drives. The strip of land is variable in width (but generally 25 feet wide, more or less, from the back of sidewalk) and is delineated by an open wire fence except along the frontage of Lot 9 where it is delineated by a wooden "Good Neighbor" fence.

Along with the perimeter fencing, the improvements include trees, shrubs, groundcover and a complete automatic irrigation system. In addition, a subdivision entry monument has been constructed on Lot 8. All of the land covered by the improvements has been encumbered by a recorded landscape maintenance easement in favor of the City of Clayton.

Detailed Scope of Work - City's Responsibility – may be contracted with 3rd party i.e.: outside company

Maintenance of the Common Landscaping shall occur twice a month.

Trees

The scope of normal tree care shall include, but not be limited to, the following:

- Pruning will be performed under the direction of a qualified maintenance supervisor using appropriate tools and equipment in general accordance with industry standards.

- Pruning shall promote structural strength and accentuate the plants natural forms and features within the limitation of space.
- Trees stakes and guides will be checked regularly and removed or replaced as necessary.
- Minor pesticide application.
- Tree pruning/trimming of trees as needed that are up to 12 feet tall. (Trees that are over 12 feet tall will be structurally pruned by tree trimming company as needed for safety reasons with prior City Engineer approval separate cost, funded by BAD.)
- Insect and disease control including pest controlspraying.
- Deep root feeding on an annual basis.
- Replacement of dead trees.

Shrubs and Groundcover

The scope of shrub and groundcover care shall include, but not be limited to, the following:

- On a continual basis, shrubs shall be checked for appropriate pruning and thinning, shearing or hedging. Hard pruning or cutting back will be done in winter to allow new growth or flushing out during the oncoming springseason.
- On a continual basis, ground covers shall be checked for proper coverage within the planting areas, and general health and condition. Required mowing or shearing of ground covers will be done in the winter to allow new growth during the spring season.
- Shrub pruning, thinning and trimming shall be accomplished on a regular basis to maintain a neat appearance.
- Shrubs shall be pruned to promote strength and accentuate the shrubs natural forms and features, minimize balling, shearing, etc.
- Ground covers shall be mowed on an annual basis as necessary.
- Plant material shall be fertilized on a regular basis before showing any sign of nutritional deficiencies.
- Minor pesticide application.
- Replacement of dead shrubs and groundcoverplantings.

Irrigation

The scope of the irrigation check shall include, but not be limited to, the following:

- The system shall be routinely checked twice each month.
- Adjust programming to apply water in accordance with plant requirements based upon weather and soil conditions, and to minimize water runoff.
- Clean and adjust the sprinkler heads and nozzles as needed. Adjust spray patterns to insure coverage and prevent overspray on to the paved areas and buildings.
- Remote control valves shall be checked for proper operation. Valve boxes shall be cleared on top and clean on the inside.
- Minor irrigation repairs (e.g., pipe cracks, joint leaks, damaged spray heads or nozzles, etc.) shall be repaired immediately. The need for more significant repairs shall be brought to the attention of the City for authorization prior to the work being untaken.

Miscellaneous

- Fencing –open wire lower slope fence/gate - repair and maintenance / replacement as needed
- Entry Monument sign – repair and maintenance as needed

STORM DRAINAGE FACILITIES

DESCRIPTION AND DETAILED SCOPE OF WORK

Description

As part of the subdivision construction, a storm drainage system has been constructed within the streets of the project. The system includes concrete collection ditches (known as "J" and "V" ditches), storm drain pipes interconnecting and running between manholes and catch basins. The system also includes five large storage pipes (36" and 48" in diameter with a total length of 728 feet). The storage pipes also include observation structures for inspection and cleaning, if required. These storage pipes have been designed to collect the storm runoff from the streets and delay the discharge of the runoff into the remainder of the storm drain system by metering the discharge flows. The intent of this delay is to keep the peak flow rate of the storm water discharge leaving the project at the same or lower rate that existed prior to construction of the project.

In order to continue to work as designed, the system must be kept clear of sediment, trash and debris.

Detailed Scope of Work – City's Responsibility– may be contracted with 3rd party i.e.: outside company

The scope of storm drain facility maintenance work shall include, but not be limited to, the following:

- Each year, by October 15th, each storm drain structure and facility (concrete ditches, manholes, catch basins, and storage pipes) shall be inspected for build-up of sediment and debris.
- Each structure shall be cleaned as necessary using a truck-mounted vacuum system.
- The concrete ditches shall be cleaned of all weeds and trash by hand. The materials generated shall be placed in bags, and legally disposed of offsite.
- Cracks in the concrete ditches and structures shall be repaired.
- If necessary, the structures shall be treated for vector (mosquitoes) infestation as necessary with Larvicide dunks.
- Upon completion of the inspection and work, the contractor shall file a written report, including photos of the findings and maintenance work, with the City indicating the results of the inspection and work, including a description of amount and type of debris removed, depth of sediment observed in the structures, and a description of repairs that the Contractor believes necessary to maintain the integrity of the storm drainage facilities.
- Any major repairs deemed necessary by the City shall be performed under separate written authorization.

STORMWATER TREATMENT FACILITIES

DESCRIPTION AND DETAILED SCOPE OF WORK

Description

As part of the subdivision construction, stormwater treatment facilities have been constructed both in the street and on each lot. The in-street facility consists of a single Vortech 3000 Hydrodynamic Separator unit located near Rialto Drive. The on-lot treatment facilities consist of one or two bioretention filtration planters ("planters") on each lot as well as small collection pipes which convey the runoff to the planters. In addition, the collection systems on some lots may include trench drains adjacent to the end of the driveways to collect runoff from the driveways.

The planters have been sized to accept and treat all of the on-lot runoff from impervious surfaces. The planters include 18" of filter soils placed on top of a thick layer of permeable rock. The runoff that enters the planter is cleaned as it percolates through the filter soils and into the permeable rock. The permeable rock layer includes a 24" storage pipe and smaller perforated drains to collect the runoff. The outflow from the storage pipes is metered by a small orifice opening to limit the rate of discharge as required by the latest stormwater regulation.

In addition to the filter soils, treatment of the runoff is accomplished by the vegetation planted in the filter soils. It is the responsibility of the individual property owners to maintain the vegetation and surface condition of the planters as well as the on-lot collection pipe system. It should be understood that the types of plantings installed by the Developer were selected from a pre-approved list of plant materials published by the Contra Costa Clean Water Program. Any vegetation that must be replaced, at any time, can only be replaced with the same or another pre-approved plant.

The stormwater treatment regulations require routine and annual inspections of all facilities, the results of which are required to be reported to the Regional Water Quality Control Board. If these inspections note that the property owner has not properly maintained the on-lot collection system, planters or vegetation, or replaced any plantings with non-approved types, a notice of deficiency will be issued to the property owner. If the property owner fails to satisfy the notice of deficiency within the time period specified on the notice, such failure shall be reported to the Regional Water Quality Control Board and may subject the property owner to fines as high as \$10,000 per day.

Detailed Scope of Work - Homeowners' Responsibility

The scope of the property owners' responsibility shall include, but not be limited to, the following routine work:

- Inspect the driveway trench drain, its entrances (grates) and exits. Look for obstructions, vegetation, debris, litter, sediment, etc., blocking the entrances and exits of the trench drain. If necessary, clear trench drain, exits and entrances by hand and with hand tools. Ensure that water flows freely into and out of the trench drain.
- Inspect for large vegetation growing within 4" of the trench drain entrance or exit. Remove any invasive plants, weeds, shrubs, or any plant with a woody stem within 4" of trench drain entrance or exit.
- Inspect the outlets of the collection system in each of the planters for plugging caused by debris. Look for evidence of erosion in the planter surface. Inspect side soils and/or rocks placed around the edges of the planters. Repair and/or replace any erosion or missing rocks. Clear outlets as necessary.
- Examine vegetation to ensure it is healthy and dense enough to provide filtering and to protect soils from erosion, replenish mulch as necessary, remove fallen leaves and debris, prune large

adequate and not excessive.

Detailed Scope of Work - City's Responsibility– may be contracted with 3rd party i.e.: outside company

The scope of the City's responsibility shall include, but not be limited to, the following:

- Each year, prior to the rainy season, the City, or its contractor, shall undertake a complete inspection and testing of the in-street and on-lot stormwater treatment systems in accordance with the project's Stormwater Control Operation & Maintenance Manual.
- Maintain Vortech 3000 Hydrodynamic Separator unit in accordance with the manufacturer's operation and maintenance requirements. This work shall include removal and disposal of accumulated sediment. Monitor and treat for vector (mosquitoes) infestation as necessary with Larvicide dunks.
- Upon completion of the inspection and work, the contractor shall file a written report, including photos of the findings and the maintenance work, with the City indicating the results of the inspection and work, including a description of amount and type of debris removed, depth of sediment observed in the structures, and a description of repairs that the Contractor believes necessary to maintain the integrity of the stormwater treatment facilities.
- Standard City fees will be paid to the City directly by the BAD and are not apart of this contract.
- Any major repairs deemed necessary by the City shall be performed under separate written authorization.

STREET LIGHTING FACILITIES

DESCRIPTION AND DETAILED SCOPE OF WORK

Description

As part of the subdivision construction, a street lighting system, consisting of four street lights and associated wiring and boxes, was installed.

Detailed Scope of Work - City's Responsibility– may be contracted with 3rd party i.e.: outside company

The scope of streetlighting system work shall include, but not be limited to, the following:

- Routinely inspect and replace parts as needed
- Payment for the supply of electricity from PG&E. (Note: the electrical billing for the street lights will be paid by the City from the BAD directly to PG&E and is not a part of the contract)

EXHIBIT "B"
SCHEDULE OF SERVICES

SERVICES WILL BE PROVIDED CONTINUOUSLY OR PERIODICALLY AS NEEDED AND/OR AS DESCRIBED IN
EXHIBIT "A"

EXHIBIT "C"
COMPENSATION

Compensation shall be as follows:

Company- Matrix Association Management – See Scope of Services (Exhibit "A") for Details	Monthly	Annually
Property Management Service	\$599	\$7,188
Landscape Maintenance, shrub and plant trimming, fertilization etc., irrigation maintenance; v-ditch cleaning; tree pruning/trimming of trees that are up to 12 feet tall.	\$1,316	\$15,792
Filtration planter system testing and reporting	\$360	\$4,320
Storm Drain System Maintenance	\$1,100	\$13,200
Street Light Maintenance (i.e.: pole, lighting fixture, bulb, ballast, wiring) (as needed with prior City Engineer approval separate cost, funded by BAD) – BAD pays PGE bill		as needed cost separate
Entry Sign maintenance (as needed with prior City Engineer approval separate cost, funded by BAD)		as needed cost separate
Wire/wood down slope fence/gate maintenance and repairs (as needed with prior City Engineer approval separate cost, funded by BAD)		as needed cost separate
Trees that are over 12 feet tall will be structurally pruned by tree trimming company as needed with prior City Engineer approval separate cost, funded by BAD. (This does not mean that trees will be topped to maintain a 12-foot height but that landscape maintenance company are not allowed to trim trees over 12 feet tall and a tree trimming company must be used in those cases for structural pruning and trimming).		as needed cost separate
Annual weed abatement of slope area per CCFD Fire standards included as part of city-wide weed abatement services and this work funded by the BAD		N/A
Total	\$3,375	\$40,500

As of January 1 of each calendar year, beginning in January 2022, annual costs may be increased in an amount not to exceed the annual increase in the Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area, for the previous December – December period subject to a maximum increase of 4% in any single calendar year.



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MARK NASSAR, CITY ENGINEER

DATE: November 16, 2021

**SUBJECT: AUTHORIZING ACQUISITION AND INSTALLATION OF ADVANCE
“PREPARE TO STOP” WARNING SIGNS ON CLAYTON ROAD
APPROACHING DIABLO VIEW MIDDLE SCHOOL IN AN AMOUNT NOT TO
EXCEED \$50,000 (CIP #10448)**

RECOMMENDATION

It is recommended that the City Council by Minute Order authorize the acquisition and installation of advance “Prepare to Stop” warning signs on Clayton Road approaching Diablo View Middle School in an amount not to exceed \$50,000 (CIP #10448).

BACKGROUND

At the June 4, 2019, City Council meeting, with the adoption of the FY 2019/20 Capital Improvement Program, Council established CIP Project #10448 the School Intersection Project. City Council established this CIP project in anticipation of future funding becoming available to construct proposed pedestrian safety enhancements at intersections near Mount Diablo Elementary School and Diablo View Middle School.

At the February 18, 2020, City Council meeting, City Council received and considered updated information regarding proposed pedestrian safety enhancements near Mount Diablo Elementary School and Diablo View Middle School and provided direction to staff regarding the proposed enhancements. On April 7, 2020, the City Council approved improvements related to the intersection of Pine Hollow and Mitchell Canyon Roads near Mt. Diablo Elementary School and at the intersection of Clayton and Marsh Creek Roads near Diablo View Middle School.

DISCUSSION

One item that remained after the April 7, 2020 approvals was the installation of advance “Prepare to Stop” warning signs approaching the intersection of Clayton and Marsh Creek

Roads near the middle school. Additional work to determine the means to deliver power and the appropriate locations for the signs was needed before the project could proceed.

Staff has coordinated with the Contra Costa County Public Works Department, including a site walk on October 7, 2021, to confirm the feasibility of locating the advance warning signs in the median and powering the signs via electric service. Contra Costa County Public Works Department provided quotes for materials and labor for the prescribed work, which would be paid on a Time & Materials basis under the City's current maintenance program with Contra Costa County (work to be completed by county subcontractors).

	Improvements	Budget
1.	Installation of advance "Prepare to Stop" warning signs on Clayton Road approaching the signal at the Clayton and Marsh Creek Roads intersection at the middle school.	\$44,141.63
2.	Contingency (10%)	\$4,414.16
	Total:	\$48,555.79

FISCAL IMPACT

The funds for this CIP were included in the approved FY2021/22 CIP budget and sufficient funding exists in the project to complete the work.

Attachments:
Cost Estimates



Safe travels:

Traffic and Parking Control Co., Inc.

5100 West Brown Deer Road

Brown Deer, Wisconsin 53223

Phone (800) 236-0112 • TAPCOnet.com • Fax (800) 444-0331

SALES QUOTE

Customer Copy

Number	Q21016548
Date	10/8/2021
Page	1

Sell To Cust. C34891	Contra Costa County Ron Alderman 2467 Waterbird Way finance@pw.cccounty.us MARTINEZ, CA 94553			Ship To Cust.	Contra Costa County Ron Alderman 2467 Waterbird Way finance@pw.cccounty.us MARTINEZ, CA 94553		
Customer PO #		Expires	Slsp	Terms	Freight	Ship Via	
		11/7/2021	German Paniagua	Net 30 DAYS			

Item	Description	Quantity	UM	Price	Extension
SP TRAFFIC	PREPARE TO STOP SIGNAL AHEAD, NEMA-4X 42.000" H x 42.000" W x 5.000" D 100-240VAC	2	EA	6,350.00	\$12,700.00
138946	Bracket,Mast Arm Sign Mount Kit,Fits 12-15"OD Pole 48"Hx6"Wx6"D,Aluminum,End Caps,Channels Incld.	2	EA	325.00	\$650.00
373-50000	Freight Quoted	1	EA	650.00	\$650.00

Shipment within _____
Acceptance By _____
Date _____
By _____

Merchandise	Freight	Tax	Total
\$14,000.00	\$0.00	\$1,301.63	\$15,301.63

All prices are listed in **US Dollars (USD)**

For terms and conditions, please visit: <https://www.tapconet.com/terms-conditions>

BUDGETARY ESTIMATE

October 12, 2021

Project: Clayton Road/Marsh Creek Rd Blank Out Signs

Attention: Ron Alderman

The following is an estimate for budget purposes only (not a price quote) to perform the above listed project. Since no plans or specs were provided, this budgetary estimate could increase or decrease based on specific requirements and unforeseen site conditions for this project. Budgetary estimate based on 10/7/21 site walk. Work to be performed at T&M under current CCC Maintenance Contract.

*Estimate based on current copper wire and pole prices. Prices change daily and could result in a cost increase or decrease.

Location #	Description	Price Range
1	Clayton Rd/Marsh Creek Signs	\$26,940.00-\$28,840.00

Scope:

1. Dig up existing IC conduit and install #5 pullboxes with extensions. 2 locations.
2. Hand dig 2 1B footings in median island 650' +/- north and south of intersection. Footings to be 2' x 2' x 4' deep. 2 locations.
3. Form footings with sonotube 6" above existing grade and pour with 6 sack concrete. Finish tops. 2 locations.
4. Furnish and install 14' 1B poles with flanges. 2 each
5. Install City furnished Blank Out Signs on 1B poles. 2 each.
6. Furnish and install 4 #8 conductors from existing controller cabinet to new pole locations through existing IC conduits.
7. Make up signs and controller.
- 8.

General / Standard Exclusions and Clarifications

1. Price good for 30 calendar days.
2. No County, County or Utility permits or fees included.
3. No work will be performed, or materials ordered until contract is fully executed by both parties.
4. Submittals will be requested from supplier when contract is received.
5. No materials will be ordered until approved submittals received.
6. All spoils (including saw cut slurry) to be left on jobsite where generated and removed by others.
7. Concrete and saw cut slurry washout basins to be provided and disposed of by others.
8. Removal of old foundations by others.
9. Removal of old pull boxes by others.
10. Loops to be installed prior to final lift (if applicable). One-week notice required per phase.
11. Excludes handling, removal or responsibility for hazardous waste.

12. Excludes TCP (Traffic Control Plan) – by others if required.
13. Excludes removal of USA markings.
14. Excludes changeable message sign (if applicable).
15. Discovery of adverse concealed conditions will result in an Extra Work RFCO calculated at standard Caltrans rate.
16. Excludes General Liability Aggregate *in excess* of \$2 million.
17. Excludes Umbrella/Excess Liability *in excess* of \$1 million. Add \$1,000.00 per additional million required.
18. Excludes concrete removal and replacement – to be done by others (if applicable).
19. Excludes concrete flatwork – to be done by others (if applicable).
20. Excludes travel fees for Caltrans source inspection (if applicable).
21. Union contractor, state certified electricians.
22. Continental not responsible for LD's associated with delivery of long lead time items i.e. lighting and traffic signal equipment
23. General Contractor to provide complete set of plans and specs required upon award.
24. This bid proposal shall become part of any contract issued.

Steve Kopp



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Dana Ayers, Community Development Director

DATE: November 16, 2021

SUBJECT: Consideration of a Resolution Approving the Final Subdivision Map (Tract Map 9536) and Authorizing Execution of a Subdivision Improvement Agreement for the Diablo Meadows Residential Development

RECOMMENDATION

Staff recommends that the City Council adopt the attached Resolution approving the Final Subdivision Map (Tract Map 9536) and authorizing the Mayor to execute the Subdivision Improvement Agreement for the Diablo Meadows Residential Development.

BACKGROUND

Following a public hearing held on February 2, 2021, the City Council took the following actions with respect to land use entitlements for the Diablo Meadows Residential Development, a development project consisting of 18 single-family residential lots with on-site private infrastructure on 8.68 vacant acres located west of Mitchell Canyon Road and north and west of Herriman Court (the Project):

1. Adopted Resolution No. 04-2021 adopting the Diablo Meadows Initial Study/Mitigated Negative Declaration and approving the Mitigation Monitoring and Reporting Program (ENV-01-2020); and
2. Introduced Ordinance No. 491 for a Zoning Amendment to rezone the entire site from R-15 to Planned Development (PD) and amend CMC 17.78.040.D Exemptions to PD floor area ratios. (ZOA-02-20); and
3. Adopted Resolution No. 05-2021 approving the Development Plan (DP-01-20); the Vesting Tentative Map (MAP-01-2020); and the Tree Removal Permit (TRP-09-2020).

The City Council subsequently adopted Ordinance No. 491 rezoning the property at the Council's meeting of February 16, 2021.

The developer, DeNova Homes, is requesting approval of the Final Subdivision Map (Tract Map 9536) for the Diablo Meadows Residential Development. The City Engineer and Community Development Director have reviewed the Final Subdivision Map and found it to be technically correct, in substantial conformance with the approved Vesting Tentative Map (MAP-01-2020) and in conformance with the requirements of the Subdivision Map Act (Government Code Section 66410 *et seq.*) and the Clayton Municipal Code. With this current action to approve the Final Subdivision Map for the Project, the Council is also requested to authorize the Mayor to execute the Subdivision Improvement Agreement for the Project. Upon execution of the Subdivision Improvement Agreement, the developer will provide the required bonds and remaining development impact fees.

The developer is continuing to work with staff to finalize the Covenants, Conditions and Restrictions (CC&Rs), Community Facilities District (CFD), and Storm Water Control Plan (SCP) and Storm Water Operations and Maintenance (O&M) Plan to satisfy the Project conditions of approval and requirements of Provision C.3 of the Contra Costa County National Pollutant Discharge Elimination System (NPDES) Permit. The developer will execute the required SCP and O&M Agreement that will run in perpetuity with the title to each of the 18 subdivision lots. Staff anticipates that the process to finalize the CC&Rs, CFD, SCP and O&M Plan will be completed within the next 60 days.

ANALYSIS

Clayton Municipal Code: Title 16, Land Development and Subdivision, of Clayton Municipal Code (CMC) governs subdivision of land in the City and establishes review and approval processes for subdivision maps. CMC Section 16.08.041 authorizes the City Council to approve final subdivision maps and authorizes the Council to execute agreements with developers for construction of infrastructure improvements that are not complete prior to approval of the final subdivision map.

California Environmental Quality Act (CEQA): This action is exempt from CEQA under Statutory Exemption, Section 15628(b)(3) – Ministerial Projects.

FISCAL IMPACTS

There are no direct fiscal impacts to the City as a result of this action. Costs related to staff time to execute the agreements with the developer for subdivision improvements and NPDES Permit compliance will be reimbursed by the developer in accordance with the City's adopted fee schedule.

ATTACHMENTS

1. Proposed Resolution
2. Final Subdivision Map (Tract Map 9536)
3. Subdivision Improvement Agreement

RESOLUTION NO. ##-2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON
APPROVING THE FINAL SUBDIVISION MAP (TRACT MAP 9536) AND
AUTHORIZING THE EXECUTION OF A SUBDIVISION IMPROVEMENT
AGREEMENT FOR THE DIABLO MEADOWS RESIDENTIAL DEVELOPMENT**

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

WHEREAS, following a public hearing held on February 2, 2021, the City Council took the following actions with respect to land use entitlements for the Diablo Meadows Residential Development, a development project consisting of 18 single-family residential lots with on-site private infrastructure on 8.68 vacant acres located west of Mitchell Canyon Road and north and west of Herriman Court (the project):

1. Adopted Resolution No. 04-2021 adopting the Diablo Meadows Initial Study/Mitigated Negative Declaration and approving the Mitigation Monitoring and Reporting Program (ENV-01-2020); and
2. Introduced Ordinance No. 491 for a Zoning Amendment to rezone the entire site from R-15 to Planned Development (PD) and amend CMC 17.78.040.D Exemptions to PD floor area ratios. (ZOA-02-20); and
3. Adopted Resolution No. 05-2021 approving the Development Plan (DP-01-20); the Vesting Tentative Map (MAP-01-2020); and the Tree Removal Permit (TRP-09-2020); and

WHEREAS, the City Council subsequently adopted Ordinance No. 491 rezoning the property at the Council's meeting of February 16, 2021; and

WHEREAS, the project developer, DeNova Homes, is requesting approval of the Final Subdivision Map (Tract Map 9536) for the Diablo Meadows Residential Development; and

WHEREAS, the project developer has executed the Subdivision Improvement Agreement which assure payment of the required bonds and development impact fees.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Clayton, California, does hereby approve the Final Subdivision Map (Tract Map 9536) and authorizes the Mayor to execute the Subdivision Improvement Agreement for the Diablo Meadows Residential Development.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California, at a regular public meeting thereof held on the 16th day of November 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

OWNER'S STATEMENT:

THE UNDERSIGNED, BEING THE PARTY OR PARTIES HAVING A RECORD TITLE INTEREST IN THE LANDS DELINEATED AND EMBRACED WITHIN THE HEAVY BLACK BOUNDARY LINES UPON THIS MAP, DO HEREBY CONSENT TO THE MAKING AND RECORDATION OF THE SAME.

THE SAME UNDERSIGNED HEREBY OFFERS FOR DEDICATION IN FEE TO THE CITY OF CLAYTON, OR ITS DESIGNEE, AND TO THE PUBLIC FOR PUBLIC USE THE AREA DESIGNATED AS "PARCEL G", BEING A 10' WIDENING OF THE MITCHELL CANYON ROAD RIGHT OF WAY.

THE AREAS MARKED "PARCEL A" AND "PARCEL E" ARE FOR STORMWATER TREATMENT FACILITIES, WITH MAINTENANCE REQUIREMENTS SET FORTH IN THE AGREEMENT WITH THE CITY OF CLAYTON ENTITLED "OPERATIONS AND MAINTENANCE AGREEMENT", AND RECORDED IN CONTRA COSTA COUNTY RECORDS. "PARCEL B", "PARCEL C", AND "PARCEL D" ARE RESERVED AS OPEN SPACE. ALL PARCELS, EXCEPT "PARCEL G", WILL BE OWNED AND MAINTAINED BY THE HOMEOWNER'S ASSOCIATION (ASSOCIATION), OR ITS DESIGNEE. ANY UTILITIES, SUCH AS ELECTRIC LINES, WITHIN THESE PARCELS SERVED BY THE DEVELOPMENT ARE PRIVATE AND WILL BE MAINTAINED BY THE OWNERS OR ASSOCIATION IN ACCORDANCE WITH THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE DEVELOPMENT. PUBLIC UTILITIES WILL BE WITHIN A "P.U.E." AS DEFINED BELOW.

THE AREA MARKED "PRIVATE STREET" ("PARCEL F"), ALSO KNOWN AS "DIABLO MEADOWS COURT", IS SPECIFICALLY EXCLUDED FROM PUBLIC DEDICATION. THE PRIVATE STREET WILL BE OWNED AND MAINTAINED BY THE ASSOCIATION, OR ITS DESIGNEE. UTILITIES WITHIN THE PRIVATE STREET SHALL BE MAINTAINED BY THE APPROPRIATE AGENCY AS DESCRIBED HEREIN.

THE AREAS MARKED "PUBLIC UTILITY EASEMENT" OR "P.U.E." ARE DEDICATED TO THE CITY OF CLAYTON, OR ITS DESIGNEE, AND TO THE PUBLIC FOR UNDERGROUND GAS, TELEPHONE, WATER, ELECTRIC, CABLE T.V., AND OTHER FACILITIES INCLUDING CONSTRUCTION, ACCESS AND/OR MAINTENANCE OF IMPROVEMENTS AND STRUCTURES AND CLEARING OF OBSTRUCTIONS AND VEGETATION AND FOR INGRESS AND EGRESS OF VEHICLES AND EQUIPMENT. THESE EASEMENTS ARE TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES EXCEPT SERVICE STRUCTURES, IRRIGATION SYSTEMS AND APPURTENANCES, LAWFUL FENCES AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS.

THE AREAS MARKED "WATER LINE EASEMENT" OR "W.L.E." ARE NON-EXCLUSIVE EASEMENTS DEDICATED TO THE CONTRA COSTA WATER DISTRICT, OR ITS DESIGNEE, FOR WATER LINE CONSTRUCTION, MAINTENANCE OF IMPROVEMENTS AND STRUCTURES, CLEARING OF OBSTRUCTIONS AND VEGETATION, AND FOR INGRESS AND EGRESS PURPOSES.

THE AREAS MARKED "PRIVATE STORM DRAINAGE EASEMENT" OR "P.S.D.E." ARE NON-EXCLUSIVE PRIVATE EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF PRIVATE STORM DRAIN IMPROVEMENTS TO BE MAINTAINED BY THE OWNERS OR ASSOCIATION, IN ACCORDANCE WITH THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE DEVELOPMENT.

THE AREA MARKED "EMERGENCY VEHICLE ACCESS" OR "E.V.A," IS A NON-EXCLUSIVE EASEMENT, DEDICATED TO THE PUBLIC FOR USE BY EMERGENCY VEHICLES OVER THE PRIVATE STREET (PARCEL F).

THE AREA WITHIN "PARCEL F" MARKED "PRIVATE SANITARY SEWER EASEMENT" OR "P.S.S.E." ARE RESERVED FOR THE CONSTRUCTION AND MAINTENANCE OF SANITARY SEWER FACILITIES AND APPURTENANCES, ALONG WITH RIGHTS OF INGRESS AND EGRESS. MAINTENANCE OF PRIVATE SANITARY SEWER IMPROVEMENTS WILL BE THE RESPONSIBILITY OF THE OWNERS OR ASSOCIATION, IN ACCORDANCE WITH THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE DEVELOPMENT.

THE AREAS MARKED "PRIVATE ACCESS EASEMENT" OR "P.A.E." ARE RESERVED FOR THE PURPOSE OF INGRESS AND EGRESS IN ACCORDANCE WITH THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS; SAID EASEMENTS ARE NOT OFFERED FOR DEDICATION TO THE PUBLIC.

WE DO FURTHER RELINQUISH ALL ABUTTERS RIGHTS OF ACCESS TO MITCHELL CANYON ROAD, A PUBLIC RIGHT OF WAY, ALONG LOT 18 AND PARCEL E, AS DEPICTED BY THE HATCHED LOCATIONS SHOWN ON THE MAP AS /////////.

THE DISPOSITION OF EASEMENTS ON THE PREMISES OR OF RECORD ARE SHOWN ON SHEET 3.

OWNER: CIVIC CLAYTON LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
BY: CIVIC PROPERTY GROUP, INC., A CALIFORNIA CORPORATION
1500 WILLOW PASS COURT, CONCORD, CA. 94520

DAVID B. SANSON, PRESIDENT BY: LORI J. SANSON, SECRETARY

OWNER'S ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

ON _____ BEFORE ME,_____A NOTARY PUBLIC, PERSONALLY APPEARED

_____, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

SIGNATURE OF NOTARY:_____ MY COMMISSION NUMBER: _____

PRINT NAME OF NOTARY:_____ MY COMMISSION EXPIRES: _____

COUNTY OF PRINCIPAL PLACE OF BUSINESS: _____

TRUSTEE'S STATEMENT

FIRST AMERICAN TITLE INSURANCE COMPANY, AS TRUSTEE UNDER THE DEED OF TRUST RECORDED ON

OCTOBER 15, 2021 AS INSTRUMENT NO. 2021-0284077 OF OFFICIAL RECORDS DOES HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND JOINS IN ALL DEDICATIONS THEREON.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS STATEMENT ON

_____, 2021, BY ITS DULY AUTHORIZED OFFICERS AS TRUSTEE:

FIRST AMERICAN TITLE INSURANCE COMPANY BY: _____
NAME: _____
TITLE: _____
DATE: _____

TRUSTEE'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

ON _____ BEFORE ME,_____A NOTARY PUBLIC, PERSONALLY APPEARED

_____, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

SIGNATURE OF NOTARY:_____ MY COMMISSION NUMBER: _____

PRINT NAME OF NOTARY:_____ MY COMMISSION EXPIRES: _____

COUNTY OF PRINCIPAL PLACE OF BUSINESS: _____

SIGNATURE OMISSIONS:

IN ACCORDANCE WITH 66436 (a), 3(A)(1) OF THE SUBDIVISION MAP ACT, SIGNATURES OF THE PARTIES OWNING THE FOLLOWING INTERESTS, WHICH CANNOT RIPEN INTO A FEE, HAVE BEEN OMITTED.

BOOK 227 OF DEEDS, PAGE 283 – IN FAVOR OF PACIFIC TELEPHONE AND TELEGRAPH COMPANY.
BOOK 241 OF DEEDS, PAGE 331 – IN FAVOR OF VALLEY PIPE LINE COMPANY.

FINAL MAP OF
SUBDIVISION 9536
DIABLO MEADOWS

A PORTION OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 1 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN, AS DESCRIBED IN THE GRANT DEED RECORDED AUGUST 13, 1959 IN BOOK 3432 AT PAGE 393 IN THE OFFICE OF THE CONTRA COSTA COUNTY RECORDER

CITY OF CLAYTON – CONTRA COSTA COUNTY – CALIFORNIA

 **MERIDIAN**
ASSOCIATES, INC.
CIVIL ENGINEERING • PLANNING • SURVEYING
OCTOBER, 2021

SURVEYOR'S STATEMENT:

I, SURYA KUMAR, STATE THAT THE MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF DENOVA HOMES ON MARCH 17, 2020. I HEREBY STATE THAT THIS SUBDIVISION MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

THE MONUMENTS OF THE CHARACTER SHOWN ON THE SUBDIVISION MAP WILL BE SET IN SUCH POSITIONS ON OR BEFORE APRIL, 2022, AND WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

ALL BEARINGS OF THIS MAP ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE III (CCS83)

DATED: _____ SURYA KUMAR, L.S. 9507



SOILS REPORT STATEMENT:

A GEOTECHNICAL INVESTIGATION ENTITLED "GEOTECHNICAL INVESTIGATION – MITCHELL CANYON DEVELOPMENT", PROJECT NUMBER 155-90, DATED FEBRUARY 28, 2020, WHICH INCLUDES THE LANDS OF THIS SUBDIVISION WAS PREPARED BY OR UNDER THE DIRECTION OF STEVENS, FERRONE & BAILEY ENGINEERING COMPANY, INC., AND IS ON FILE WITH THE CITY OF CLAYTON.

CITY ENGINEER'S STATEMENT:

I, MARK NASSAR, CITY ENGINEER OF THE CITY OF CLAYTON, HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP ENTITLED, "SUBDIVISION 9536 – DIABLO MEADOWS"; THAT SAID SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF AS APPROVED BY THE CITY OF CLAYTON, CITY COUNCIL ON _____, 2021; THAT ALL OF THE PROVISIONS OF STATE LAWS AND LOCAL ORDINANCES GOVERNING THE FILING OF SUBDIVISION MAPS HAVE BEEN COMPLIED WITH, AND I AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT.

DATED: _____ MARK NASSAR, CITY ENGINEER
C 57500

CITY SURVEYOR'S STATEMENT:

I, STEPHANIE REISETTER GRONLUND, ACTING CITY SURVEYOR FOR THE CITY OF CLAYTON, HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED, "SUBDIVISION 9536 – DIABLO MEADOWS" AND I AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT.

DATED: _____ STEPHANIE REISETTER GRONLUND,
ACTING CITY SURVEYOR LS 7907

FINAL MAP OF

SUBDIVISION 9536

DIABLO MEADOWS

A PORTION OF THE NORTHWEST 1/4 OF SECTION 14,
TOWNSHIP 1 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE
AND MERIDIAN, AS DESCRIBED IN THE GRANT DEED
RECORDED AUGUST 13, 1959 IN BOOK 3432 AT PAGE 393
IN THE OFFICE OF THE CONTRA COSTA COUNTY RECORDER

CITY OF CLAYTON – CONTRA COSTA COUNTY – CALIFORNIA

M

MERIDIAN
ASSOCIATES, INC.

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OCTOBER, 2021

CITY CLERK'S STATEMENT:

I, JANET CALDERON, CITY CLERK OF THE CITY COUNCIL OF THE CITY OF CLAYTON, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DO HEREBY STATE THAT THIS MAP, CONSISTING OF FIVE SHEETS AND ENTITLED, "SUBDIVISION 9536 – DIABLO MEADOWS", WAS PRESENTED TO SAID COUNCIL AS PROVIDED BY LAW AT A REGULAR MEETING HELD ON THE _____ DAY OF _____, 2021, AND THAT SAID COUNCIL DID THEREUPON APPROVE SAID MAP AND DID ACCEPT ON BEHALF OF THE PUBLIC "PARCEL G" AND ALL PUBLIC UTILITY EASEMENTS SHOWN THEREUPON AS DEDICATED FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION AND OF THE SUBDIVISION MAP ACT SECTION 66477.5 (C).

I HEREBY FURTHER STATE THAT PURSUANT TO SECTION 66477.5 OF THE CALIFORNIA GOVERNMENT CODE, THE LOCAL AGENCY SHALL RECONVEY THE PROPERTY TO THE SUBDIVIDER IF THE LOCAL AGENCY MAKES A FINDING THAT THE SAME PURPOSE FOR WHICH THE PROPERTY WAS DEDICATED DOES NOT EXIST OR ANY PORTION THEREOF IS NOT NEEDED FOR PUBLIC UTILITY, AS SPECIFIED IN SUBDIVISION (C) OF THE SECTION.

THE NAME AND ADDRESS OF THE SUBDIVIDER(S) DEDICATING SAID PROPERTY IN FEE FOR PUBLIC PURPOSES ARE AS SHOWN ON THE STATEMENT OF OWNERS UPON THIS SHEET.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____, 2021.

JANET CALDERON
CITY CLERK OF THE CITY OF CLAYTON

CLERK OF THE BOARD OF SUPERVISORS STATEMENT:

I STATE, AS CHECKED BELOW, THAT:

- () A TAX BOND ASSURING PAYMENT OF ALL TAXES WHICH ARE NOW A LIEN, BUT NOT YET PAYABLE, HAS BEEN RECEIVED AND FILED WITH THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA.
- () ALL TAXES DUE HAVE BEEN PAID AS STATED BY THE COUNTY REDEMPTION OFFICER.

DATED: _____ MONICA NINO
CLERK OF THE BOARD OF SUPERVISORS AND COUNTY ADMINISTRATOR
OF COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

BY: _____
DEPUTY CLERK

COUNTY RECORDER'S STATEMENT:

THIS MAP ENTITLED, "SUBDIVISION 9536 – DIABLO MEADOWS", IS HEREBY ACCEPTED FOR FILING SHOWING A CLEAR TITLE AS PER (LETTER OF TITLE) (SUBDIVISION GUARANTEE) MADE BY FIRST AMERICAN TITLE COMPANY DATED THE _____ DAY OF _____, 2021, AND AFTER EXAMINING THE SAME, I DEEM THAT SAID MAP COMPLIES IN ALL RESPECTS WITH THE PROVISIONS OF STATE LAWS AND LOCAL ORDINANCES GOVERNING THE FILING OF SUBDIVISION MAPS.

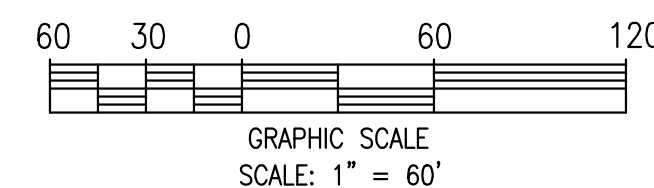
FILED AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY AT _____ __.M. ON THE _____ DAY

OF _____, 20____, IN BOOK _____ OF MAPS AT PAGE _____ IN THE OFFICE OF THE
COUNTY RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

DEBORAH R. COOPER
COUNTY RECORDER IN AND FOR THE COUNTY
OF CONTRA COSTA, STATE OF CALIFORNIA

BY: _____
CLERK RECORDER

SHEET 3 OF 5



FINAL MAP OF
SUBDIVISION 9536
DIABLO MEADOWS

A PORTION OF THE NORTHWEST 1/4 OF SECTION 14,
TOWNSHIP 1 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE
AND MERIDIAN, AS DESCRIBED IN THE GRANT DEED
RECORDED AUGUST 13, 1959 IN BOOK 3432 AT PAGE 393
IN THE OFFICE OF THE CONTRA COSTA COUNTY RECORDER

CITY OF CLAYTON - CONTRA COSTA COUNTY - CALIFORNIA



CIVIL ENGINEERING • PLANNING • SURVEYING

OCTOBER, 2021

LEGEND

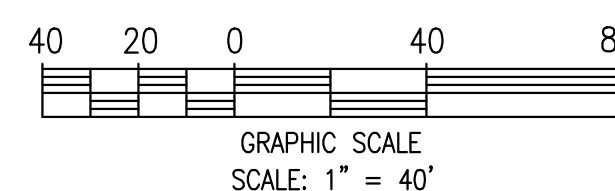
- FOUND STREET MONUMENT
- SET STREET MONUMENT, LS 6323
- FOUND IRON PIPE, AS NOTED
- IRON PIPE NOT FOUND, AS NOTED
- SET 1/2" REBAR & CAP LS 9507
- BOUNDARY LINE
- MONUMENT LINE
- EASEMENT LINE
- PROPERTY LINES
- CENTER LINE
- RELINQUISHMENT OF ABUTTER'S RIGHTS TO MITCHELL CANYON ROAD
- RADIAL BEARING AND/OR RIGHT ANGLE MEASUREMENT (TIE)

ABBREVIATIONS

- | | | |
|----------|---------------------------------|------------|
| M-M | MONUMENT TO MONUMENT | |
| (R) | RADIAL BEARING | |
| (T) | TOTAL | |
| D | DELTA | |
| R | RADIUS | |
| L | LENGTH | |
| } | | CURVE DATA |
| E.V.A. | EMERGENCY VEHICLE ACCESS | |
| P.A.E. | PRIVATE ACCESS EASEMENT | |
| P.S.D.E. | PRIVATE STORM DRAIN EASEMENT | |
| P.S.S.E. | PRIVATE SANITARY SEWER EASEMENT | |
| P.U.E. | PUBLIC UTILITY EASEMENT | |
| W.L.E. | WATER LINE EASEMENT | |

SITE LAYOUT

SCALE : 1"=40'



BASIS OF BEARINGS:

BASIS OF BEARINGS: NORTH 00° 36' EAST AS SHOWN ON THE
MAP OF MITCHELL CANYON UNIT 7, (BOOK 128 OF MAPS,
PAGE 23) BETWEEN MONUMENTS ON MITCHELL CANYON ROAD
(AT HERRIMAN DRIVE AND TIFFIN DRIVE).

ALL BEARINGS OF THIS MAP ARE BASED ON THE CALIFORNIA
COORDINATE SYSTEM OF 1983, ZONE III (CCS83)

MAP REFERENCES

- "SUBDIVISION 3934 - MITCHELL CANYON UNIT 7"
RECORDED OCTOBER 8, 1969 (128 M 23)
- "SUBDIVISION 3237 - MITCHELL CANYON ESTATES - UNIT NO. 5"
RECORDED JANUARY 30, 1964 (97 M 17)
- PARCEL MAP RECORDED FEBRUARY 9, 1977 (52 PM 26)
- "SUBDIVISION 4886 - DAVIS RIDGE"
RECORDED FEBRUARY 10, 1978 (207 M 48)

FINAL MAP OF
SUBDIVISION 9536
DIABLO MEADOWS

A PORTION OF THE NORTHWEST 1/4 OF SECTION 14,
TOWNSHIP 1 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE
AND MERIDIAN, AS DESCRIBED IN THE GRANT DEED
RECORDED AUGUST 13, 1959 IN BOOK 3432 AT PAGE 393
IN THE OFFICE OF THE CONTRA COSTA COUNTY RECORDER

CITY OF CLAYTON – CONTRA COSTA COUNTY – CALIFORNIA



MERIDIAN
ASSOCIATES, INC.

CIVIL ENGINEERING • PLANNING • SURVEYING

OCTOBER, 2021

LEGEND

- FOUND STREET MONUMENT
- SET STREET MONUMENT, LS 6323
- FOUND IRON PIPE, AS NOTED
- IRON PIPE NOT FOUND, AS NOTED
- SET 1/2" REBAR & CAP LS 9507
- BOUNDARY LINE
- MONUMENT LINE
- EASEMENT LINE
- PROPERTY LINES
- CENTER LINE
- RADIAL BEARING AND/OR
RIGHT ANGLE MEASUREMENT (TIE)

ABBREVIATIONS

- M-M MONUMENT TO MONUMENT
- (R) RADIAL BEARING
- (T) TOTAL
- D DELTA
- R RADIUS
- L LENGTH
- E.V.A. EMERGENCY VEHICLE ACCESS
- P.A.E. PRIVATE ACCESS EASEMENT
- P.S.D.E. PRIVATE STORM DRAIN EASEMENT
- P.S.S.E. PRIVATE SANITARY SEWER EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT
- W.L.E. WATER LINE EASEMENT

MAP REFERENCES

- ① "SUBDIVISION 3934 – MITCHELL CANYON UNIT 7"
RECORDED OCTOBER 8, 1969 (128 M 23)
- ② "SUBDIVISION 3237 – MITCHELL CANYON ESTATES – UNIT NO. 5"
RECORDED JANUARY 30, 1964 (97 M 17)
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RECORDED FEBRUARY 10, 1978 (207 M 48)

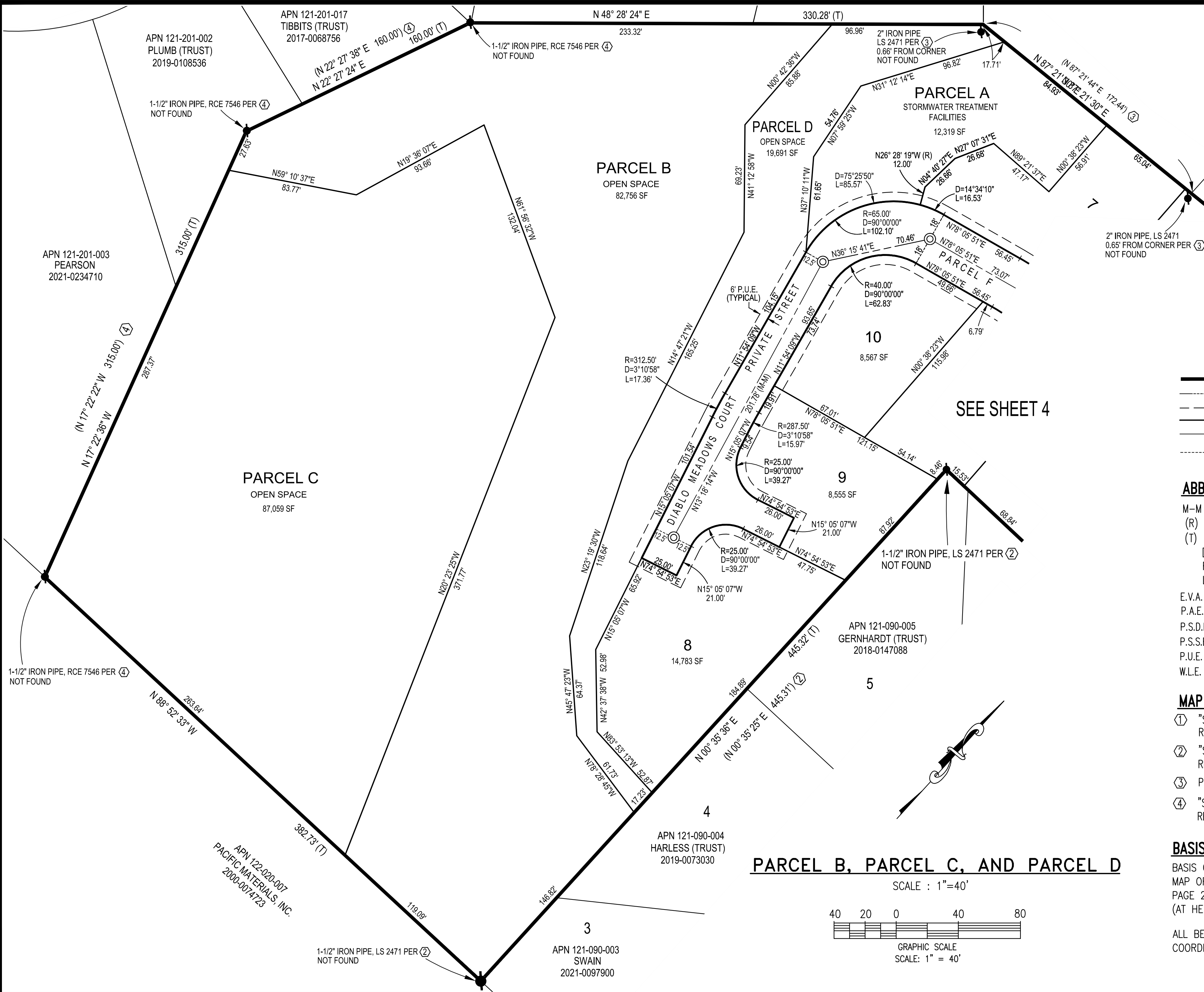
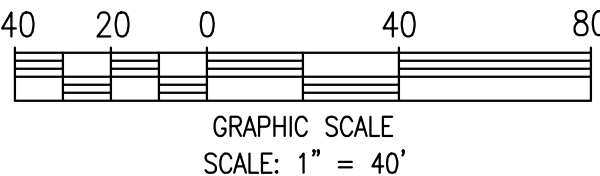
BASIS OF BEARINGS:

BASIS OF BEARINGS: NORTH 00° 36' EAST AS SHOWN ON THE
MAP OF MITCHELL CANYON UNIT 7, (BOOK 128 OF MAPS,
PAGE 23) BETWEEN MONUMENTS ON MITCHELL CANYON ROAD
(AT HERRIMAN DRIVE AND TIFFIN DRIVE).

ALL BEARINGS OF THIS MAP ARE BASED ON THE CALIFORNIA
COORDINATE SYSTEM OF 1983, ZONE III (CCS83)

PARCEL B, PARCEL C, AND PARCEL D

SCALE : 1"=40'



RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

CITY OF CLAYTON
6000 Heritage Trail
Clayton, CA 94517
ATTN: City Clerk

(Exempt from Filing Fees – Government Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS

PARCEL/TRACT NO. 9536

between

THE CITY OF CLAYTON
a California municipal corporation

and

CIVIC CLAYTON, LLC

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS

PARCEL/TRACT MAP NO. 9536

I. PARTIES AND DATE.

This Subdivision Improvement Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this ____ day of _____, 20__, by and between the CITY OF CLAYTON, a California municipal corporation ("City") and CIVIC CLAYTON, LLC, a California limited liability company, with its principal office located at 1500 Willow Pass Court, Concord, California 94520 ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS.

A. Developer's tentative parcel/tract map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"), was conditionally approved by the Clayton City Council on February 2, 2021. The tentative parcel/tract map is identified in City records as Parcel/Tract Map No. 9536 ("Map").

B. Developer is the owner of Property, and Developer proposes to do and perform certain work of improvement thereon as set forth in this Agreement.

C. Developer has submitted and requests approval of Final Map No. 9536, which relates, in whole or in part, to the subdivision proposed by Developer's Map for the Property.

D. Developer has not completed all of the work or made all of the public improvements required by Chapter 16 of the Clayton Municipal Code, the Subdivision Map Act (California Government Code Section 66410, et seq.) ("Map Act"), the conditions of approval for the Map, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

E. Pursuant to Chapter 16 of the Clayton Municipal Code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Map.

F. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the final map for the Property.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until all three of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes this Agreement; and (c) the City

Council of the City of Clayton ("City Council") approves the final map for the Property. If any of the above-described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter record the final map for Parcel/Tract Map No. 9536.

1.1 Definitions. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, Public Works Director, City Engineer, Community Development Director, Building Official, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official, or public employee may act on behalf of City for any particular purpose.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of the Map, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Map ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any utility system or public improvement in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility system or public improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Subject to Section 2.3, herein, where construction of any Public Improvements has been partially completed prior to the execution of this Agreement, Developer agrees to complete such Public Improvements or ensure their completion in accordance with this Agreement.

2.2 Permits; Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans, specifications, estimates, and bonds for such Public Improvement have been submitted to and approved by the City Engineer, the City Attorney, or their authorized designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, conditions, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced. It is expressly understood that if there is a conflict between the construction plans as submitted and approved, and the rules, statutes, standards, regulations, laws and ordinances of the City, County of Contra Costa, State of California or Federal Government, the strictest of all said requirements and standards shall govern.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications, and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit "B" are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

2.7 Superintendence by Developer. Developer shall require each contractor and subcontractor to have a competent foreperson on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Public Improvements. Before starting work on the Public Improvements, each contractor and subcontractor shall submit in writing the name of the proposed foreperson, who shall be subject to the review and approval of City. Following approval by City, each foreperson shall be present at the work site at all times that any work is in progress and at any time that any employee of the contractor or subcontractor is present at the work site. Should a contractor or subcontractor desire to change its foreperson, it shall provide the information specified above and obtain City's prior written approval. City, in its sole and absolute discretion, may require any contractor or subcontractor to replace its foreperson provided that City gives the contractor or subcontractor at least forty-eight hours written notice.

Developer shall, at all times, enforce strict discipline and good order among its employees and those of its subcontractors and shall not employ any unfit person or anyone not

skilled in the assigned task. If any person employed by a contractor or subcontractor fails or refuses to carry out the directions of the City or appears to the City, in its sole and absolute discretion, to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the project immediately upon request by the City, and such person shall not again be employed on the work. Such removal shall not be the basis for any claim of compensation or damages against the City.

In addition, Developer shall maintain an office with a telephone and Developer or a person authorized to make decisions and to act on Developer's behalf in Developer's absence shall be available to be on the job within three (3) hours of being called at such office by the City, during the hours of 9:00 a.m. through 5:00 p.m., Monday through Friday, or any other day or time when work is being performed on the Public Improvements. Developer shall also provide City with a telephone number, at which Developer, or its representative, shall be available twenty-four (24) hours a day in the event of an emergency.

3.0 Maintenance of Public Improvements and Landscaping Prior to Acceptance by City. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City.

Maintenance of the Public Improvements shall include but shall not be limited to: repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. Developer shall cause the sweeping of streets to occur weekly at a minimum. Developer shall perform additional street sweeping work as necessary depending on construction activities of the Public Improvements or as required by, and at the direction of, the City Engineer. It shall be Developer's responsibility to initiate all maintenance work of the Public Improvements, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to this Section of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements by November 16, 2023, or before any certificates of occupancy are issued for any lots within the Property, whichever is earlier. At least fifteen (15) days prior to the commencement of such work, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement of the work.

4.1 Extensions. Time is of the essence with regard to this Agreement. The City Council may, in its sole and absolute discretion, provide Developer with additional time within

which to complete the Public Improvements. Requests for extension of time shall be in writing and shall be delivered to City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on City.

If the construction of all Public Improvements is not completed by the deadline above and requires an extension, Developer shall pay an additional inspection fee to the City, by the 15th day following the original deadline to complete Public Improvements stated in Section 4.0, in an amount equal to ten percent (10%) of the initial inspection fee. A like additional fee shall apply each year that completion of the subdivision improvements is delayed beyond the initial 24-month period and each subsequent 12-month period.

It is understood that by providing the security required by this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waive any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder.

In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates approved by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of the Property shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements including, without limitation, City's grading regulations, the National Pollutant Discharge Elimination Systems (NPDES), and stormwater regulations thereunder as administered by the State Water Resources Control Board and Regional Water Quality Control Boards. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in this Agreement. Developer further agrees that the indemnification as set forth in this Agreement shall extend to and include any and all grading contemplated by this Agreement, including but not limited to, any partial or rough grading work.

6.0 Utilities. Developer shall assume all costs for and shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within

the Property in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules, and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground, unless otherwise approved by the City Council or the Planning Commission of the City of Clayton, or by any other state or federal laws or regulations.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to fees for the checking, filing, and processing of improvement plans and specifications and for inspecting the construction of the Public Improvements. These fees must be paid in full prior to approval of the final map and improvement plans. The fees referred to above are not necessarily the only City fees, charges, or other costs that have been or will be imposed on the subdivision and its development, and this Agreement shall in no way exonerate or relieve Developer from paying such other applicable fees, charges, and/or costs.

8.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur. City shall designate and appoint an inspector(s) who may be present from time to time on the job site. City is free to choose or utilize any and all person(s) or firms including, but not limited to, City or County personnel to inspect the job site. Said inspections shall take place at the sole discretion of the City and inspector shall be allowed access to the job site at all times.

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs and expenses.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to completion acceptable to City within the time frame contained in the Notice, City will give Developer notice that it intends to complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial

activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none, of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to this Section of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

10.0 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, the City Clerk shall file with the Recorder's Office of the County of Contra Costa, a notice of completion for the accepted Public Improvements in accordance with California Civil Code Section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor.

Title to and ownership of the Public Improvements constructed under this Agreement shall vest absolutely in City upon completion and acceptance in writing of such Public Improvements by City.

Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein. In addition, before acceptance by the City of any work or improvements as complete, the Developer shall set and establish survey monuments in accordance with the final map approved for the subdivision and to the satisfaction of the City Engineer.

11.0 Security; Surety Bonds. Prior to execution of this Agreement, Developer shall provide City with surety bonds in the amounts and under the terms set forth below ("Security").

Nothing in this Section is intended to prevent City, in its sole discretion, from requiring Developer to submit, or prevent Developer from submitting, security in a form other than bonds which may be allowed under California Government Code Section 66499, et seq. and Chapter 16 of the Clayton Municipal Code, and acceptable to City. The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all public landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section shall in no way limit or modify Developer's indemnification obligation under this Agreement.

11.1 Faithful Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all public landscaping in a vigorous and thriving condition, Developer shall provide City One Thousand Dollars (\$1,000) cash deposit and a cash deposit or certified cashier's check or an irrevocable faithful performance bond in the amount of One Hundred Ninety-three Thousand Dollars (\$193,000.00), which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this Section as the Public Improvements are accepted by City, as provided under this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map and that no more than fifty percent (50%) of the security is released prior to full final completion and acceptance of all Public Improvements. All security provided under this Section shall be released no later than the end of the Warranty period, or any extension thereof as provided by this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map.

11.2 Payment Bond. To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City an irrevocable payment bond in the amount of One Hundred Ninety-three Thousand Dollars (\$193,000.00), which sum shall not be less than one hundred percent (100%) of the Estimated Costs. At the discretion of City, the security provided under this Section may be released by written authorization of the City Engineer six (6) months after the date City accepts the final Public Improvements, or within the time limits established in California Government Code Section 66499.7. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

11.3 Guarantee and Warranty Bond. Developer hereby guarantees and warrants all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all public landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions,

regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this Section shall survive the expiration or termination of this Agreement.

Prior to execution of this Agreement, Developer shall provide City with an irrevocable guarantee and warranty bond in the amount of fifty percent (50%) of the Estimated Costs of the Work to guarantee and warrant the Work, for a period of one year following its completion and acceptance, against any defective work or labor done, or defective materials furnished, as required by California Government Code Section 66499.3(d). Any unused portion of the guarantee and warranty security shall be released one year after acceptance of the required improvements by the City Council.

11.4 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best's rating of no less than A:VII, shall be authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

11.5 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C", unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

12.0 Intentionally omitted.

13.0 Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected and appointed officials, officers, employees, agents, and volunteers from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and

related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by Agency, its elected officials, officers, employees, agents, or volunteers.

14.0 Insurance.

14.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors and subcontractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below ("Required Insurance") and without limiting the indemnity provisions of this Agreement. If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than three times the specified occurrence limit. For purposes of this Section 14.0, et seq., the "indemnified parties" shall mean City, its elected officials, officers, employees, agents, and volunteers, as described in this Agreement. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

14.1.1 Commercial General Liability. Developer, its contractors and subcontractors shall procure and maintain Commercial General Liability Insurance with minimum limits of at least \$2,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for: (1) products and completed operations; (2) contractual liability; (3) third party action over claims; (4) cross liability exclusion for claims or suits by one insured against another; or (5) explosion, collapse or underground hazard (XCU).

14.1.2 Automobile Liability. Developer, its contractors and subcontractors shall procure and maintain automobile liability insurance with minimum limits of \$1,000,000 each accident. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible. If Developer does not own any company vehicles and if requested by City, this requirement may be satisfied by providing a non-owned auto endorsement to the Commercial General Liability policy.

14.1.3 Workers' Compensation. Developer, its contractors and subcontractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and Employers' Liability Insurance of not less than \$1,000,000 per accident for bodily injury and disease.

14.1.4 Professional Liability. If applicable to this Agreement and required by City, for any consultant or other professional who will engineer or design the Public

Improvements, professional liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of three (3) years following completion of the Public Improvements and shall specifically include all work to be performed under the Agreement. If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination of this Agreement.

14.1.5 Contractors Pollution Liability. If applicable to this Agreement and required by City, Contractors Pollution Liability Insurance covering all of Developer's operations to include onsite and offsite coverage for bodily injury (including death and mental injury), property damage, defense costs and cleanup costs with minimum limits of \$5,000,000 per loss and \$10,000,000 total all losses. The policy shall contain no endorsements or provisions limiting contractual liability or coverage for cross liability of claims or suits by one insured against another. Non-owned disposal site coverage shall be provided if handling, storing or generating hazardous materials or any material/substance otherwise regulated under environmental laws/regulations.

For projects involving transportation of hazardous waste/materials, the policy shall include coverage for loading/unloading from the project site to final disposal locations, and all disposal locations shall be scheduled as non-owned disposal sites.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

14.2 Deductibles. Any deductibles or self-insured retentions must be approved by City in writing and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

14.3 Certificates; Verification. Developer, its contractors and subcontractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City prior to the execution of this Agreement and before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies at any time.

14.4 Insurer Rating. Unless approved in writing by City, the insurers for all Required Insurance shall have a current A.M. Best rating of at least A:VII, shall be authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law, and shall be satisfactory to City.

14.5 Endorsements.

14.5.1 The Commercial General Liability, Automobile Liability, and Contractors Pollution Liability policies, if the latter is required by City, shall be endorsed as follows:

Additional Insured: The indemnified parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of this Agreement. The "Additional Insured Endorsement" shall contain no other modifications to the policy.

Primary Insurance: This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.

Severability: In the event one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom the claim is made or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced, or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon City, except ten (10) days prior written notice shall be allowed for non-payment of premium.

Duties: Any failure by the named insured to comply with report provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.

Applicability: That the coverage provided therein shall apply to the obligations assumed by Developer, its contractors or subcontractors under the indemnity provisions of this Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

14.5.2 The Workers' Compensation policy or policies required by this Agreement shall be endorsed as follows:

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced, or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon City, except ten (10) days prior written notice shall be allowed for non-payment of premium.

14.5.3 The Professional Liability policy or policies required by this Agreement, if required by City, shall be endorsed as follows:

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced, or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon City, except ten (10) days prior written notice shall be allowed for non-payment of premium.

15.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer. Developer shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

16.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to the Property, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer, its contractors or subcontractors an agent, contractor or subcontractor of City.

17.0 General Provisions.

17.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

17.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

17.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

17.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY:

City of Clayton
6000 Heritage Trail
Clayton, CA 94517
Attn: City Engineer

DEVELOPER:

Civic Clayton, LLC
1500 Willow Pass Court
Concord, CA 94520
Attn: David B. Sanson, Dana Tsubota, Trent Sanson

Depending upon the method of transmittal, notice shall be deemed received as follows: by e-mail, as of the date and time sent as confirmed by the e-mail server; by messenger, as of the date delivered; by overnight carrier as of the following business day; and by U.S. Mail first class postage prepaid, as of five (5) days after deposit in the U.S. Mail.

17.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

17.6 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional.

17.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City, except to an entity under common ownership or control of Developer. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, which may be given by the City Manager, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. In the event that City consents in writing to such an assignment or has otherwise found acceptable such an entity under common ownership or control of Developer, any assignee, hypothecatee, or transferee shall expressly assume Developer's obligations hereunder by a written agreement in a form, and containing such security, as is reasonably acceptable to City and may be executed by the City Manager.

The agreement, hypothecation, or transfer shall be to the satisfaction of the City Attorney and shall include provisions requiring the assignee to post bonds or submit another form of financial security, satisfactory to City and approved by the City Attorney, to guarantee construction of the Public Improvements. The agreement shall survive the recordation of the Final Map and shall be recorded against each of the proposed lots to inform successors and assigns of the required Public Improvements to be constructed and their time frame for construction.

Following any permitted assignment, hypothecation, or transfer of the Public Improvements as set forth in this Section, City shall release Developer from its obligations so assigned and shall release to Developer any bonds or other security posted to secure the Public Improvements so assigned; provided, however, that City shall not release any security or undertakings given to secure the performance of any of the Public Improvements not assigned, hypothecated, or transferred.

17.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This Section shall not be construed as an authorization for any Party to assign any right or obligation.

17.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

17.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

17.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Contra Costa, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

17.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs. This Section shall survive the termination or expiration of this Agreement.

17.13 Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements required by this Agreement are to be constructed on land not within the subdivision or an already-existing public right-of-way, no construction or installation shall be commenced before:

17.13.1 The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements, or other interests in real property, and appropriate

authorization from the property owner to allow construction or installation of the Public Improvements or work; or

17.13.2 The issuance of an order of possession by a court of competent jurisdiction pursuant to California's Eminent Domain Law. Developer shall comply in all respects with any such order of possession.

Nothing in this paragraph 17.13 shall be construed as authorizing or granting an extension of time to Developer for completion of the Public Improvements.

17.14 Prevailing Wages. Developer has been alerted to the requirements of California Labor Code sections 1770, et seq., including, without limitation, SB 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required.

(Remainder of page intentionally left blank.)

17.15 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

CITY OF CLAYTON

CIVIC CLAYTON, LLC

By: _____
Carl Wolfe, Mayor

By: _____
Signature

Print Name

ATTEST:

(Seal)

By: _____
Janet Calderon, City Clerk

By: _____
Signature

Print Name

APPROVED AS TO FORM:

By: _____
Malathy Subramanian, City Attorney
Best Best & Krieger LLP

NOTE: DEVELOPER'S AND SURETY'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On ____ before me, _____ (insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On ____ before me, _____ (insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

TRACT NO. 9536

Real property in the City of Clayton , County of Contra Costa, State of California, described as follows:

BEING A PART OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN, AS GRANTED IN THE DEED TO FRED B. CLAYTON AND MARY E. CLAYTON, HIS WIFE, AS JOINT TENANTS, RECORDED AUGUST 13, 1959 IN BOOK 3432, PAGE 393, OFFICIAL RECORDS, CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE NORTH QUARTER CORNER OF SECTION 14, TOWNSHIP 1 NORTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN, SOUTH 0° 32' 48" EAST, 2,203.10 FEET ALONG THE CENTER SECTION LINE OF SECTION 14; THENCE NORTH 89° 41' WEST, 40.00 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, NORTH 89° 41' WEST, 450.41 FEET; THENCE SOUTH 0° 32' 48" EAST, 445.32 FEET; THENCE SOUTH 89° 59' 03" WEST, 382.73 FEET; THENCE NORTH 18° 31' WEST, 315.00 FEET; THENCE NORTH 21° 19' EAST, 160.00 FEET; THENCE NORTH 47° 20' EAST, 330.28 FEET; THENCE NORTH 86° 13' 06" EAST, 626.72 FEET; THENCE SOUTH 0° 32' 48" EAST 270.00 FEET TO THE POINT OF BEGINNING.

APN: 121-090-011-2 and 121-090-016-1

EXHIBIT “B”

LIST OF PUBLIC IMPROVEMENTS

TRACT NO. 9536

Developer shall perform all work and furnish all materials necessary, in the opinion of the City Engineer and on his order, to complete the following Public Improvements in accordance with the plans and specifications on file with City or with any changes required or ordered by the City Engineer which, in his opinion, are necessary or required to complete this work.

Developer is required to perform the following Public Improvements under this Agreement:

Improvements within the public right of way, contained within the Grading and Improvement Plans for Subdivision 9536 Diablo Meadows, dated October 27, 2021, prepared by Meridian Associates, Inc., and which include:

- Construction of subdivision entry drive approach at the project site frontage at Mitchell Canyon Road;
- Construction of a 5-foot-wide concrete sidewalk parallel to Mitchell Canyon Road and adjacent to the eastern parcel lines of Lot 18 and Parcel E, and including curb returns and accessible sidewalk ramps at the intersection of the subdivision entry drive and Mitchell Canyon Road;
- Construction of a gutter and a 6-inch-wide concrete curb parallel to the sidewalk described above, and separated from the sidewalk by a 5-foot-wide landscape strip;
- Installation of landscaping and irrigation, in accordance with landscape plans approved by the City, in the landscape strip between the curb and sidewalk;
- Installation of asphalt adjacent to the curb and gutter at 6.5 feet wide or otherwise as needed to increase the paved roadway width of Mitchell Canyon Road to a minimum 20 feet from proposed face of curb to centerline of the ultimate 60-foot right-of-way after dedication at the site frontage;
- Installation of 8-inch water line in the Mitchell Canyon Road right-of-way to connect the residential lots in the Diablo Meadows Subdivision to the 12-inch public water line under Mitchell Canyon Road;
- Installation of 6-inch sanitary sewer line and manholes in the Mitchell Canyon Road right-of-way to connect the residential lots in the Diablo Meadows subdivision to the public sanitary sewer system; and
- Installation of a 12-inch storm drain pipeline and a manhole connecting the stormwater quality basin on Parcel E to the public storm drain pipeline in the Mitchell Canyon Road right-of-way.

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

TRACT NO. 9536

As evidence of understanding the provisions contained in this Agreement, and of Developer's intent to comply with same, Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

FAITHFUL PERFORMANCE BOND:

\$ 193,000

Surety: _____

Attorney-in-fact: _____

Address: _____

PAYMENT BOND:

\$ 193,000

Surety: _____

Attorney-in-fact: _____

Address: _____

GUARANTEE AND WARRANTY SECURITY BOND:

\$ 96,500

Surety: _____

Attorney-in-fact: _____

Address: _____

CITY OF CLAYTON

**FAITHFUL PERFORMANCE BOND FOR
SUBDIVISION IMPROVEMENT AGREEMENT**

PROJECT: TRACT MAP 9536

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Clayton, California ("City") and Civic Clayton, LLC ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 9536 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated November 16, 2021, ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and _____ ("Surety"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of One Hundred Ninety Three Thousand Dollars (\$193,000.00), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their

intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499, *et seq.*, of the California Government Code as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

(Corporate Seal)

CIVIC CLAYTON, LLC

Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$ _____.

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or
Representative for service of
process in California, if different
from above)

(Telephone number of Surety
and Agent or Representative for
service of process in California)

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

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☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact for Surety. The Power-of Attorney to local representatives of the bonding company must also be attached.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the attached bond, that _____, who signed the said bond on behalf of the Principal, was then _____ of said Corporation; that I know his/her signature and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for and upon behalf of said Corporation by authority of its governing Board.

Dated: _____

By: _____
Signature

Print Name

(PAGE 1 OF 2)

CITY OF CLAYTON
PAYMENT BOND FOR
SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: TRACT MAP 9536

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City Clayton, California ("City") and Civic Clayton, LLC ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 9536 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated November 16, 2021, ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement before entering upon the performance of the work to provide a good and sufficient payment bond to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code.

NOW, THEREFORE, Principal and _____ ("Surety"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Improvement Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code in the sum of One Hundred Ninety Three Thousand Dollars (\$193,000.00), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's

(PAGE 2 OF 2)

fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499, *et seq.*, of the California Government Code as security for labor performed and materials provided in connection with the performance of the Improvement Agreement and construction of the Public Improvements.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

(Corporate Seal)

CIVIC CLAYTON, LLC
Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or
Representative for service of
process in California, if different
from above)

(Telephone number of Surety
and Agent or Representative for
service of process in California)

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Principal.

Notary Acknowledgment

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☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact for Surety. The Power-of Attorney to local representatives of the bonding company must also be attached.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the attached bond, that _____, who signed the said bond on behalf of the Principal, was then _____ of said Corporation; that I know his/her signature and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for and upon behalf of said Corporation by authority of its governing Board.

Dated: _____

By: _____
Signature

Print Name

(PAGE 1 OF 2)

CITY OF CLAYTON

**SUBDIVISION MAINTENANCE BOND
GUARANTEE AND WARRANTY SECURITY**

PROJECT: TRACT MAP 9536

WHEREAS, the City of Clayton, State of California, and CIVIC CLAYTON, LLC (“PRINCIPAL”) have entered into an agreement by which PRINCIPAL agrees to install and complete certain designated public improvements for Tract Map No. 9536 (“Public Improvements”) and to guarantee and warrant the work for a period of one year following its completion and acceptance; and

WHEREAS, the Public Improvements to be performed by PRINCIPAL are more particularly set forth in that certain Subdivision Improvement Agreement for Completion of Public Improvements dated November 16, 2021 (“Improvement Agreement”); and

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, PRINCIPAL is required under the terms of the Improvement Agreement to furnish a bond to guarantee and warrant the work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, to comply with the terms of the Improvement Agreement.

NOW, THEREFORE, we, PRINCIPAL and _____ a _____, admitted and duly authorized to transact business under the laws of the State of California as surety (“SURETY”), are held and firmly bound unto the City of Clayton as obligee (“CITY”), in the penal sum of Ninety-Six Thousand Five Hundred Dollars (\$96,500) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, provisions in the said agreement and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless CITY, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys’

fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY
above named, on _____, 20____.

Civic Clayton, LLC
Principal

_____ and _____
Mailing Address of Surety

Telephone No. of Surety

By: _____
Title: _____

Approved as to form:

City Attorney

NOTE: If principal is a partnership, all partners should execute the bond.

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

NOTICE: The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Sacramento County.

MANDATORY: The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."

REQUEST TO INSURER TO SUBMIT DOCUMENTS: Execution of this document shall constitute the City's formal request to the insurer to provide the City with an original of a certificate from the clerk of Sacramento County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted.

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

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☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the attached bond, that _____, who signed the said bond on behalf of the Principal, was then _____ of said Corporation; that I know his/her signature and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for and upon behalf of said Corporation by authority of its governing Board.

Dated: _____

By: _____
Signature

Print Name



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Reina Schwartz, City Manager

BY: Dana Ayers, Community Development Director

DATE: November 16, 2021

SUBJECT: Adoption of Resolutions Selecting Projects for Applications of Funds from the California Department of Parks and Recreation's Office of Grants and Local Services' (OGAL) Proposition 68 Per Capita and Recreational Infrastructure Revenue Enhancement (RIRE) Programs.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolutions:

- 1) selecting the replacement of the Toddler Play Structure and dining tables as the identified project for the application to the OGAL for receipt of grant funds pursuant to the Proposition 68 Per Capita Grant Program; and
- 2) selecting the replacement of the School-Age Play Structure and dining tables as the identified project for submittal of the application to the OGAL for receipt of grant funds pursuant to the Proposition 68 RIRE Program.

BACKGROUND

The Per Capita and RIRE grant funding programs originate from Proposition 68, placed on the ballot via Senate Bill 5 (DeLeon, Chapter 852, statutes of 2017), and approved by voters on June 5, 2018. Codified in part in Public Resources Code (PRC), Division 46, Senate Bill 5 authorized "issuance of bonds in the amount of \$4,000,000,000 pursuant to the State General Obligation Bond Law to finance a drought, water, parks, climate, coastal protection, and outdoor access for all program." Funds are provided through various programs, including the Per Capita and RIRE Programs, which are briefly described below:

- **Prop 68 Per Capita Program:** Under the Per Capita Program (PRC Section 80061), grant funds are made available to local governments on a per capita basis. Grant recipients are encouraged to use funds to rehabilitate existing recreational

infrastructure and address deficiencies in neighborhoods lacking access to the outdoors. For projects not serving a severely disadvantaged community, the recipient agency is required to provide a local match of 20 percent of the total project cost. Eligible sources of the local match include federal, local or private funds; in-house employee services; and volunteer labor.

- **Prop 68 Recreational Infrastructure Revenue Enhancement Program:** Through the RIRE Program (PRC Section 80066), funds are available for a local agency that has obtained voter approval between November 1, 2012, through November 30, 2018, for revenue enhancement measures aimed at improving and enhancing local or regional park and recreational infrastructure. Funds are awarded proportionally based on the population of the voting area. A recipient of grant funds through the RIRE program is eligible to receive funds based on a per person basis, with a minimum allocation of \$250,000. No local match is required.

The City of Clayton is eligible for up to \$177,952 through the Prop 68 Per Capita Program and up to \$250,000 through the Prop 68 RIRE Program. Funds received through the Prop 68 programs will be added to existing funding sources for identified park improvement and rehabilitation projects. The grant funding process starts with the City Council's authorization through resolution. The grant process includes submitting an application packet through December 2021 and finalizing a contract with the state by March 2022. Projects must be completed by June 2024.

On September 15, 2020, the City Council adopted Resolution No. 45-2020 authorizing the City Manager to file an application and to execute the grant agreement and other documents necessary to secure the Prop 68 Per Capita Grant Program funds in the amount of \$177,952. Subsequently, on December 15, 2020, the City Council provided direction to staff to apply the Per Capita Program funds to replacement of the School-Age (6-12 years) Play Structure at Clayton Community Park, which had a then-estimated cost of approximately \$214,000.

On December 15, 2020, the City Council adopted Resolution No. 60-2020 authorizing the City Manager to file an application and to execute the grant agreement and other documents necessary to secure the Prop 68 RIRE Program funds in the amount of \$250,000. At the time of adoption of that resolution, no project had been identified for the Council's consideration of application for the RIRE Program funds.

ANALYSIS

Both the School-Age and Toddler Play Structures at Clayton Community Park have reached the end of their usable lifespan and are in need of replacement. Following the initial direction of the City Council with respect to the Per Capita Program funds, staff obtained estimates of cost for a new School-Age Play Structure at Clayton Community Park. Approximate cost of the structure, replacement of the playground surface and installation of the equipment was \$250,600. Since staff's receipt of the initial estimate of cost earlier this year, the selected vendor has advised that the estimate has increased by another 13 percent, to approximately \$284,000. Staff received from the same vendor an estimate for approximately \$70,400 for replacement of the Toddler (2-5 years) Play Structure and playground surface at Clayton

Community Park; the estimated cost of that play structure has also since increased to approximately \$79,800.

Due to the higher estimated cost for replacement of the School-Age Play Structure, staff recommends that the School-Age Play Structure and surface replacement be selected for the higher RIRE Program grant funds rather than the Per Capita Program funds. Staff further recommends that the less expensive Toddler Play Structure and surface replacement be the selected project for the lesser amount of Per Capita Program funds. With the difference between the cost of the Toddler Play Structure (\$79,800) and the amount of the Per Capita Program grant amount (\$177,952), additional grant funds would be available to replace many of the outdoor dining tables at the park, which are constructed of wood, have weathered over several years of outdoor exposure, and are at the end of their usable lifespan. Existing wood tables would be replaced with recycled plastic tables. At an estimated cost of \$5,000 per table, staff projects that 20 of the 28 existing tables needing to be replaced could be replaced using grant funds.

ENVIRONMENTAL

Replacement of the existing play structures, playground surface and dining tables at Clayton Community Park are exempt from the California Environmental Quality Act (CEQA) under Categorical Exemption Class 1 (Existing Facilities), Section 15301 of the State CEQA Guidelines.

FISCAL IMPACTS

The grant programs would provide reimbursement to the City for eligible project costs up to each respective grant amount. Staff anticipates that staff time to coordinate purchase of the Toddler Play Structure and manage its installation would provide the match necessary for the Per Capita Program grant. For either project, additional necessary or matching funds could also come from private sources and donations. If additional expenditures from the General Fund or other park improvement budgets would be necessary for either project, staff would return to the Council for authorization as needed.

ATTACHMENTS

1. Resolution Selecting the Park Improvement Project for the Per Capita Program
2. Resolution Selecting the Park Improvement Project for the RIRE Program

RESOLUTION NO. ##-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON SELECTING THE REPLACEMENT OF THE TODDLER PLAY STRUCTURE AND DINING TABLES AT CLAYTON COMMUNITY PARK AS THE IDENTIFIED PROJECT FOR THE APPLICATION TO THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, OFFICE OF GRANTS AND LOCAL SERVICES (OGAL), FOR RECEIPT OF GRANT FUNDS PURSUANT TO THE PROPOSITION 68 PER CAPITA GRANT PROGRAM

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

WHEREAS, the Proposition 68 Per Capita Program (Per Capita Program) originates from Proposition 68, which was placed on the ballot via Senate Bill 5 (DeLeon, Chapter 852, statutes of 2017); was approved by voters on June 5, 2018; is codified in part in Public Resources Code (PRC), Division 46; and authorizes “issuance of bonds in the amount of \$4,000,000,000 pursuant to the State General Obligation Bond Law to finance a drought, water, parks, climate, coastal protection, and outdoor access for all program;” and

WHEREAS, funds are provided through various programs, including the Per Capita Program (PRC Section 80061), which makes grant funds available to local governments on a per capita basis to rehabilitate existing recreational infrastructure and address deficiencies in neighborhoods lacking access to the outdoors; and

WHEREAS, the City of Clayton is eligible for up to \$177,952 in grant funds through the Prop 68 Per Capita Program; and

WHEREAS, on September 15, 2020, the City Council adopted Resolution No. 45-2020 authorizing the City Manager to file an application and to execute the grant agreement and other documents necessary to secure the Proposition 68 Per Capita Program grant funds; and

WHEREAS, the Toddler (2-5 years) Play Structure and multiple wood dining tables at Clayton Community Park have reached the end of their usable lifespan and are in need of replacement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Clayton, California, does hereby select the replacement of the Toddler Play Structure and outdoor dining tables at the Clayton Community Park as the identified project for the Proposition 68 Per Capita Program and authorizes the City Manager to complete applications and necessary documentation accordingly for receipt of grant funds under the Proposition 68 Per Capita Program.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California, at a regular public meeting thereof held on the 16th day of November 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

RESOLUTION NO. ##-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON SELECTING THE REPLACEMENT OF THE SCHOOL-AGE PLAY STRUCTURE AT CLAYTON COMMUNITY PARK AS THE IDENTIFIED PROJECT FOR THE APPLICATION TO THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, OFFICE OF GRANTS AND LOCAL SERVICES (OGAL), FOR RECEIPT OF GRANT FUNDS PURSUANT TO THE PROPOSITION 68 RECREATIONAL INFRASTRUCTURE REVENUE ENHANCEMENT GRANT PROGRAM

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

WHEREAS, the Proposition 68 Recreational Infrastructure Revenue Enhancement Program (RIRE Program) program originates from Proposition 68, which was placed on the ballot via Senate Bill 5 (DeLeon, Chapter 852, statutes of 2017); was approved by voters on June 5, 2018; is codified in part in Public Resources Code (PRC), Division 46; and authorizes “issuance of bonds in the amount of \$4,000,000,000 pursuant to the State General Obligation Bond Law to finance a drought, water, parks, climate, coastal protection, and outdoor access for all program;” and

WHEREAS, funds are provided through various programs, including the RIRE Program (PRC Section 80066), which makes grant funds available to a local agency that has obtained voter approval between November 1, 2012, through November 30, 2018, for revenue enhancement measures aimed at improving and enhancing local or regional park and recreational infrastructure; and

WHEREAS, RIRE Program funds are awarded proportionally based on the population of the voting area, with a minimum allocation of \$250,000 to a jurisdiction; and

WHEREAS, the City of Clayton is eligible for up to \$250,00 in grant funds through the RIRE Program; and

WHEREAS, on December 15, 2020, the City Council adopted Resolution No. 60-2020 authorizing the City Manager to file an application and to execute the grant agreement and other documents necessary to secure the Proposition 68 RIRE Program grant funds; and

WHEREAS, the School-Age (6-12 years) Play Structure at Clayton Community Park has reached the end of its usable lifespan and is in need of replacement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Clayton, California, does hereby select the replacement of the School-Age Play Structure at the Clayton Community Park as the identified project for the Proposition 68 RIRE Program and authorizes the City Manager to complete applications and necessary documentation accordingly for receipt of grant funds under the Proposition 68 RIRE Program.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California, at a regular public meeting thereof held on the 16th day of November 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

declaring
November 16
as
"Dutch-American Heritage Day"

WHEREAS, as of 1990, November 16 has been declared as "Dutch-American Heritage Day"; and

WHEREAS, on November 16, 1776, a small American warship, the Andrew Doria sailed into the harbor of the Dutch island of Saint Eustatius in the West Indies, only four months after the United States had declared its independence from Great Britain; and

WHEREAS, the American crew was delighted when the governor of the island ordered that his fort's cannons be fired in a friendly salute representing the first time a foreign power had offered a salute to the flag of the United States, and

WHEREAS, angered by Dutch trading of contraband with the rebellious colonies, the British seized the island a few years later; and

WHEREAS, the Dutch recaptured the island in 1784, and

WHEREAS, De Graaf's welcoming salute was also a sign of respect, and today it continues to symbolize the deep ties of friendship that exist between the United States and The Netherlands.

Now, Therefore, I, Carl Wolfe, Mayor, and on behalf of the entire Clayton City Council, proclaim November 16, as "Dutch-American Heritage Day" in Clayton, CA and I call this observance to the attention of all of our citizens.

declaring

December 10th

as

"Human Rights Day"

WHEREAS, On December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) and thereafter, December 10 has been observed each year as Human Rights Day; and

WHEREAS, The Universal Declaration of Human Rights was the first universal standard of achievements for all people and nations, stating that all human beings have certain inherent and inalienable rights to be universally protected; and

WHEREAS, On December 10, 1949, President Truman issued the first Presidential Proclamation for Human Rights Day (Presidential Proclamation 2866, Federal Register Vol. 14, No.238, December 10, 1949); and

WHEREAS, In 1958, President Eisenhower issued the first proclamation for Human Rights Week (Proclamation 3265, Federal Register Vol. 23, No. 230, November 25, 1958), held from December 10-17.

Now, Therefore, I, Carl Wolfe, Mayor, and on behalf of the entire Clayton City Council, proclaim December 10, as "Human Rights Day" in Clayton, CA and I encourage all citizens to learn more about the Universal Declaration of Human Rights.



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Dana Ayers, Community Development Director

DATE: November 16, 2021

SUBJECT: Introduce and Waive First Reading of an Ordinance to Amend Clayton Municipal Code Section 17.36.080 and Chapter 17.95 entitled “Medical and Adult-use Cannabis Regulations” Relating to Cultivation of Cannabis for Personal Use (ZOA-01-2021).

RECOMMENDATION

Staff recommends that the City Council open the public hearing and accept written and spoken testimony, close the public hearing, and introduce and waive further reading of the attached Ordinance amending Clayton Municipal Code Section 17.36.080 and Chapter 17.95 relating to cultivation of cannabis for personal use.

BACKGROUND

Since 2016, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), legalized the use and possession of marijuana (now termed cannabis) by adults over 21 years of age. AUMA, as amended by Senate Bill (SB) 94 in 2017, also allows adults to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and to possess the cannabis produced by the plants, subject to the following restrictions:

- (1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with Health and Safety Code, § 11362.2(b).
- (2) The living plants and any cannabis produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

(Health and Safety Code, §§ 11362.1(a)(3) & 11362.2(a).)

AUMA, as amended, authorizes local governments to enact and enforce reasonable regulations on personal cultivation of cannabis activities. While local governments cannot completely prohibit personal cultivation of cannabis indoors (i.e., either inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure), local governments may choose to completely prohibit personal cannabis cultivation outdoors. (Health and Safety Code, § 11362.2(b).)

Since 2016, Clayton Municipal Code (CMC) Section 17.36.080 and text of CMC Chapter 17.95 have prohibited outdoor cannabis cultivation. At its regular meeting on May 4, 2021, the City Council heard a presentation by a member of the public and discussed whether the City should allow outdoor cultivation of cannabis for personal use. The City Council discussed problems related to indoor cannabis cultivation, such as increased risk of fire from grow light systems, increased energy use, and use of pesticides, and considered whether outdoor cannabis cultivation might help reduce reliance on indoor cultivation. The City Council then directed staff to prepare an ordinance allowing personal use cultivation of cannabis outdoors for the Council's consideration.

DESCRIPTION OF AMENDMENT

Clayton Municipal Code currently allows indoor growing of up to six cannabis plants at a residential property, for personal use. This maximum number of plants is consistent with the allowances of State law, as noted above. As drafted, the proposed Zoning Ordinance Amendment would allow outdoor growing of all or some of the allowed six cannabis plants at a residential property. Though a residential property would not be allowed more than six plants total, and growing of cannabis must be exclusively for personal use, there is no proposed requirement that all plants be indoor or outdoor within the State-permitted maximum. For example, within the provisions of the draft text, all six plants could be grown indoors, or all six plants could be grown outdoors, or plants could be divided between indoor and outdoor spaces, provided that no more than six cannabis plants are on the residential property at any time. The proposed Ordinance would not change the current requirement of CMC that growing of cannabis at a residential property must be for personal use and not for any commercial use. Additional regulations on both indoor and outdoor growing would be imposed with the proposed amendment, including requirements that: 1) cannabis plants not be visible from a public right-of-way or other public place; 2) all structures and equipment used for cultivation comply with applicable building, plumbing, electrical and fire codes; and 3) cannabis plants grown outdoors be enclosed by fencing with entry points controlled by locked gates.

ANALYSIS

Code Compliance: CMC Section 17.56.010 authorizes the City to amend the Zoning Ordinance (CMC Title 17) whenever the public necessity, convenience and general welfare require such amendment. Amendments to the Zoning Ordinance can be initiated by the City Council, Planning Commission, or qualified applicant pursuant to CMC Section 17.56.020. In addition to a finding that the proposed amendment would serve the public necessity, convenience and general welfare, the Planning Commission in its advisory capacity must find that the proposed amendment is in general conformance with the General Plan before the Commission can affirmatively recommend an amendment to the Zoning Ordinance (CMC Section 17.56.060). The City Council must make the same findings before approving the amendment.

Following a duly noticed public hearing held at the regular October 26, 2021, meeting of the Planning Commission, the Planning Commission by vote of 4 to 0 (Commissioner Gavidia abstained), adopted a resolution recommending that the City Council adopt the proposed Zoning Ordinance Amendment (see Attachment 2).

Required Findings: The proposed amendment is consistent with the General Plan. While there are not specific General Plan policies addressing cannabis, there are General Plan Safety Element policies and objectives intended to reduce air emissions and risks of fire hazards. With a spring to fall growing season (germination in spring, flowering and harvest in early fall), cannabis plants grow naturally with the extended hours of sunlight typical in the warmer months of the year. To replace outdoor sunlight, indoor growing requires artificial lighting that requires electricity—and consequently, more greenhouse gas emissions from generation of that electricity—when compared with outdoor growing. Additionally, outdoor growing of cannabis is potentially safer and results in fewer fire hazard risks because it does not rely on wiring needed to provide electricity for synthetic light for the plants. The reduced greenhouse gas emissions and reduced risk of fire from wiring for synthetic light sources that would result from allowing outdoor growing would also serve the public necessity, convenience and general welfare of the City.

California Environmental Quality Act (CEQA): This proposed Zoning Ordinance Amendment is not a project within the meaning of Section 15378 of State CEQA Guidelines (California Code of Regulations Section 15000 *et seq.*), and it is exempt under Section 15061(b)(3) and Section 15304 of the State CEQA Guidelines, because it has no potential for resulting in a physical change in the environment, directly or indirectly. The text amendments described in this staff report would authorize minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping on private residential property, and they do not approve the removal of healthy, mature, scenic trees or other significant alterations to land. The amendments would impose reasonable regulations on the ability of individuals to cultivate cannabis for personal use on residential properties otherwise authorized by State law. Based on the limited number of plants, the limited outdoor personal cultivation activities authorized under this proposed amendment would not create any significant changes to the character or use of private residential properties in the City.

FISCAL IMPACTS

Adoption of the Ordinance amending the CMC would not have direct fiscal impacts to the City. Because the Ordinance would affect growth of cannabis exclusively for personal use and not for commercial retail sale, adoption of the Ordinance would not result in generation of any new tax revenue. Enforcement of the Ordinance would likely be within current staff time costs currently budgeted for citywide Code Enforcement.

ATTACHMENTS

1. Proposed Ordinance
2. Planning Commission Resolution No. 08-2021
3. Draft Minutes of October 26, 2021, Planning Commission Meeting
4. Video of October 26, 2021, Planning Commission Meeting (online at <https://claytonca.gov/community-development/planning/planning-commission/planning-commission-agendas/>)
5. Minutes and Video of May 4, 2021, City Council Meeting (online at <https://claytonca.gov/city-clerk-department/city-council/city-council-agendas/>)

ORDINANCE NO. -2021

**AN ORDINANCE AMENDING CLAYTON MUNICIPAL CODE SECTION 17.36.080
AND CHAPTER 17.95 ENTITLED “MEDICAL AND ADULT-USE CANNABIS
REGULATIONS” RELATING TO CULTIVATION OF CANNABIS FOR PERSONAL
USE
(ZOA-01-2021)**

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

The City Council of the City of Clayton DOES ORDAIN as follows:

Section 1. Recitals

- A. Pursuant to the authority granted to the City of Clayton (“City”) by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety.
- B. In 1996, the voters of the State of California approved the Compassionate Use Act of 1996 (“CUA”) (codified as Health and Safety Code, § 11362.5 *et seq.*) to enable seriously ill Californians to legally possess, use, and cultivate marijuana for personal medical use free from criminal prosecution under enumerated provisions of State law.
- C. In 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMPA”) (codified as Health and Safety Code, § 11362.7 *et seq.*), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under State law.
- D. In 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that nothing in the CUA or MMPA preempted cities’ authority to regulate or ban outright medical marijuana land uses.
- E. In 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the use and possession of marijuana (now termed cannabis) by adults over 21 years of age, among other changes.
- F. AUMA, as amended, legalizes persons 21 years of age or older to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants (Health and Safety Code, § 11362.1(a)(3)).

- G. AUMA, as amended, provides that personal cultivation of cannabis under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:
1. A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with Health and Safety Code, § 11362.2(b).
 2. The living plants and any cannabis produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.
 3. Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time. (Health and Safety Code, § 11362.2(a).)
- H. AUMA, as amended, provides that a city may enact and enforce reasonable regulations to regulate personal cultivation of cannabis activities, provided a city shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but may choose to completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2(b)).
- I. On May 4, 2021, the City Council heard a presentation from a member of the public, discussed the matter of personal cannabis cultivation, and directed staff to prepare amendments to the Clayton Municipal Code to allow outdoor cultivation of cannabis for personal use in accordance with State law.
- J. On October 26, 2021, the Clayton Planning Commission held a duly-noticed public hearing on the City-initiated Zoning Ordinance Amendment Application ZOA-01-2021 pertaining to outdoor cultivation of cannabis for personal use. After closing the public hearing, the Planning Commission by vote of 4-0 recommended that the City Council adopt an ordinance approving the proposed Zoning Ordinance Amendment.
- K. Proper notice of this public hearing before the City Council was given in all respects as required by law no fewer than 10 days in advance of the public hearing, with notice published in a newspaper of general circulation, electronically mailed to interested parties, and posted on three community notice boards within the City.

Section 2. Findings

Based on the information in the Community Development Department files on this project, incorporated here by reference and available for review at City Hall, 6000 Heritage Trail in Clayton, the City Council finds that:

- A. The above recitals are true and correct and are hereby incorporated into this Ordinance.
- B. The proposed Zoning Ordinance Amendment is consistent with the General Plan. While there are not specific General Plan policies addressing cannabis, there are General Plan Safety Element policies and objectives intended to reduce air emissions and risks of fire hazards. With a spring to fall growing season (germination in spring, flowering and harvesting in early fall), cannabis plants grow naturally with the extended hours of sunlight typical of the warmer months. To replace outdoor sunlight, indoor growing requires artificial lighting that requires electricity—and consequently, more greenhouse gas and other air emissions from generation of that electricity—when compared with outdoor growing. Additionally, outdoor growing of cannabis is potentially safer and results in fewer fire hazard risks because it does not rely on wiring needed to provide electricity for synthetic light for the plants.
- C. Expanding the allowances for cannabis cultivation to include both indoor and outdoor growing would serve the public necessity, convenience and general welfare, as indoor cultivation of cannabis presents potential risks to health, safety and general welfare, including but not limited to, increased risk of fire from grow light systems, increased energy use, and exposure to fertilizers, pesticides and anti-fungus/mold agents. Allowing both indoor and outdoor cultivation would reduce these risks by reducing reliance on exclusively indoor cultivation.
- D. In accordance with Health and Safety Code, § 11362.2(b), this Ordinance effects reasonable regulations governing the conduct of outdoor cultivation of cannabis for personal use set forth in paragraph (3) of subdivision (a) of Section 11362.1.
- E. This amendment to Clayton Municipal Code is not a project within the meaning of Section 15378 of State California Environmental Quality Act (CEQA) Guidelines (California Code of Regulations Section 15000 *et seq.*), and it is exempt under Section 15061(b)(3) and Section 15304 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The amendments contained in this recommendation authorize only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping on private residential property, and does not approve the removal of healthy, mature, scenic trees or other significant alterations to land. The City Council finds that this Ordinance merely imposes reasonable regulations on the ability of individuals to cultivate cannabis for personal use on

residential properties otherwise authorized by State law. Based on the limited number of plants, the limited outdoor personal cultivation activities authorized under this Ordinance would not create any significant changes to the character or use of private residential properties in the City. It can be seen with certainty that the amendments would have no significant effect on the environment. Accordingly, the City Council finds that adoption of this Ordinance is categorically exempt from further CEQA review.

Section 3. Zoning Ordinance Amendment

Based on the findings and the authority set forth above, the City Council hereby amends Title 17 (Zoning) of the Clayton Municipal Code, as follows:

- A. **Amendment to Clayton Municipal Code Section 17.36.080.** That Clayton Municipal Code Section 17.36.080 be hereby amended and restated as shown in underline/strike-through to read in its entirety as follows:

“17.36.080 Prohibited Uses and Activities. The following uses and activities are prohibited in all zoning districts:

- A. Any use or activity which is prohibited by local, regional, state, or federal law unless expressly and affirmatively authorized by this code.
- B. Outdoor cannabis cultivation, except personal cannabis cultivation as provided in See Section 17.95.020.
- C. Commercial cannabis uses, as described in Section 17.95.030.
- D. Reserved.
- E. Reserved.
- F. Other uses or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited.”

- B. **Amendment to Clayton Municipal Code Section 17.95.010.** That Clayton Municipal Code, Section 17.95.010, be amended to revise the definition of “Commercial cannabis uses” in subparagraph (I) and to insert as subparagraph (L) the definition of “Personal cannabis cultivation” and re-designate the definition of “Private residence” as subparagraph (M), as shown in underline/strike-through below:

“17.95.010 Definitions.

For purposes of this Code, the following definitions shall apply.

- A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative,

mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis also includes "Cannabis" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.

- B. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- C. "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- D. "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the state distributor license(s), including, but not limited to, cannabis storage, quality control and collection of state cannabis taxes.
- E. "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. "Cannabis manufacture" includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- F. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include "cannabis products" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.
- G. "Cannabis retailer" means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery. For purposes of this Code, the term "cannabis retailer" includes microbusinesses as well as nonprofits licensed under Business and Professions Code, Section 26070.5. For purposes of this Code, "cannabis retailer" also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate,

pursuant to Health and Safety Code Sections 11362.5 and/or 11362.775, as may be amended.

H. "Cannabis testing laboratory" means a facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and

2. Licensed by the Bureau of Cannabis Control.

I. "Commercial cannabis uses" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial cannabis activity" as defined in Business and Professions Code, Section 26001, as may be amended from time to time, and includes any activity that requires a license from a state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as may be amended from time to time. Commercial cannabis activity does not include possession or cultivation for personal use ~~indoor cultivation of cannabis for personal use that is not sold~~ and in strict accordance with Health and Safety Code, Section 11362.1 et seq.

J. "Indoor" means any location that is totally contained within a fully enclosed and secure private residence or accessory building located on the grounds of the private residence.

K. "Outdoor" means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.

L. "Personal cannabis cultivation or cultivation for personal use" means cannabis cultivation for personal, noncommercial purposes, that is not sold, and in strict accordance with Health and Safety Code, Section 11362.1 et seq. Personal cultivation by qualified patients and primary caregivers is further subject to the restrictions set forth in Business and Professions Code Section 26033.

~~L.~~ M. "Private residence" means a house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes."

C. **Amendment to Clayton Municipal Code Section 17.95.020.** That Clayton Municipal Code, Section 17.95.020, be amended and restated as shown in underline/strikethrough to read in its entirety as follows:

“17.95.020 Personal Cannabis Cultivation. Personal cannabis cultivation is permitted subject to the following restrictions:

- A. No more than six (6) cannabis plants may be cultivated either indoors or outdoors, or a combination of both indoors and outdoors, at a private residence at one time regardless of the number of individuals residing at the residence.
- B. The cannabis plants shall not be visible from a public right-of-way or other public place.
- C. Structures and equipment used for cultivation, such as indoor grow lights, shall comply with all applicable building, plumbing, electrical and fire code regulations as adopted by the city.
- D. For outdoor cultivation: All cannabis plants cultivated outdoors must be enclosed by fencing, and all gates and other points of entry to the outdoor growing area must be locked at all times.
- E. Nothing in this section shall authorize commercial cultivation of cannabis.”
- ~~A. Outdoor cultivation of cannabis, including cannabis cultivation for personal medical use, personal adult use, or commercial purposes is prohibited in all zoning districts in the City of Clayton.~~
- ~~B. The indoor cultivation of cannabis is prohibited except to the extent that state law permits the indoor cultivation of up to six (6) marijuana plants for personal use per private residence. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation and personal use of cannabis.”~~

Section 4. 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 5. Effective Date and Publication.

This Ordinance shall become effective 30 days from and after its passage. Within 15 days after the passage of the Ordinance, the City Clerk shall cause the Ordinance, with the names of those City Council members voting for and against it, to be posted in three public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the

amendments adopted in Section 3 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 November 16, 2021.

Passed, adopted and ordered posted by the City Council of the City of Clayton at a regular public meeting thereof held on _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

APPROVED AS TO FORM:

APPROVED BY ADMINISTRATION:

Malathy Subramanian, City Attorney

Reina J. Schwartz, City Manager

I hereby certify that the foregoing Ordinance was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on _____, 2021.

Janet Calderon, City Clerk

**CITY OF CLAYTON
PLANNING COMMISSION
RESOLUTION NO. 08-2021**

**A RESOLUTION OF THE CLAYTON PLANNING COMMISSION RECOMMENDING
THAT THE CITY COUNCIL AMEND CLAYTON MUNICIPAL CODE SECTION
17.36.080 AND CHAPTER 17.95 ENTITLED “MEDICAL AND ADULT-USE
CANNABIS REGULATIONS” RELATING TO CULTIVATION OF CANNABIS FOR
PERSONAL USE
(ZOA-01-2021)**

WHEREAS, pursuant to the authority granted to the City of Clayton (“City”) by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety; and

WHEREAS, in 1996, the voters of the State of California approved the Compassionate Use Act of 1996 (“CUA”) (codified as Health and Safety Code, § 11362.5 *et seq.*) to enable seriously ill Californians to legally possess, use, and cultivate marijuana for personal medical use free from criminal prosecution under enumerated provisions of State law; and

WHEREAS, in 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMPA”) (codified as Health and Safety Code, § 11362.7 *et seq.*), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under State law; and

WHEREAS, in 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that nothing in the CUA or MMPA preempted cities’ authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the use and possession of marijuana (now termed cannabis) by adults over 21 years of age, among other changes; and

WHEREAS, AUMA, as amended, legalizes persons 21 years of age or older to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants (Health and Safety Code, § 11362.1(a)(3)); and

WHEREAS, AUMA, as amended, provides that personal cultivation of cannabis under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with Health and Safety Code, § 11362.2(b).

(2) The living plants and any cannabis produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time. (Health and Safety Code, § 11362.2(a).)

WHEREAS, AUMA, as amended, provides that a city may enact and enforce reasonable regulations to regulate personal cultivation of cannabis activities, provided a city shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but may choose to completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2(b)); and

WHEREAS, on May 4, 2021, the City Council heard a presentation from a member of the public, discussed the matter of personal cannabis cultivation, and directed staff to prepare amendments to the Clayton Municipal Code to allow outdoor cultivation of cannabis for personal use in accordance with State law; and

WHEREAS, on October 26, 2021, the Clayton Planning Commission held a duly-noticed public hearing on the City-initiated Zoning Ordinance Amendment Application ZOA-01-2021 pertaining to outdoor cultivation of cannabis for personal use, and received and considered testimony and evidence, both spoken and written.

NOW, THEREFORE, THE COMMISSION DOES HEREBY FIND:

- A.** The foregoing recitals are true and correct and are incorporated herein by reference.
- B.** The proposed Zoning Ordinance Amendment is consistent with the General Plan. While there are not specific General Plan policies addressing cannabis, there are General Plan Safety Element policies and objectives intended to reduce air emissions and risks of fire hazards. With a spring to fall growing season (germination in spring, flowering and harvesting in early fall), cannabis plants grow naturally with the extended hours of sunlight typical of the warmer months. To replace outdoor

sunlight, indoor growing requires artificial lighting that requires electricity—and consequently, more greenhouse gas and other air emissions from generation of that electricity—when compared with outdoor growing. Additionally, outdoor growing of cannabis is potentially safer and results in fewer fire hazard risks because it does not rely on wiring needed to provide electricity for synthetic light for the plants.

- C. Expanding the allowances for cannabis cultivation to include both indoor and outdoor growing would serve the public necessity, convenience and general welfare, as indoor cultivation of cannabis presents potential risks to health, safety and general welfare, including but not limited to, increased risk of fire from grow light systems, increased energy use, and exposure to fertilizers, pesticides and anti-fungus/mold agents. Allowing both indoor and outdoor cultivation would reduce these risks by reducing reliance on exclusively indoor cultivation.
- D. In accordance with Health and Safety Code, § 11362.2(b), this recommended Ordinance effects reasonable regulations governing the conduct of outdoor cultivation of cannabis for personal use set forth in paragraph (3) of subdivision (a) of Section 11362.1.
- E. This recommended amendment to Clayton Municipal Code is not a project within the meaning of Section 15378 of State California Environmental Quality Act (CEQA) Guidelines (California Code of Regulations Section 15000 *et seq.*), and it is exempt under Section 15061(b)(3) and Section 15304 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The amendments contained in this recommendation authorize only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping on private residential property, and does not approve the removal of healthy, mature, scenic trees or other significant alterations to land. The Planning Commission finds that this recommended amendment merely imposes reasonable regulations on the ability of individuals to cultivate cannabis for personal use on residential properties otherwise authorized by State law. Based on the limited number of plants, the limited outdoor personal cultivation activities authorized under this recommended amendment would not create any significant changes to the character or use of private residential properties in the City. It can be seen with certainty that the amendments would have no significant effect on the environment. Accordingly, the Planning Commission finds that this recommended amendment is categorically exempt from further CEQA review.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby make the following recommendations to the City Council for amendments to

Clayton Municipal Code Section 17.36.080 and Chapter 17.95 pertaining to cultivation of cannabis for personal use:

- A. **Amendment to Clayton Municipal Code Section 17.36.080.** That Clayton Municipal Code Section 17.36.080 be hereby amended and restated as shown in underline/strike-through to read in its entirety as follows:

“17.36.080 Prohibited Uses and Activities. The following uses and activities are prohibited in all zoning districts:

- A. Any use or activity which is prohibited by local, regional, state, or federal law unless expressly and affirmatively authorized by this code.
- B. Outdoor cannabis cultivation, except personal cannabis cultivation as provided in See Section 17.95.020.
- C. Commercial cannabis uses, as described in Section 17.95.030.
- D. Reserved.
- E. Reserved.
- F. Other uses or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited.”

- B. **Amendment to Clayton Municipal Code Section 17.95.010.** That Clayton Municipal Code, Section 17.95.010, be amended to revise the definition of “Commercial cannabis uses” in subparagraph (I) and to insert as subparagraph (L) the definition of “Personal cannabis cultivation” and re-designate the definition of “Private residence” as subparagraph (M), as shown in underline/strike-through below:

“17.95.010 Definitions.

For purposes of this Code, the following definitions shall apply.

- A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis also includes "Cannabis" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.
- B. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- C. "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a cannabis retailer

of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.

- D. "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the state distributor license(s), including, but not limited to, cannabis storage, quality control and collection of state cannabis taxes.
- E. "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. "Cannabis manufacture" includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- F. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include "cannabis products" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.
- G. "Cannabis retailer" means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery. For purposes of this Code, the term "cannabis retailer" includes microbusinesses as well as nonprofits licensed under Business and Professions Code, Section 26070.5. For purposes of this Code, "cannabis retailer" also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to Health and Safety Code Sections 11362.5 and/or 11362.775, as may be amended.
- H. "Cannabis testing laboratory" means a facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:
 - 1. Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and
 - 2. Licensed by the Bureau of Cannabis Control.
- I. "Commercial cannabis uses" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial

cannabis activity" as defined in Business and Professions Code, Section 26001, as may be amended from time to time, and includes any activity that requires a license from a state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as may be amended from time to time. Commercial cannabis activity does not include possession or cultivation for personal use ~~indoor cultivation of cannabis for personal use that is not sold and~~ in strict accordance with Health and Safety Code, Section 11362.1 et seq.

- J. "Indoor" means any location that is totally contained within a fully enclosed and secure private residence or accessory building located on the grounds of the private residence.
- K. "Outdoor" means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.
- L. "Personal cannabis cultivation or cultivation for personal use" means cannabis cultivation for personal, noncommercial purposes, that is not sold, and in strict accordance with Health and Safety Code, Section 11362.1 et seq. Personal cultivation by qualified patients and primary caregivers is further subject to the restrictions set forth in Business and Professions Code Section 26033.
- ~~L.~~ M. "Private residence" means a house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes."

- C. **Amendment to Clayton Municipal Code Section 17.95.020.** That Clayton Municipal Code, Section 17.95.020, be amended and restated as shown in underline/strikethrough to read in its entirety as follows:

"17.95.020 Personal Cannabis Cultivation. Personal cannabis cultivation is permitted subject to the following restrictions:

- A. No more than six (6) cannabis plants may be cultivated either indoors or outdoors, or a combination of both indoors and outdoors, at a private residence at one time regardless of the number of individuals residing at the residence.
- B. The cannabis plants shall not be visible from a public right-of-way or other public place.
- C. Structures and equipment used for cultivation, such as indoor grow lights, shall comply with all applicable building, plumbing, electrical and fire code regulations as adopted by the city.
- D. For outdoor cultivation: All cannabis plants cultivated outdoors must be enclosed by fencing, and all gates and other points of entry to the outdoor growing area must be locked at all times.
- E. Nothing in this section shall authorize commercial cultivation of cannabis."
- ~~A. Outdoor cultivation of cannabis, including cannabis cultivation for personal medical use, personal adult use, or commercial purposes is prohibited in all zoning districts in the City of Clayton.~~
- ~~B. The indoor cultivation of cannabis is prohibited except to the extent that state law~~

~~permits the indoor cultivation of up to six (6) marijuana plants for personal use per private residence. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation and personal use of cannabis."~~

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 26th day of October 2021.

AYES: Altwal, Cesarin, Denslow, Miller

NOES: none

ABSTAINED: Gavidia

ABSENT: none

APPROVED:



Terri Denslow
Chair

ATTEST:



Dana Ayers, AICP
Community Development Director

**Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, October 26, 2021**

1. CALL TO ORDER

Chair Terri Denslow called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Altwal led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Terri Denslow
Vice Chair Ed Miller
Commissioner Bassam Altwal
Commissioner Justin Cesarin
Commissioner Frank Gavidia

4. PRESENTATIONS AND ANNOUNCEMENTS

There were no presentations or announcements.

5. ACCEPTANCE OF THE AGENDA

Commissioner Altwal moved and Commissioner Cesarin seconded a motion to accept the agenda as submitted. The motion passed 5-0.

6. PUBLIC COMMENT

None.

7. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of September 14, 2021.

Vice Chair Miller moved and Commissioner Cesarin seconded a motion to approve the minutes, as amended. The motion passed 3-0, with Commissioners Altwal and Gavidia abstaining because they did not attend the September 14, 2021 meeting.

8. PUBLIC HEARING

A. Recommendation on an Ordinance to Amend Clayton Municipal Code Section 17.36.080 and Chapter 17.95 entitled “Medical and Adult-use Cannabis Regulations” Relating to Cultivation of Cannabis for Personal Use (ZOA-01-2021).

This is a City-initiated proposal to amend Title 17 (Zoning) of Clayton Municipal Code to remove an existing prohibition on outdoor cannabis cultivation and allow outdoor cultivation of up to six cannabis plants at a residence, for personal use. After the hearing, the Planning Commission is asked to make a recommendation to the City Council on the proposed Zoning Ordinance Amendment. If approved by the City Council, the Zoning Ordinance Amendment would apply City-wide.

Community Development Director Dana Ayers presented the staff report.

Chair Denslow requested clarification on the role of the Planning Commission in the City Council-initiated ordinance amendment. Director Ayers advised that Clayton Municipal Code allowed for Zoning Ordinance Amendments to be initiated by an applicant, by the Planning Commission or by the City Council. The role of the Planning Commission in any of those cases is to act in an advisory capacity to the City Council. The recommendation of the Planning Commission, whether in favor of or opposition to the proposed amendment, would be forwarded to the City Council for the Council's ultimate decision on whether to amend Clayton Municipal Code.

Chair Denslow said she recalled a concern raised by Councilmember Diaz regarding proximity of outdoor cannabis plants to schools and inquired why that concern had not been addressed in the draft ordinance.

Amanda Charne from the City Attorney's office clarified that Councilmember Diaz's question was whether a city could adopt a restriction on personal outdoor cultivation of cannabis within a certain distance of a school or sensitive use. She advised that Health and Safety Code 11362.2 gave cities discretion to allow outdoor cannabis cultivation, as well as authority to adopt reasonable restrictions on outdoor cultivation. She advised that, based on state statute, it would be within the City's authority and discretion to adopt a school buffer standard. However, no such standard was included in the draft ordinance because it was not directed by a majority of Councilmembers at the May 4, 2021 meeting at which the City Council initiated the amendment.

Vice Chair Miller reported that he observed roughly one-third of Bay Area cities allowed outdoor cannabis cultivation. He suggested that common sense provisions for outdoor cannabis cultivation, such as keeping plants out of sight, below the fence line, behind locked gates and outside of a specified radius from schools, made sense to him as possible restrictions

since cities did not have to allow outdoor cannabis cultivation.

Chair Denslow opened the public hearing. There was no one present to speak on the matter. Chair Denslow closed the public hearing.

Commissioner Altwal said he was in agreement with the Zoning Ordinance Amendment to allow outside growing of cannabis because the City already allowed growing of up to six cannabis plants indoors, and indoor cultivation demanded more energy than outdoor cultivation where the sun could provide the light needed for the plants to grow. With provisions written into the proposed ordinance that the plants be out of sight and gated, he did not see a problem with it.

Commissioner Cesarin agreed with Commissioner Altwal. He believed that applying a standard for a buffer around schools would be comparable to regulating houses that were located near schools and that had alcohol or home brewing equipment inside them. He noted that such standards for alcohol in residences were not being considered. He was supportive of the proposed Zoning Ordinance Amendment as written.

Vice Chair Miller expressed concern that if the cannabis plants were grown outside and not in locked container or area, and if the property was located near a middle school or high school, that students walking home from school could be tempted to trespass into private yards with the objective of taking the plants. He did not think the concern was the same for indoor cultivation, where a young person would have to break through a window or door to come into the house to gain access to the plants.

Commissioner Altwal understood Vice Chair Miller's concern but did not think it was a problem. He stated that the student passerby would have to know who was cultivating the plants, would have to see them, and would have to be inclined to steal them. He thought the probability of coincidence of all of those factors was very low. He added that plants grown under the ordinance would be for personal rather than commercial use, that most people growing them needed the plants were sick and needed the plants for health reasons, and that it was very expensive to purchase. He thought the benefits outweighed the isolated incidence of a kids jumping a fence.

Chair Denslow agreed that the risks of allowing outdoor cultivation were low, and she did not anticipate that many people would take advantage of the expanded allowance of the ordinance. She did not have significant concerns with the amendment.

Commissioner Cesarin believed the proposed ordinance as written was appropriate and made a motion to adopt Resolution No. 08-2021 recommending that the City Council approve the Zoning Ordinance

Amendment (ZOA-01-2021). Commissioner Miller seconded the motion. The motion passed 4-0, with Commissioner Gavidia abstaining.

9. ACTION ITEMS

None.

10. COMMUNICATIONS

Vice Chair Miller reported that he had attended the Housing Element Community Workshop on that had been held on October 20. He stated that he did not share any of his personal ideas about housing but did voice what he had heard from community members as concerns and requested that those concerns be addressed in a future meeting.

Chair Denslow reported that attendance at the October 20 workshop was reasonable, but she hoped community engagement in the Housing Element process would increase. She recommended that community members continue to check the City website and social media pages for updates. Director Ayers added that City staff would be releasing an online survey in the next week requesting community input on housing in the City as well as visioning for the City-owned Downtown Site in the Town Center.

11. ADJOURNMENT

The meeting was adjourned at 7:35 p.m. to the next regular meeting of the Planning Commission on November 9, 2021.

Respectfully submitted:

Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:

Chair Terri Denslow



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Reina J. Schwartz, City Manager

DATE: November 16, 2021

SUBJECT: Adopt a Resolution Approving Program Parameters for the Clayton Cares Program and Appropriating American Rescue Plan Act (ARPA) Funding for Implementation

RECOMMENDATION

Adopt a Resolution approving program parameters and appropriating American Rescue Plan Act (ARPA) funds for implementation.

BACKGROUND

In March 2021 the Federal Government passed the American Rescue Plan Act (ARPA), which had total funding of \$1.9 trillion. This included \$350 billion in funding to States, Localities, and Tribal Governments. This program is separate from Federal grants targeting both institutions and businesses that were impacted by the COVID-19 Pandemic. Attachment A provides a high-level overview of the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) including: its objectives, high level examples of how the funds can be used; and some of the eligible and ineligible uses.

On August 17, 2021 the City Council heard a presentation and overview on the ARPA funding and directed staff to engage a consultant to solicit community input and make recommendations on proposed uses for Clayton's ARPA funding. On September 21, the City Council approved an agreement with Management Partners to gather the community input and develop program recommendations.

On November 2, 2021, the City Council heard a presentation from Management Partners on the results of the community and business surveys and recommended program components and provided direction to staff to return to the City Council with a Resolution for program implementation.

DISCUSSION

Based on direction from the City Council on November 2, the initial programs to be implemented with ARPA funding will focus on direct assistance to small business and lower income households in Clayton. Council directed staff to refine the program, dubbed “Clayton Cares,” based on the following direction:

- Allocating funds available from the First Tranche of ARPA funds totaling \$1,467,025 as follows:
 - Administrative costs estimated to be \$150,000
 - Clayton Cares program allocating the remaining funds as follows:
 - 75% to a Business/Non-Profit Loan/Grant program (~\$988,000), and
 - 25% to a Household Assistance program (~\$329,000)
- Develop a flat dollar amount loan/grant program based on anticipated numbers of potential businesses and households that would be eligible to apply for the funds
- Develop program guidelines consistent with ARPA requirements and streamline implementation
- Disburse funds as quickly as possible, with a preference to disburse funds before the end of 2021

The Clayton Cares program would provide supplementary assistance to businesses, non-profits and households primarily to supplement support already received by those entities through ARPA and/or the CARES Act that preceded ARPA.

Staff worked with Management Partners to develop program criteria and guidelines consistent with Council direction. Staff has identified the potential of approximately 300 small businesses and non-profit organizations that could likely be eligible for the business program, and an estimated 400 Clayton households that would be eligible under the criteria of annual income below 50% of the area median income (AMI) for Contra Costa County.

Developing dollar amounts based on an unknown number of businesses and households that might apply is challenging. Based on Management Partners’ research, some other agencies in California and in the Pacific Northwest are developing programs that provide funds on a “first-come, first-served” basis that is informed by the potential population eligible for such grants. Using this same approach would be consistent with Council direction and allow an opportunity for those most affected by the pandemic to take advantage of the Clayton Cares program.

Based on analysis, staff recommends that the Clayton Cares program have the components and parameters described below.

- Small Business and Non-Profit Support

- One-time cash assistance in the form of a no-interest forgivable loan of \$5,000 per eligible business.
 - Funds are provided on a first-come, first-served basis until a total of \$990,000 in funds are disbursed.
 - Business/non-profits qualify based on standards established by the Small Business Administration, demonstrated by gross receipts from 2019 tax returns greater than \$1,000 and less than \$2,500,000.
 - Business must have a primary physical address in incorporated Clayton city limits.
 - Business must have a Clayton Business License effective prior to March 3, 2021.
 - Requires documentation and attestation to adverse economic impacts.
 - Loan will be forgiven if the following criteria are met one year from the date of the initial disbursement of funds:
 - Business has an active business license with Clayton, and
 - Business demonstrates its continued physical presence in Clayton.
 - Application period would start on December 1, 2021 and would end on January 31, 2022
 - Disbursement of funds within 30 days of receipt of a completed application that meets the criteria for the program.
- Households
 - One-time cash assistance grant of \$1,500 for households making 50% or less of Contra Costa County area median income for 2020 based on household size, demonstrated by 2020 tax returns or other accepted documentation if no tax returns were filed.
 - Funds are provided on a first-come, first-served basis until a total of \$330,000 in funds are disbursed.
 - Requires attestation to adverse economic impacts due to the pandemic.
 - Household must have proof of residency in incorporated Clayton city limits prior to March 3, 2021 to date.
 - Application period would start on December 2, 2021 and would end on February 28, 2022.
 - Disbursement of funds within 30 days of receipt of a completed application that meets the criteria for the program.

Implementation of the program will require assistance from a combination of professional services and/or part-time staffing. Those costs will be included in the administrative costs associated with implementation of ARPA funds in the First Tranche.

The parameters recommended above would be consistent with ARPA compliance and reporting guidelines. The City will need to comply with evidence-based reporting requirements

issued by the Treasury Department for assistance provided to households and the business community. Management Partners is engaged to develop those reporting requirements as part of their contract with the City.

Staff will implement a communications/outreach program using a variety of sources such as social media, newsletters, flyers, the Clayton Pioneer, and outreach through organizations such as the Clayton Business and Community Association, the library, non-profit organizations, places of worship, senior living facilities, and physical bulletin boards at City facilities.

These programs will exhaust the funds from the First Tranche of the ARPA funds that the City receives. Staff will come back to Council in the Summer of 2022 after receipt of the Second Tranche to provide a report on the Clayton Cares program, and to develop additional programs and/or specified uses of any leftover funds from the First Tranche and funds from the Second Tranche.

FISCAL IMPACTS

The City of Clayton has been allocated \$2,934,049 under the ARPA. All funds must be encumbered by December 2024 and spent no later than December 2026. Any unspent funds must be returned to the federal government.

Adopting the attached resolution would appropriate the use of \$1,467,025 of the ARPA funds received in the First Tranche.

ATTACHMENTS

1. Resolution
2. Draft administrative documents for the Clayton Cares Business and Household programs
3. PowerPoint Presentation for 11/16/21 City Council Meeting

RESOLUTION NO. ##-2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON
APPROVING PROGRAM PARAMETERS FOR THE CLAYTON CARES
PROGRAM AND APPROPRIATING AMERICAN RESCUE PLAN ACT FUNDS
FOR IMPLEMENTATION**

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

WHEREAS, The American Rescue Plan Act of 2021 (ARPA) was signed by the President on March 11, 2021. Part of this package includes the Coronavirus State and Local Fiscal Recovery Fund (CSLFR), which provides approximately \$350 billion in new federal fiscal assistance for states, territories, tribes, counties, and municipalities;

WHEREAS, Clayton will receive approximately \$2.9 million in funding from the CSLFR to be spent in alignment with the requirements of the American Rescue Plan Act;

WHEREAS, Clayton has already received one half of the total funds allocated to the City; and

WHEREAS, the US Treasury Department is responsible for administration and distribution of CSLFR funds and issued its Interim Final Rule (31CFR Part 35, RIN 1505-AC77) (IFR) on May 10, 2021, along with its State and Local Fiscal Recovery Funds Compliance and Reporting Guidance (CRG) on June 24, 201, that establish the provisions for the use and reporting of CSLFR funds; and

WHEREAS, the CRG specifies valid Expenditure Categories (EC) for the reporting of expenditure of CSLFR funds; and

WHEREAS, the City Council of the City of Clayton finds that the first priority for expenditure of ARPA funds be focused on direct assistance to small businesses and households within the City of Clayton; and

WHEREAS, based on the City's priorities and its review of the IFR and CRG, the City is eligible to use the CSLFR funds to address the negative economic impacts of the pandemic by providing Small Business Economic Assistance – General (EC 2.9) and Household Assistance: Cash Transfers (EC 2.3); and

WHEREAS, administrative expenditures will be incurred by the City to directly administer CSLFR funds in the areas of Evaluation and Data Analysis (EC 7.2) and other Administrative Expenses (EC 7.1); and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Clayton, California, does hereby:

1. Establish the Clayton Cares Grant Program to provide direct assistance to Clayton small businesses, non-profits and households in compliance with the requirements of the American Rescue Plan Act;
2. Appropriates a total of \$1,467,025 in ARPA funds for establishment of the Program in the following categories:
 - a. Small Business Economic Assistance – General (EC 2.9) in the amount of \$988,000;
 - b. Household Assistance: Cash Transfers (EC 2.3) in the amount of \$329,000;
 - c. Evaluation and Data Analysis (EC 7.2) in the amount of \$25,000, and
 - d. Administrative Expenses (EC 7.1) in the amount of \$125,025;
3. Direct the City Manager or designee to develop the necessary administrative procedures to implement and report expenditure of such funds to the Treasury Department; and
4. Authorizes the City Manager to disburse such funds with appropriate, authorized signatures in advance of formal Council approval on a warrant register published at the next regularly scheduled City Council meeting after disbursement.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California, at a regular public meeting thereof held on the 16th day of November 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

Clayton Cares Forgivable Loan Opportunity

Business/Non-Profit Application Materials

The City of Clayton is providing a no-interest forgivable loan opportunity to assist with distributing American Rescue Plan Act (ARPA) direct cash assistance to Clayton businesses and non-profit organizations (herein referred to as “organizations”) experiencing financial difficulty due to the COVID-19 pandemic.

The following application is to determine eligibility and gather details for distribution of Coronavirus relief funds.

The City is offering one-time available cash assistance in the form of a forgivable loan of \$5,000 per qualifying organization. Forgivable loans are provided on a first-come, first-served basis. Those that qualify must have gross receipts from 2019 tax returns greater than \$1,000 and less than \$2,500,000 based on standards established by the Small Business Administration. Organization must have a primary physical address in incorporated Clayton city limits and must have a Clayton Business License effective prior to March 3, 2021.

The loan will be forgiven in full if the organization meets both of the following criteria one year after disbursement of the loan proceeds:

1. The organization retains a current physical address in the incorporated Clayton city limits; and
2. The organization has a current business license on file with the City.

If the organization fails to meet the forgiveness requirements, the loan is due and payable within 30 days thereof.

Once the completed application is submitted, we anticipate contacting you within 30 days. We may use your contact information for the following purposes: to contact you regarding your eligibility, to coordinate funds distribution, to discuss additional disbursements, or to follow up after funds are received to inquire about their impact.

If you have any questions or concerns, please contact the Clayton Cares team:

Email: ClaytonCares@claytonca.gov or

Phone: (925) 673-7300

Application Period: December 1, 2021 – January 31, 2022.

Forgivable loans are on a first-come, first-served basis and are accepted online through the City's website at www.claytonca.gov or during regular business hours at Clayton City Hall (6000 Heritage Trail, Clayton, CA 94517).

To complete this application, you will need to attach the following documentation:

1. 2019 Federal Tax Return; and
2. Copy of active Clayton Business License (if required based on city requirements) or official business registration with the California Secretary of State (if not required to have a city business license); and

Clayton Cares Forgivable Loan Opportunity

Business/Non-Profit Application Materials

3. Proof of physical address location in Clayton city limits (e.g., utility bill, letterhead).

Eligibility: An organization must have a physical address and operate in Clayton and satisfy the following criteria to be eligible to receive a forgivable loan:

1. Must meet the definition of an “eligible small business”. An “eligible small business” means (i) a “small business” (sole proprietor, independent contractor, 1099 work, and or registered “for-profit” business entity (e.g., C-corporation, S-corporation, limited liability company, partnership) that has yearly gross revenue of \$2.5 million or less (but at least \$1,000 in yearly gross revenue) based on most recently filed tax return) or (ii) a “small nonprofit” (registered 501(c)(3), 501(c)(19), or 501(c)(6) nonprofit entity having yearly gross revenue of \$2.5 million or less (but at least \$1,000 in yearly gross revenue) based on most recently filed Form 990)
2. Business must have a Clayton Business License effective prior to March 3, 2021.

Eligible Use of Funds: In accordance with Treasury regulations, the funds are expected to be used to reimburse those costs incurred due to business interruptions or business closures as a result of the COVID-19 pandemic, such as.

1. All employee expenses including payroll costs, health care benefits, paid sick, medical, or family leave, and insurance premiums
2. Working capital and overhead, including rent, utilities, mortgage principal and interest payments (excluding mortgage prepayments), and debt obligations (including principal and interest) incurred before March 1, 2020 (i.e., in order to be an eligible debt obligation, the loan agreement, promissory note, etc., as applicable, must have pre-dated the pandemic and been entered into before March 1, 2020)
3. Costs associated with re-opening business operations after being fully or partially closed due to state- or locally-mandated COVID-19 health and safety restrictions and business closures
4. Costs associated with complying with COVID-19 federal, state or local guidelines for reopening with required safety protocols, including but not limited to equipment, plexiglass barriers, outdoor dining, PPE supplies, testing, and employee training expenses
5. Any other COVID-19 related expenses not already covered (for the same period) through grants, forgivable loans or other relief through federal, state, county or city programs
6. Any other COVID-19 related costs that are not human resource expenses for the State share of Medicaid, employee bonuses, severance pay, taxes, legal settlements, personal expenses or other expenses unrelated to COVID-19 impacts, repairs from damages already covered by insurance, or reimbursement to donors for donated items or services

The Clayton Cares Team is committed to and recognizes the importance of protecting your privacy and personal information. All applications will be reviewed by members of the Clayton Cares Team. All personal information provided in your application will be kept confidential within the Clayton Cares Team.

The undersigned, constituting an authorized representative of the below-referenced applicant organization (the “Applicant”), acknowledges and agrees, on behalf of the Applicant, that the City of Clayton may rely on the below certifications in determining the Applicant’s eligibility for this opportunity.

Clayton Cares Forgivable Loan Opportunity

Business/Non-Profit Application Materials

The undersigned further acknowledges and agrees that if (i) any of the following certifications are untrue, (ii) the Applicant knowingly makes any false or misleading statement or material omission in the information or materials required or requested from the Applicant, or (iii) the Applicant uses any funds for any unauthorized purpose, Clayton Cares may require the Applicant to repay such funds or take any other legal or equitable recourse available, including, without limitation, by seeking remedies for fraud.

By executing this document, the Applicant hereby certifies to all of the following (please initial next to each of the certifications below):

___ 1. The undersigned signatory is a duly authorized representative and owner of the Applicant and has full authority to make the certifications referenced herein on the Applicant's behalf.

___ 2. The Applicant is currently an active business/non-profit. The Applicant acknowledges and agrees that if the Applicant receives a loan and the Applicant's organization ceases to operate one year from the date of the initial disbursement of funds, the Applicant may be subject to return of all or any portion of such loan.

___ 3. The Applicant has a primary physical address in incorporated Clayton city limits and, subject to the certification made in (2), above, is presently operating in the city of Clayton. Applicant acknowledges and agrees that if the Applicant receives a loan and the Applicant's organization ceases to operate within Clayton city limits one year from the date of the initial disbursement of funds, the Applicant may be subject to return of all or any portion of such loan.

___ 4. The Applicant's business has been adversely impacted by COVID-19 and the health and safety restrictions have resulted in business interruptions, business closures, or similar impacts incurred as a result of the COVID-19 pandemic, making the loan request made in the Applicant's application necessary to support the ongoing operations of the Applicant.

___ 7. The Applicant has not and will not apply for or receive any other loan through or under this program. Further, no majority owner of the Applicant has applied for or received, nor will any majority owner of the Applicant apply for or receive, any other loan through or under this program on behalf of any other business for which such person is also a majority owner. The undersigned hereby represents and warrants, as the owner of the Applicant, that the Applicant is the undersigned's eligible business with the highest gross revenue. The Applicant agrees that if a second award is issued, then one or both awards will be voidable at the discretion of the City of Clayton.

___ 8. The undersigned, on behalf of the Applicant, hereby authorizes the City of Clayton and its designated authorized representatives to request access to, and to review, the Applicant, the Applicant's tax return information and other information related to the Applicant and its owners that may be requested by such representatives. The Applicant further affirms that the tax return information provided in connection with this program is identical to the tax return information submitted to the Internal Revenue Service.

Clayton Cares Forgivable Loan Opportunity

Business/Non-Profit Application Materials

___ 9. Any and all information provided by or on behalf of the Applicant, including without limitation the information contained in the Applicant's loan application submitted and any and all information provided in support of Applicant's application is and will be true and accurate in all material respects.

___ 10. The Applicant acknowledges that the City of Clayton is relying upon the certifications made in this document in addition to any other certifications made by the Applicant in connection with its application for the loan. The Applicant further acknowledges and agrees that all certifications made by the Applicant are made in good faith.

Print Name	
Signature	
Email Address	
Applicant Business Name	
Applicant Business Address	
Applicant Business Tax ID	
Applicant Business License Number	
Date	

Has your business been negatively impacted (closed temporarily) as a result of the COVID-19 public health emergency? YES ☐ NO ☐

Was or has your business been partially closed as a result of the COVID-19 public health emergency? YES ☐ NO ☐

Has your business closed indoor services voluntarily to prevent COVID-19 spread? YES ☐ NO ☐

Please attach copies of the documentation listed on page one to this application and submit by January 31, 2022. Please note, this opportunity is available on a first-come, first-served basis.

The City of Clayton is providing a grant opportunity to assist with distributing American Rescue Plan Act (ARPA) direct cash assistance to Clayton households hardest hit by the Coronavirus pandemic and experiencing financial difficulty.

The following application is to determine eligibility and gather details for distribution of American Rescue Plan Act (ARPA) funds. **The city is offering one-time available cash assistance of \$1,500 per household.** You must be 18 years of age or older to apply. Only residents within the Clayton city limits with 2020 household income below 50% of Contra Costa County area median income (see table below) are eligible to apply.

Persons per Household	Income Limit
1	\$47,950
2	\$54,800
3	\$61,650
4	\$68,500
5	\$74,000
6	\$79,500
7	\$84,950
8	\$90,450

Once the complete application is submitted, we anticipate contacting you within 30 days. We may use your contact information for the following purposes: to contact you regarding your eligibility, to coordinate funds distribution, to discuss additional disbursements, or to follow up after funds are received to inquire about their impact.

If you have any questions or concerns, please contact the Clayton Cares team:

Email: ClaytonCares@claytonca.gov or
Phone: (925) 673-7300

Application Period: December 1, 2021 – February 28, 2022.

Grants are on a first-come, first-served basis and are accepted online through the City's website at <http://www.claytonca.gov> or during regular business hours at Clayton City Hall (6000 Heritage Trail, Clayton, CA 94517).

To complete this application, you will need to attach the following:

- 1. Proof of your physical address in the city of Clayton** (Picture or PDF only) may include one or more of the following:
 - Rental or lease agreement with the signature of the owner/landlord
 - Deed or title to residential property
 - Mortgage bill
 - Home utility bill (water bill, power bill, cellular phone bill, etc.)
 - Medical or employee documents
- 2. Proof of your and other household members' income** for the calendar year 2020, which may include one or more of the following:
 - 2020 Federal Tax Return
 - W2, 1099-SSA, or other tax forms received from income sources

Other accepted forms of income verification include:

- Earnings statement on a payroll stub
- Bank statement
- 1099 form
- Benefit award letter
- Retirement benefit letter

The Clayton Cares Team is committed to and recognizes the importance of protecting your privacy and personal information. All applications will be reviewed by members of the Clayton Cares Team and all personal information provided in your application will be kept confidential.

The undersigned (the “Applicant”) acknowledges and agrees that Clayton Cares may rely on the below certifications in determining the Applicant’s eligibility for the grant opportunity.

The undersigned further acknowledges and agrees that if (i) any of the following certifications are untrue or (ii) the Applicant knowingly makes any false or misleading statement or material omission in the information or materials required or requested from the Applicant, Clayton Cares may require the Applicant to repay such grant funds or take any other legal or equitable recourse available, including, without limitation, by seeking remedies for fraud.

- Individuals and households (18 years or older) that reside in the city of Clayton, who have been adversely impacted by the pandemic, and who meet income requirements are encouraged to apply for this direct cash funding support.
- To meet income qualifications, households must make 50% or less of area median income (AMI)

By executing this document, the Applicant hereby certifies to all of the following (please initial next to each of the certifications below):

- ___ 1. The undersigned signatory is 18 years or older.
- ___ 2. The Applicant resides within incorporated Clayton city limits.
- ___ 3. The Applicant attests to suffering adverse economic impacts by the COVID-19 pandemic.
- ___ 4. The Applicant hereby authorizes the Clayton Cares and its designated authorized representatives to request access to, and to review, Applicant’s proof of income and other information related to the Applicant.
- ___ 5. Any and all information provided by or on behalf of the Applicant, including without limitation the information contained in the Applicant’s grant application submitted and any and all information provided in support of Applicant’s application is and will be true and accurate in all material respects.
- ___ 6. The Applicant acknowledges that Clayton Cares is relying upon the certifications made in this document in addition to any other certifications made by the Applicant in connection with its application for the grant opportunity. The Applicant further acknowledges and agrees that all certifications made by the Applicant are made in good faith.

Print Name	
Signature	
Email Address	
Residential Address	
Date	

Please attach copies of the documentation listed on page one to this application and submit by February 28, 2022. Please note, this opportunity is available on a first-come, first-served basis.





American Rescue Plan Act (ARPA) Policy Assistance and Plan Development

City Council Presentation

November 16, 2021

Dan Keen, Partner
Steve Toler, Partner



Council Direction on November 2 – 1st Tranche



- Business Program

- Allocation of 75% of ARPA 1st Tranche net of estimated administrative costs
- March 3, 2021 had to be in business
- Small Business Administration criteria
- Flat amount (\$5,000)



- Household Program

- Allocation of 25% of ARPA 1st Tranche net of estimated administrative costs
- March 3, 2021 had to be a Clayton resident
- Flat amount (\$1,500)
- Household income of no more than 50% AMI 2020 tax return



Business Loan/Grant Program – 1st Tranche

- **Criteria**
 - Business with primary physical address in incorporated Clayton city limits
 - Active business license as of 3/3/2021
 - Gross receipts in 2019 (or 2020 if business started after 12/31/2019) greater than \$1,000 and less than \$2,500,000
- **Forgivable Loan**
 - Forgivable loan, no interest, loan term one year from date of issuance
 - Forgiven one year from date of grant if:
 - Business has active business license with Clayton
 - Business demonstrates physical presence in Clayton
 - Due and payable within 60 days of end of loan period if unable to demonstrate forgiveness criteria within 30 days of loan term
- **Application Period**
 - Start: December 1, 2021
 - End: January 31, 2022
- **Disbursement Date**
 - Within 30 days of receipt of completed application
- **Total Pool of Funds Available**
 - Allocation of ARPA Funds based on:
 - ARPA 1st Tranche of \$1,317,000
 - Administrative costs of \$150,000
 - 75% of net ARPA Funds after administrative costs
 - Total Pool - \$988,000
- **Loan/Grant Amount**
 - Flat amount of \$5,000
 - First-come, first-served based on completed application

Household Grant Program – 1st Tranche

- Criteria

- Home address in incorporated Clayton city limits
- Household income (demonstrated by tax return or other accepted documentation) in 2020 less than 50% of area median income (see chart)

Persons per Household	Income Limit
1	\$47,950
2	\$54,800
3	\$61,650
4	\$68,500
5	\$74,000
6	\$79,500
7	\$84,950
8	\$90,450

- Grant

- One-time grant to eligible households

- Application Period

- Start: December 1, 2021
- End: February 28, 2022

- Disbursement Date

- Within 30 days of completed application

- Total Pool of Funds Available

- Allocation of ARPA Funds based on:
 - ARPA 1st Tranche of \$1,317,000
 - Administrative costs of \$150,000
 - 25% of net ARPA Funds after administrative costs
- Total Pool - \$329,000

- **Grant Amount**

- One-time grant of \$1,500 per qualified household
- First-come, first-served based on completed application

Application Forms



Application forms for each opportunity have been drafted



Application forms require an attestation of need and attachments demonstrating criteria are met

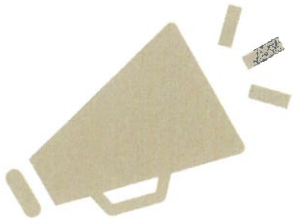


Completed applications will be accepted at City Hall during regular business hours



Outreach Plan

- Clayton will get the word out using a combination of print and digital outreach at locations such as:
 - Library
 - Non-profits and places of worship
 - Diamond Terrace apartments
 - Clayton Business and Community Association
 - Physical bulletin boards at city facilities
 - Clayton social media accounts
 - Clayton Pioneer



facebook



City of Clayton,
California
@CityofClaytonCA

ARPA 2nd Tranche

- Separate Council resolution will be drafted and approved after completion of 1st Tranche programs (July 2022)
- Potential uses:
 - Business program – extension of existing program
 - City infrastructure projects
 - City Hall HVAC
 - Stormwater-related unfunded infrastructure projects
 - Downtown economic revitalization
 - City pandemic protection (e.g., PPE, sanitization, physical distancing)

Questions?



Dan Keen | dkeen@managementpartners.com
Steve Toler | stoler@managementpartners.com

CITY OF CLAYTON
Founded 1857 Incorporated 1964





AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Reina J. Schwartz, City Manager

DATE: November 16, 2021

SUBJECT: A Resolution of the City Council of the City of Clayton Electing to Become Subject to the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.) and Waive First Reading and Introduce an Ordinance Establishing Bidding Procedures in Accordance with the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.)

RECOMMENDATION

Adopt a Resolution of the City Council of the City of Clayton Electing to Become Subject to the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.) and Waive First Reading and Introduce an Ordinance Establishing Bidding Procedures in Accordance with the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.)

BACKGROUND

Other than a minor update in 2020, the City of Clayton's purchasing guidelines have been in place since 2004 and are in need of updating. One area in particular where updating the purchasing guidelines would result in improved administrative efficiencies and more timely service delivery is with respect to public works projects. As a General Law city (rather than a Charter City), Clayton is subject to strict competitive bidding laws with respect to public works projects. Under those current laws, any public works project over \$5,000 requires strict competitive bidding involving publication of notice inviting bids and award to the lowest responsible bidder submitting a responsive bid.

DISCUSSION

To streamline purchasing options, the State enacted the Uniform Public Construction Cost Accounting Act ("Act") (Pub. Contract Code § 22000 et seq.) which offers an alternative to

traditional bidding. Generally, the Act raises bidding thresholds for local agencies relative to their normally applicable bidding threshold.

Pursuant to the Act, there are three different types of contracts:

1. Small Contracts: Contracts equal to or less than \$60,000
2. Medium Contracts: Contracts between \$60,000 and \$200,000
3. Large Contracts: Contracts over \$200,000

Small Contracts are not subject to strict competitive bidding and may be done via any alternative means (i.e., via negotiated contract, force account (i.e., city staff), competitive quotes, etc. (Pub. Contract Code § 22032(a).) This is the primary benefit to adopting the Act, as it allows the City to contract for public works equal to or less than \$60,000 via a simplified process thereby significantly increasing purchasing flexibility and efficiency and authorizes the City Manager to execute the Small Project contracts up to the \$60,000 limit.

The existing \$5,000 bidding threshold applicable to the City is not conducive to promoting the City's general goal of maintaining efficiency and cost-effectiveness in contracting. Based on increased construction costs, labor and material shortages and an overabundance of public works projects in the Bay Area, it is very difficult to attract quality contractors to bid on very small dollar projects and in particular those projects at or just exceeding the existing \$5,000 bidding threshold. Opting into the Act will provide the City much greater flexibility and increased interest from contractors for the City's smaller projects at or below the \$60,000 bid threshold – this in turn will result in better overall contractor quality and pricing.

The informal bid procedures apply to public works projects between \$60,000 and \$200,000, and the formal bid procedures apply to public works projects in excess of \$200,000. The informal and formal bidding process are both strict competitive sealed bid processes where award is made to the lowest responsible bidder submitting a responsive bid. The only substantive difference between informal and formal bidding is the solicitation process (i.e., informal bidder list or construction trade journals versus construction trade journals and newspaper).

The California Uniform Construction Cost Accounting Commission publishes a Cost Accounting Policies and Procedures Manual that sets forth some basic guidelines regarding the construction accounting procedures that participating agencies are required to comply with. However, most of these guidelines defer to a local agency's own accounting procedures provided those procedures provide a reasonable method of accounting for costs during the construction of a public work of improvement.

In order to opt in to the Act, the attached Resolution and Ordinance must be adopted by the City Council. It is anticipated that additional updates to the City's Purchasing Guidelines will be brought to City Council early in 2022 to further modernize, streamline and improve the efficiency of city purchasing.

FISCAL IMPACTS

There is no direct financial cost if the City opts into the Act, and there may be administrative benefits and cost savings realized from opting in as noted above.

ATTACHMENTS

1. Resolution Opting in to the Uniform Public Construction Cost Accounting Act
2. Ordinance Establishing Bidding Procedures in Accordance with the Uniform Public Construction Cost Accounting Act

RESOLUTION NO. ##-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON ELECTING TO BECOME SUBJECT TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (PUBLIC CONTRACT CODE SECTION 22000 ET SEQ.)

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chap. 1054 Stats. 1983, which added Chapter 2 commencing with Section 22000 to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies;

WHEREAS, the Uniform Public Construction Cost Accounting Act (the "Act"), codified at Public Contract Code Section 22000 *et seq.*, establishes such a uniform cost accounting standard;

WHEREAS, the California Uniform Construction Cost Accounting Commission ("Commission") established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public works projects;

WHEREAS, the City Council of the City of Clayton ("City") desires to adopt and implement the uniform public construction cost accounting procedures as set forth in the Act; and

WHEREAS, the adoption of these procedures is in the best interests of the City and in the public interest.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Clayton, California does hereby resolve as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Election to Become Subject to the Act. On behalf of the City, the City Council hereby elects under Public Contract Code Section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs the City Clerk notify the State Controller forthwith of this election.

Section 3. Effective Date of Resolution. This Resolution shall become effective upon the effective date of the City Council's ordinance implementing the Act.

PASSED AND ADOPTED by the Clayton City Council, State of California, on this 16th day of November 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

ORDINANCE NO. ____

ORDINANCE ESTABLISHING BIDDING PROCEDURES IN ACCORDANCE WITH
THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (PUBLIC
CONTRACT CODE SECTION 22000 ET SEQ.)

THE CITY COUNCIL
City of Clayton, California

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

WHEREAS, on November 16, 2021, the City of Clayton ("City") elected to become subject to the Uniform Public Construction Cost Accounting Act ("Act"); and

WHEREAS, the Act requires participating agencies to adopt a bidding ordinance consistent with the bidding requirements under the Act.

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

1. **Section 1. Recitals.** The above recitals are true and correct and are hereby incorporated into this Ordinance.
2. **Section 2. Amendment.** Section 3.10.060 is hereby added to the Clayton Municipal Code to read in full as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.
3. **Section 3. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.
3. **Section 4. Effective Date and Publication.** The City Clerk shall certify to the adoption of this Ordinance, and the City Clerk shall, within fifteen (15) days of its adoption, cause this Ordinance to be posted or published in a newspaper of general circulation published and circulated in the jurisdiction of the City of Clayton. This Ordinance shall take effect thirty (30) days following its adoption.

PASSED AND ADOPTED by the City Council of the City of Clayton at a regular public meeting this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

Exhibit “A”

CHAPTER 3.10 – PURCHASING POLICES AND PROCEDURES

3.10.060 – Uniform Public Construction Cost Accounting Act.

A. Definitions. For the purposes of this enabling ordinance for the Uniform Public Construction Cost Accounting Act, the following words and phrases shall have the following meanings:

1. “Act” means the Uniform Public Construction Cost Accounting Act (California Public Contracts Code Section 22000 *et seq.*).
2. “City” means the City of Clayton.
3. “Commission” means the California Uniform Construction Cost Accounting Commission.
4. “Public project” has the meaning assigned to it under Public Contract Code Section 22002, as it may be amended from time to time.

B. Public Project Contracting Procedures. The City shall follow the contracting procedures set forth in Article 3 of the Act (Public Contract Code Section 22030 *et seq.*).

C. Contractors List. The City Manager, or his or her designee, shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of the Act and the criteria promulgated, from time to time, by the Commission.

D. Informal Bidding.

1. When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows except where the product or service is proprietary:
 - a. Notice shall be sent to all contractors on the contractors list for the category of work being bid or notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Contra Costa County; and
 - b. Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.
2. If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors in accordance with Public Contract Code section 3400 *et seq.*

3. All mailing of notices to contractors and/or construction trade journals shall be completed not less than ten days before bids are due.
4. The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

E. Formal Bidding.

1. When a public project is to be performed which qualifies for formal bidding, notice of such project shall be given as follows except where the product or service is proprietary:
 - a. Notice shall be given to all construction trade journals specified by the Commission for the receipt of such notice for Contra Costa County and notice shall be published in a newspaper of general circulation printed and published or circulated in the City; and
 - b. Additional notice to other contractors and/or trade journals may, in the discretion of the City, be given.
2. If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors in accordance with Public Contract Code section 3400 *et seq.*
3. All notices to construction trade journals shall be completed not less than fifteen days before bids are due. All notices shall be published in a newspaper of general circulation not less than fourteen days before bids are due.
4. The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

F. Award of Contracts. The City Manager is authorized to award contracts for public projects of \$60,000 or less. The City Council shall award all contracts in excess of \$60,000.

G. Rejection of Bids. The City Manager or the City Council, as the case may be, may, in the City Manager's or City Council's discretion, reject all bids and proceed as authorized by the Act.

H. Emergencies. Emergency work shall be contracted for in accordance with Public Contract Code Sections 22035 and 22050.