



# **AGENDA**

## **REGULAR MEETING**

\* \* \*

## **CLAYTON CITY COUNCIL**

\* \* \*

**TUESDAY, May 5, 2015**

**7:00 P.M.**

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

**Mayor:** David T. Shuey  
**Vice Mayor:** Howard Geller

### **Council Members**

Jim Diaz  
Keith Haydon  
Julie K. Pierce

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

# **\* CITY COUNCIL \***

**May 5, 2015**

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

2. **PLEDGE OF ALLEGIANCE** – led by Mayor Shuey.

3. **CONSENT CALENDAR**

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

- (a) Approve the minutes of the regular meeting of April 21, 2015. ([View Here](#))
- (b) Approve Financial Demands and Obligations of the City. ([View Here](#))
- (c) Adopt a Resolution directing the preparation of an Engineer's Report for calculation of the real property tax assessments in FY 2015-16 for the Diablo Estates at Clayton Benefit Assessment District (BAD). ([View Here](#))
- (d) Adopt a Resolution approving Addendum No. 1 to the base Memorandum of Agreement with the Clayton Police Officers' Association effective May 5, 2015 through June 30, 2015, unless replaced sooner by mutual agreement. ([View Here](#))

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Certificate of Recognition to John Blatter, Troop 492, Muir District, Mt. Diablo Silverado Council of the Boy Scouts of America, for his Eagle Scout Project construction and installation of a shade structure in the Clayton Dog Park. ([View Here](#))
- (b) Certificates of Recognition to "Do The Right Thing" public school students selected for exemplifying the character trait of "Integrity" during the months of March and April 2015. ([View Here](#))
- (c) Kickoff of Clayton's Certified Farmers' Market for 2015  
"Opening Day" is Saturday, May 9<sup>th</sup> (8:00 am – Noon each Saturday on Diablo Street)  
(Jessica Millender, Regional Manager, Pacific Coast Farmers' Market Association) ([View Here](#))

**5. REPORTS**

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.
- (e) Other

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

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

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

**7. PUBLIC HEARINGS - None.**

**8. ACTION ITEMS**

- (a) Consider the adoption of a Resolution awarding low-bid contract to MCK Services, Inc. in the amount of \$867,373.21 for construction of the 2015-16 Neighborhood Street Pavement Rehabilitation Project (CIP No. 10424). (City Engineer) ([View Here](#))

Staff recommendation: Following staff report and opportunity for public comment, that Council adopt the Resolution awarding the contract for performance of the City's 2015-16 Neighborhood Street Pavement Rehabilitation Project (CIP No. 10424) and ordering the transfer of \$28,000 from CIP No. 10394A to this Project.

- (b) Consider Resolutions (3) authorizing participation in the State of California Property Assessed Clean Energy (PACE) Programs within the city of Clayton, consisting of the CaliforniaFirst, the Figtree, and the HERO Programs. ([View Here](#))

Staff recommendation: Following staff report and discussion of the State of California Property Assessed Clean Energy (PACE) Programs for the City of Clayton, that Council receive public comments and then adopt each of the 3 prepared Resolutions allowing implementation of the CaliforniaFirst, the Figtree, and the HERO Programs within the municipal limits of Clayton.

- (c) Continued discussion of current land use designation(s) for ground floor land uses and alternative(s) for possible amendments to the City’s General Plan, Zoning Code, and/or Town Center Specific Plan concerning public and privately-owned real properties in the Clayton Town Center (downtown). ([View Here](#)) (City Council; City Manager)

Staff recommendation: Following City Council discussion and opportunity for public comment, the City Council provide general policy direction regarding the City’s existing ground floor land use designations of public and privately-owned real properties in the Clayton Town Center (downtown).

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

10. **CLOSED SESSION**

- (a) *Government Code Section 54957.6*, Conference with Labor Negotiator  
Instructions to City-designated labor negotiator: City Manager  
Employee Organization: Clayton Police Officers’ Association (CPOA)

Report Out from Closed Session: Mayor Shuey

11. **ADJOURNMENT**– the next regularly scheduled City Council meeting is May 19, 2015.

# # # # #

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

TUESDAY, April 21, 2015

1. **CALL TO ORDER & ROLL CALL** – With a quorum present, the meeting was called to order at 7:01 p.m. by Councilmember Pierce in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Shuey (arrived at 7:20 p.m.) and Councilmembers Diaz, Haydon and Pierce. Councilmembers absent: Vice Mayor Geller. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Clerk/HR Manager Janet Brown, and Community Development Director Charlie Mullen.
  
2. **PLEDGE OF ALLEGIANCE** – led by Councilmember Pierce.
  
3. **CONSENT CALENDAR**

It was moved by Councilmember Haydon, seconded by Councilmember Diaz, to approve the Consent Calendar as submitted. (Passed; 3-0 vote).

  - (a) Approved the minutes of the regular meeting of April 7, 2015.
  - (b) Approved Financial Demands and Obligations of the City.
  - (c) Accepted the City's Investment Portfolio Report for Third Quarter of FY 2014-15, ending March 31, 2015.
  - (d) Adopted Resolution No. 10-2015 approving an amended City Investment Policy to add federal agency notes as an investment option.
  - (e) Adopted Resolution No. 11-2015 approving and adopting an update to the City of Clayton Standard Specifications (dated March 2015) concerning the construction of public improvements, and authorization to post it on the City's website.
  - (f) Adopted Resolution No. 12-2015 approving a covenant, and the recordation thereof, with Lester Ipsen, Jr. for the perpetual maintenance of stormwater treatment facilities on real property located at 6024 and 6062 Main Street (APNs 119-013-003 and 119-013-004; dba Skipolini's Pizza).
  
4. **RECOGNITIONS AND PRESENTATIONS**
  - (a) Presentation of its Annual Report for 2014 by Joyce Atkinson, President of the Clayton Community Library Foundation.

Joyce Atkinson presented the 2014 Annual Report of the Clayton Community Library Foundation highlighting: the recent Spring Used Book Sale brought in a profit of \$7,439.49; in-library service hours totaling 6,450.16 hours provided by volunteers for daily needs and special events valued at \$169,897.21; Boy Scout Troop 484 assistance with physical tasks; Clayton Valley Garden Club maintenance of flower boxes and garden areas; the nineteenth Birthday Celebration of the Clayton Community Library; local second grade classes visited the library and students received their first library cards; Clayton Community Library Foundation generated income of \$48,183.45 from a variety of sources in 2014.

Members of the City Council expressed their appreciation for the wonderful works by the Clayton Community Library Foundation supporting the operation and existence of the library.

- (b) Proclamation declaring the week of April 20<sup>th</sup> – 24<sup>th</sup>, 2015 as “Clayton Community Library Volunteer Recognition Week,” and recognition of Clayton’s “Library Volunteers of the Year.”

Councilmember Pierce read the Proclamation declaring the week of April 20<sup>th</sup> – 24<sup>th</sup>, 2015 as “Clayton Community Library Volunteer Recognition Week. She presented Certificates of Recognition to “Library Volunteers of the Year” David Atkinson, Carol Wolfe, Joyce Atkinson, Jeanne Boyd, and Yola Liang who were present; she further acknowledged volunteers Diana Bauer, Carolyn McCombs, Clare Rogers, Larry Rogers, Louise Wall, Marnie Malcom, and Ted Holmsen for their many years of service to the Clayton Community Library.

(Mayor Shuey arrived)

## 5. REPORTS

- (a) Planning Commission – Commissioner Gregg Manning reported on its meeting of March 14, 2015: the Commission considered the State of California Property Assessed Clean Energy (PACE) programs for the City of Clayton consisting of the CaliforniaFirst, Figtree, and HERO programs, and recommends them to the City Council on a 4-0-1 vote (one Commissioner abstained).

Commissioner Gregg Manning also provided a brief report from his meeting at the Contra Costa County Connection where he serves as Clayton’s delegate (CCCTA). Its draft budget was approved for filing in compliance with Transportation Development Act. He noted CCCTA’s intent of a 10 percent fare increase, of which 2 percent covers staff wages that have been frozen for some time.

Mayor Shuey asked if the usage of Route 10, Marsh Creek/Clayton to Concord BART, is still reflecting numbers needed to continue this service. Mr. Manning advised Route 10 is the most used route in the Contra Costa County Connection system and more seniors are taking advantage of ride free time (10:00 a.m. to 2:00 p.m.), which has resulted in less transportation needs from paratransit.

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

- (c) City Manager/Staff – City Manager Gary Napper noted the PACE programs will be brought to the Clayton City Council at its May 5<sup>th</sup> meeting; however, the City has no control over closing costs and terms of contracts its citizen may choose to enter into with the PACE companies.

Mr. Napper mentioned that as the water drought continues, the State of California and Governor Brown continue to refine its per capita mandatory water use reductions for application statewide. Past water consumption will now be measured by a tiered metric system of 1-9, the highest water use tier being No. 9. The Contra Costa Water District serving Clayton was placed into Tier 7, bumping its earlier 25% reduction mandate to a 28% reduction for residential water usage. Commercial businesses, such as City of Clayton, could now be bumped from its earlier 40% reduction to a probable 43% water usage reduction.

Based on the severity of a 43% potable water reduction, he has ordered public drinking fountains at all City parks turned off due to volume usage and the potential for misuse and commodity theft, noting no state law requires a city to provide public drinking water in parks. He referenced public schools typically shut off exterior drinking fountains during school breaks and summer recess for similar reasons of water waste and misuse. City turf and public landscape watering must be two days per week. Public restrooms in the parks will remain open.

He added the City of San Juan Capistrano was recently sued for charging ever-increasing water rates when higher water quantities are used to further encourage water conservation; a state appellate court just ruled such practice is unconstitutional under Prop 218. This decision could complicate the State's and water purveyors' plans to employ such water rate practices to obtain the mandated water use reductions.

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

Councilmember Diaz attended the League of California Cities' Public Safety Policy Committee discussing peace officers use of body cameras.

Councilmember Haydon continues to walk the City trails and is impressed by the number of community members' use of the Trail System and the Clayton Dog Park. He is also preparing for Clayton Cleans Up event this Saturday, April 25, 2015 and encourages the community to come and help out.

Councilmember Pierce attended meetings of the California Association of Councils of Government, the Metropolitan Transportation Commission, the Contra Costa Transportation Authority and the Central County TRANSPAC. She also opened the Street Smarts/CHP Teen driving program at Clayton Valley Charter High School.

Mayor Shuey advised the Clayton City Council continues to monitor the happenings at Clayton Valley Charter High School and encourages the community, should they have any questions, to please feel free to approach any Clayton Councilmember as they are here to help. He was also pleased to

announce the Clayton Valley Charter High School graduation numbers are on the rise, and applications are being accepted for a community member opening on the Clayton Valley Charter High School Governing Board with a deadline of April 30.

- (e) Other – None.

## 6. **PUBLIC COMMENT ON NON - AGENDA ITEMS**

Tamara Steiner announced the Clayton Cleans Up! event is scheduled Saturday, April 25<sup>th</sup>, 9:00 a.m., rain or shine, followed by a BBQ at the City Hall courtyard. She also noted this year's t-shirts were designed by one of the local artists from the recent Clayton Library Creekside Art event.

Mayor Shuey asked if location maps will be available for participants and if the drop-off area for trash collected will still be at the trailheads? The replies were "Yes" to both questions.

Councilmember Pierce added there will be a lot of good information booths in the City Hall courtyard, including Clayton Emergency Response Team (CERT), and she encouraged people to take advantage of those opportunities.

- 7. **PUBLIC HEARINGS** – None.

## 8. **ACTION ITEMS**

- (a) Discussion of current land use designation(s) for ground floor land uses and alternative(s) for possible amendments to the City's General Plan, Zoning Code, and/or Town Center Specific Plan regarding public and privately-owned real properties in the Clayton Town Center (downtown).

City Manager Napper referred the City Council to the displayed property owner map of the downtown area; the City owns several properties in the downtown with several marketed for sale. One of the vacant properties is approximately 1.67 acres acquired by the City in April 2013 from the Clayton Community Church. The other property consists of 3 smaller parcels which is a fully-entitled City-approved development project known as "Creekside Terrace". The properties have been listed exclusively with Transwestern for approximately 1 year with a recently approved listing extension to January 2, 2016. Transwestern created and developed a marketing plan, has outreached to numerous retail commercial enterprises or developers, and brought two interested developers to meet with the Council Sub-Committee on Economic Development and City staff. Mr. Napper advised both developers submitted property offers but their proposed land uses did not entail a full retail commercial use on the ground floor; each contained a dominant component of residential units.

Mr. Napper then invited Ed Del Beccaro, Managing Director for Transwestern to provide a more detailed update on the progress of the property listings.

Mayor Shuey thanked Transwestern, Ed Del Beccaro, and his staff for all the effort in generating interest with the City's property listings in downtown Clayton.

Mr. Del Beccaro, Managing Director for Transwestern, thanked the City Council for extending the list contract. He indicated Transwestern's proactive marketing efforts of the City's real properties were transmitted to approximately 675-700 distinct retailers, including Trader Joe's, extolling the existing downtown's amenities such as the new Bocce Ball Courts which he rated as a 5+ addition. Mr. Del Beccaro has found developers consider the Clayton demographics appealing; however the demographics are just not dense enough to attract the desired retail business. For example, Trader Joe's would need to earn \$2,500.00 per square foot in retail sales per month to cover overhead operating costs and it is likely the Clayton market would yield \$450 per sq. ft. Mr. Del Beccaro noted the nearby vacancies at Village Square and Flora Square also give a negative draw to prospective developers.

Mr. Del Beccaro rhetorically asked "How do you get some new development", and "How do you have other uses to subsidize the retail amenity?" One idea is to allow other uses on the City's sites to stimulate retail, retail becoming the perk, not the driver. Another idea is to consider the existing restaurant trade by allowing the opportunity, for example, for ground floor commercial office users like real estate agents or bankers to have a place to have lunch nearby. However, the restaurant trade downfall is lunch crowds do not generate enough revenue to survive. Some parcels should allow commercial offices along with some other retailers or allowing some mixed use residential would be beneficial. He suggested the City offer some relaxation of uses on the ground floor, some mixed residential use, to get things moving in the downtown.

Mayor Shuey noted some of the numbers presented this evening are discouraging.

Mayor Shuey opened the item to receive public comments; no public comments were offered. Mayor Shuey noted that Vice Mayor Geller was not able to attend the meeting and requested that any policy direction be continued to a later date.

Councilmember Pierce indicated she supports the City re-engaging the community to dialogue about our Town Center Specific Plan established in 1990. At that time there was approximately a year and a half of meetings with the community; with all the work that went into that specific plan, if changes are going to be considered a similar process should occur. If done properly, it can be beneficial and a good way to get the community involved in the future of development in downtown Clayton. Councilmember Pierce advised a process needs to be established with potential uses, procedures and study sessions with the expertise of a consultant and the Planning Commission.

Councilmember Diaz supports community input in this very crucial decision-making process and the valuable input of the Planning Commission.

Councilmember Haydon advised when the Town Center Specific Plan was in discussions, Oakhurst was in development and people thought things would

boom. Since that time, the economy has changed and it is time to re-consider the designated uses in the downtown area of Clayton with community input.

Mayor Shuey added there were two intriguing offers on the City's real property but noted the importance of making the right decision for the community. If the designations can be updated that may generate additional interest.

**It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to continue this item to its regular meeting on May 5, 2015. (Passed; 4-0 vote).**

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION**

- (a) *Government Code Section 54957.6*, Conference with Labor Negotiator.  
Instructions to City-designated labor negotiator: City Manager  
Employee Organization: Clayton Police Officers' Association (CPOA)

On announcement by Mayor Shuey, the City Council went into Closes Session for the purpose noted at 8:37 p.m.

Report Out from Closed Session (8:52 p.m.): Mayor Shuey reported the City Council received information from its negotiator and gave general direction to staff.

11. **ADJOURNMENT**– on call by Mayor Shuey, the City Council adjourned its meeting at 8:53 p.m. in memory of Wil Barnes, a Clayton resident and the father of Councilmember Julie Pierce, who passed away on April 16, 2015.

The next regularly scheduled City Council meeting is May 5, 2015.

# # # # #

Respectfully submitted,

---

Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL

---

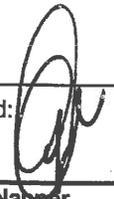
David T. Shuey, Mayor

# # # # #



Agenda Date 5/ 5/2015

Agenda Item: 3b

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

# STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS  
FROM: Kevin Mizuno, FINANCE MANAGER  
DATE: 5/15/2015  
SUBJECT: FINANCIAL OBLIGATIONS

---

## RECOMMENDATION:

Approve the following Invoices:

5/1/2015 Cash Requirements	\$ 3,804,052.80
4/28/2015 Payroll, PPE 4/26/15, Pay 4/29/15	\$ 78,594.14

Total \$ 3,882,646.94

### Attachments:

Cash Requirements Report dated 5/1/2015 (4 pages)  
ADP Report Week 18, PPE 04/26/15 (1 page)

## City of Clayton Cash Requirements Report City Council Meeting for 5/5/15

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<b>AAUW</b>								
AAUW	5/5/2015	5/1/2015	26746	Deposit refund for EH Usage on 4/29/15	\$500.00	\$0.00		\$500.00
				<i>Totals for AAUW:</i>	<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
<b>All City Management Services, Inc.</b>								
All City Management Services, Inc.	5/5/2015	4/27/2015	38749	school crossing guard services 3/15/15-3/28/15	\$509.10	\$0.00		\$509.10
All City Management Services, Inc.	5/5/2015	4/27/2015	38886	school crossing guard services 3/29/15-4/11/15	\$254.55	\$0.00		\$254.55
				<i>Totals for All City Management Services, Inc.:</i>	<u>\$763.65</u>	<u>\$0.00</u>		<u>\$763.65</u>
<b>American Fidelity Assurance Company</b>								
American Fidelity Assurance Company	5/5/2015	4/29/2015	B298488	May Supplemental Insurance	\$753.44	\$0.00		\$753.44
				<i>Totals for American Fidelity Assurance Company:</i>	<u>\$753.44</u>	<u>\$0.00</u>		<u>\$753.44</u>
<b>ASCAP</b>								
ASCAP	5/5/2015	4/27/2015	500653269-2015	Concert licensing for 2015	\$336.67	\$0.00		\$336.67
				<i>Totals for ASCAP:</i>	<u>\$336.67</u>	<u>\$0.00</u>		<u>\$336.67</u>
<b>AT&amp;T/ CalNet 2</b>								
AT&T/ CalNet 2	5/5/2015	4/29/2015	00000006508448	Service 3/22/15-4/21/15	\$1,590.99	\$0.00		\$1,590.99
				<i>Totals for AT&amp;T/ CalNet 2:</i>	<u>\$1,590.99</u>	<u>\$0.00</u>		<u>\$1,590.99</u>
<b>CA Dept of Industrial Relations</b>								
CA Dept of Industrial Relations	5/5/2015	5/1/2015	E1272122 OA	elevator inspection 112575	\$225.00	\$0.00		\$225.00
				<i>Totals for CA Dept of Industrial Relations:</i>	<u>\$225.00</u>	<u>\$0.00</u>		<u>\$225.00</u>
<b>Christopher or Amy Callaghan</b>								
Christopher or Amy Callaghan	5/5/2015	4/27/2015	CAP0149	Deposit for CAP0149 - 5838 Four Oaks Lane	\$500.00	\$0.00		\$500.00
				<i>Totals for Christopher or Amy Callaghan:</i>	<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
<b>CalPERS Health</b>								
CalPERS Health	5/5/2015	4/27/2015	1721	Medical Benefits for May 2015	\$34,077.14	\$0.00		\$34,077.14
				<i>Totals for CalPERS Health:</i>	<u>\$34,077.14</u>	<u>\$0.00</u>		<u>\$34,077.14</u>
<b>CalPERS Retirement</b>								
CalPERS Retirement	5/5/2015	4/27/2015	PPE 4/26/15	Retirement PPE 4/26/15	\$20,981.90	\$0.00		\$20,981.90
				<i>Totals for CalPERS Retirement:</i>	<u>\$20,981.90</u>	<u>\$0.00</u>		<u>\$20,981.90</u>
<b>Caltronics Business Systems, Inc</b>								
Caltronics Business Systems, Inc	5/5/2015	4/27/2015	1760780	contract for 3/17/15-4/16/15	\$371.79	\$0.00		\$371.79
				<i>Totals for Caltronics Business Systems, Inc:</i>	<u>\$371.79</u>	<u>\$0.00</u>		<u>\$371.79</u>
<b>City of Concord</b>								
City of Concord	5/5/2015	4/27/2015	44861	vehicle maintenance for February 2015	\$307.06	\$0.00		\$307.06
				<i>Totals for City of Concord:</i>	<u>\$307.06</u>	<u>\$0.00</u>		<u>\$307.06</u>

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

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<b>CK Ross, Inc</b>								
CK Ross, Inc	5/5/2015	4/27/2015	5/9/15	Concert in the Grove 5/9/15, "The Departmen	\$1,500.00	\$0.00		\$1,500.00
				<i>Totals for CK Ross, Inc:</i>	<u>\$1,500.00</u>	<u>\$0.00</u>		<u>\$1,500.00</u>
<b>Concord Garden Equipment</b>								
Concord Garden Equipment	5/5/2015	5/1/2015	504559	spray boom	\$354.25	\$0.00		\$354.25
				<i>Totals for Concord Garden Equipment:</i>	<u>\$354.25</u>	<u>\$0.00</u>		<u>\$354.25</u>
<b>Contra Costa County Animal Svcs Dept</b>								
Contra Costa County Animal Svcs Dept	5/5/2015	4/27/2015	ASD M5807	Animal Control Services for 4/1/15-6/30/15	\$14,726.00	\$0.00		\$14,726.00
				<i>Totals for Contra Costa County Animal Svcs Dept:</i>	<u>\$14,726.00</u>	<u>\$0.00</u>		<u>\$14,726.00</u>
<b>Contra Costa County Auditor-Controller</b>								
Contra Costa County Auditor-Controller	5/5/2015	5/1/2015	Reso 03-2015	unencumbered LMHF balance	\$3,679,225.00	\$0.00		\$3,679,225.00
				<i>Totals for Contra Costa County Auditor-Controller:</i>	<u>\$3,679,225.00</u>	<u>\$0.00</u>		<u>\$3,679,225.00</u>
<b>Contra Costa County Sheriff - Forensic Svc Div (Lab)</b>								
Contra Costa County Sheriff - Forensic S	5/5/2015	4/27/2015	CLPD-115	blood withdrawal services January-March 201	\$866.25	\$0.00		\$866.25
				<i>Totals for Contra Costa County Sheriff - Forensic Svc Div (Lab):</i>	<u>\$866.25</u>	<u>\$0.00</u>		<u>\$866.25</u>
<b>CR Fireline, Inc</b>								
CR Fireline, Inc	5/5/2015	5/1/2015	102009	qtrly inspection City Hall	\$110.00	\$0.00		\$110.00
CR Fireline, Inc	5/5/2015	5/1/2015	102008	qtrly inspection Endeavor Hall	\$110.00	\$0.00		\$110.00
CR Fireline, Inc	5/5/2015	5/1/2015	102007	qtrly inspection Library	\$110.00	\$0.00		\$110.00
				<i>Totals for CR Fireline, Inc:</i>	<u>\$330.00</u>	<u>\$0.00</u>		<u>\$330.00</u>
<b>Hammons Supply Company</b>								
Hammons Supply Company	5/5/2015	5/1/2015	88281	supplies for CCP	\$281.54	\$0.00		\$281.54
Hammons Supply Company	5/5/2015	5/1/2015	88282	supplies for Endeavor Hall	\$208.55	\$0.00		\$208.55
				<i>Totals for Hammons Supply Company:</i>	<u>\$490.09</u>	<u>\$0.00</u>		<u>\$490.09</u>
<b>Health Care Dental Trust</b>								
Health Care Dental Trust	5/5/2015	4/29/2015	192245	June Dental	\$2,954.88	\$0.00		\$2,954.88
				<i>Totals for Health Care Dental Trust:</i>	<u>\$2,954.88</u>	<u>\$0.00</u>		<u>\$2,954.88</u>
<b>Innovative Impressions</b>								
Innovative Impressions	5/5/2015	4/27/2015	837	T-shirts for Clayton Cleans Up 2015	\$72.29	\$0.00		\$72.29
				<i>Totals for Innovative Impressions:</i>	<u>\$72.29</u>	<u>\$0.00</u>		<u>\$72.29</u>
<b>Ken Joiret</b>								
Ken Joiret	5/5/2015	4/27/2015	5/9/15	Sound for Concert 5/9/15	\$650.00	\$0.00		\$650.00
				<i>Totals for Ken Joiret:</i>	<u>\$650.00</u>	<u>\$0.00</u>		<u>\$650.00</u>
<b>Arlene Kikkawa-Nielsen</b>								
Arlene Kikkawa-Nielsen	5/5/2015	4/27/2015	May 2015	Library V olunteer Coordinator - May 2015	\$900.00	\$0.00		\$900.00

## City of Clayton Cash Requirements Report City Council Meeting for 5/5/15

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Arlene Kikkawa-Nielsen:</i>					<u>\$900.00</u>	<u>\$0.00</u>		<u>\$900.00</u>
<b>LarryLogic Productions</b>								
LarryLogic Productions	5/5/2015	4/27/2015	1496	City Council Meeting 4/21/15	\$325.00	\$0.00		\$325.00
<i>Totals for LarryLogic Productions:</i>					<u>\$325.00</u>	<u>\$0.00</u>		<u>\$325.00</u>
<b>Wendy Lewis</b>								
Wendy Lewis	5/5/2015	4/27/2015	3164B	Deposit refund for Endeavor Hall 3/21/15	\$500.00	\$0.00		\$500.00
<i>Totals for Wendy Lewis:</i>					<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
<b>Marken Mechanical Services Inc</b>								
Marken Mechanical Services Inc	5/5/2015	5/1/2015	115-20167	City Hall - remove and replace hot water pump	\$6,437.85	\$0.00		\$6,437.85
<i>Totals for Marken Mechanical Services Inc:</i>					<u>\$6,437.85</u>	<u>\$0.00</u>		<u>\$6,437.85</u>
<b>Martell Water Systems, Inc.</b>								
Martell Water Systems, Inc.	5/5/2015	5/1/2015	21812	Service call 4/15/15	\$362.04	\$0.00		\$362.04
<i>Totals for Martell Water Systems, Inc.:</i>					<u>\$362.04</u>	<u>\$0.00</u>		<u>\$362.04</u>
<b>MPA</b>								
MPA	5/5/2015	4/27/2015	May 2015	Life/LTD for May 2015	\$1,480.28	\$0.00		\$1,480.28
<i>Totals for MPA:</i>					<u>\$1,480.28</u>	<u>\$0.00</u>		<u>\$1,480.28</u>
<b>Neopost (add postage)</b>								
Neopost (add postage)	5/5/2015	4/27/2015	4/20/15	postage added	\$300.00	\$0.00		\$300.00
<i>Totals for Neopost (add postage):</i>					<u>\$300.00</u>	<u>\$0.00</u>		<u>\$300.00</u>
<b>Pacific Telemanagement Svc</b>								
Pacific Telemanagement Svc	5/5/2015	4/27/2015	744306	Courtyard payphone for May 2015	\$73.00	\$0.00		\$73.00
<i>Totals for Pacific Telemanagement Svc:</i>					<u>\$73.00</u>	<u>\$0.00</u>		<u>\$73.00</u>
<b>PERMCO, Inc.</b>								
PERMCO, Inc.	5/5/2015	4/29/2015	10366	Services for 4/11/15-4/24/15	\$2,885.00	\$0.00		\$2,885.00
PERMCO, Inc.	5/5/2015	4/29/2015	10367	CAP Inspection 4/21/15	\$41.50	\$0.00		\$41.50
PERMCO, Inc.	5/5/2015	4/29/2015	10368	prep of preliminary plans for CalTrans process	\$1,363.25	\$0.00		\$1,363.25
PERMCO, Inc.	5/5/2015	4/29/2015	10369	open bids, analyze, prepare contract, staff rep	\$2,246.56	\$0.00		\$2,246.56
PERMCO, Inc.	5/5/2015	4/29/2015	10370	review plans and issue permit for work	\$825.00	\$0.00		\$825.00
<i>Totals for PERMCO, Inc.:</i>					<u>\$7,361.31</u>	<u>\$0.00</u>		<u>\$7,361.31</u>
<b>PG&amp;E</b>								
PG&E	5/5/2015	4/27/2015	4/17/15	service 3/18/15-4/16/15	\$17,048.71	\$0.00		\$17,048.71
PG&E	5/5/2015	4/27/2015	4/27/15	service 3/25/15-4/23/15	\$2,884.52	\$0.00		\$2,884.52
<i>Totals for PG&amp;E:</i>					<u>\$19,933.23</u>	<u>\$0.00</u>		<u>\$19,933.23</u>
<b>Pinnacle Construction Services, Inc</b>								
Pinnacle Construction Services, Inc	5/5/2015	4/27/2015	2116	services for April 2015	\$4,264.10	\$0.00		\$4,264.10

## City of Clayton Cash Requirements Report City Council Meeting for 5/5/15

<u>Vendor Name</u>	<u>Due Date</u>	<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Invoice Description</u>	<u>Invoice Balance</u>	<u>Potential Discount</u>	<u>Discount Expires On</u>	<u>Net Amount Due</u>
<i>Totals for Pinnacle Construction Services, Inc:</i>					\$4,264.10	\$0.00		\$4,264.10
<b>R&amp;S Erection of Concord</b>								
R&S Erection of Concord	5/5/2015	5/1/2015	92978 COMR	Job Tag # 90681	\$199.00	\$0.00		\$199.00
<i>Totals for R&amp;S Erection of Concord:</i>					\$199.00	\$0.00		\$199.00
<b>Stericycle Inc</b>								
Stericycle Inc	5/5/2015	4/27/2015	3002990633	service 5/15-7/15	\$340.59	\$0.00		\$340.59
<i>Totals for Stericycle Inc:</i>					\$340.59	\$0.00		\$340.59
<b>GRAND TOTALS:</b>					<b>\$3,804,052.80</b>	<b>\$0.00</b>		<b>\$3,804,052.80</b>

# Earnings Statement

0 Employees With Overflow Statement  
0 Overflow Statement 1 Total Statement  
Tot Cks/Vchrs:00000000030 Tot Docs in all:00000000033  
First No. Last No. Total  
Checks: ADPCHECK ADPCHECK 00000000004  
Vouchers: 00000180001 00000180026 00000000026

Z7L TOTAL DOCUMENT  
CITY OF CLAYTON  
LOCATION 0001

## CHECK STUFFING, RECONCILIATION

78594.14 GROSS  
57342.23 NET PAY (INCLUDING ALL DEPOSITS)  
8739.20 FEDERAL TAX  
138.75 SOCIAL SECURITY  
1085.36 MEDICARE  
.00 MEDICARE SURTAX  
.00 SUI TAX  
2821.89 STATE TAX  
.00 LOCAL TAX  
63861.55 DEDUCTIONS  
1947.39 NET CHECK

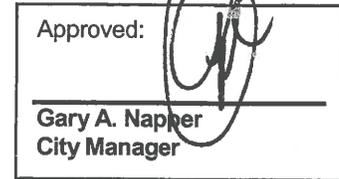
COMPANY CODE Z7L  
CITY OF CLAYTON  
TOTAL DOCUMENT  
LOCATION 0001

NON-NEGOTIABLE - VOID - NON-NEGOTIABLE  
NON-NEGOTIABLE - VOID - NON-NEGOTIABLE



Agenda Date: 5-5-2015  
Agenda Item: 3c

# STAFF REPORT



**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: RICK ANGRISANI, CITY ENGINEER**

**DATE: MAY 5, 2015**

**SUBJECT: RESOLUTION DIRECTING THE PREPARATION OF AN ENGINEER'S REPORT FOR THE DIABLO ESTATES BENEFIT ASSESSMENT DISTRICT.**

---

## RECOMMENDATION

Adopt the attached resolution.

## BACKGROUND

At the request of Toll Bros., Inc., the developer of the Diablo Estates project, the City Council, by passage of Resolution 04-2012 on February 7, 2012, formed the Diablo Estates Benefit Assessment District (BAD) in accordance with the requirements of Landscaping & Lighting Act of 1972 and the Benefit Assessment Act of 1982. The purpose of the District is for the private property owners to collectively provide sufficient funds each year for the proper maintenance of various subdivision improvements constructed as part of the residential project. The Engineer of Work for the preparation of the initial Engineer's Report was the Developer's consultant, SCI Consulting Group. The initial assessment was approved via a Proposition 218 ballot election by the property owner and its authorization included an annual CPI increase in the assessment amount.

Although the Benefit Assessment Act of 1982 does not require further action prior to levying of the annual assessment if the assessments are not increased (other than any authorized adjustment due to a CPI increase), the Landscaping & Lighting Act of 1972 does require the filing and approval of an annual Engineer's Report prior to levying of its annual assessment.

For the purpose of continuing to levy annual assessments, the process must be initiated by the City Council officially calling for such an annual report. After enactment of this resolution, the next step will be for the Engineer of Work (City Engineer) to submit, and the City Council to accept, the Engineer's Report for this District. Following that submittal will be a single public hearing (with property owner notification) prior to formally setting next year's assessments in sufficient time to be collected via the property tax bills issued by the County in 2015-2016.

Subject: Diablo Estates BAD – Call for Engineer’s Report

Date: May 5, 2015

Page 2 of 2

---

This resolution does not commit the City Council to any action but is just the first administrative step required by the Landscaping & Lighting Act of 1972.

**FISCAL IMPACT**

None to the City. All expenses of the BAD are borne by the private property owners as the beneficiaries of their subdivision improvements, maintenance, operation and repair.

Attachment: Resolution [2 pp.]

**RESOLUTION NO. - 2015**

**A RESOLUTION DIRECTING THE FILING OF AN ANNUAL REPORT  
FOR THE DIABLO ESTATES BENEFIT ASSESSMENT DISTRICT (PURSUANT TO THE  
LANDSCAPING AND LIGHTING ACT OF 1972).**

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

**WHEREAS**, as requested by the development project's property owner and by Resolution No. 04-2012 adopted February 7, 2012, the Clayton City Council formed the Diablo Estates Benefit Assessment District pursuant to both the Landscaping & Lighting Act of 1972 and the Benefit Assessment Act of 1982; and

**WHEREAS**, an initial Engineer's Report was prepared by the project developer's own consultant, SCI Consulting Group; and

**WHEREAS**, an initial annual assessment, along with an allowable rate increase in accordance with annual increases in the San Francisco-Bay Area Consumer Price Index ("CPI"), was approved by the affected property owner(s) in a Proposition 218 ballot election; and

**WHEREAS**, although the Benefit Assessment Act of 1982 requires no further action to continue levying the annual assessment, the Landscaping & Lighting Act of 1972 does require that the City Council direct the Engineer of Work to prepare an Annual Engineer's Report prior to the levying of an assessment; and

**WHEREAS**, it is expedient for the City Council to commence said proceedings to ensure sufficient funds be assessed, levied, collected and expended each fiscal year to fulfill the property owner's intent and fiscal obligation to properly maintain, operate and repair the associated Diablo Estates subdivision improvements as private property owner beneficiaries;

**NOW THEREFORE**, the City Council of Clayton, California does hereby resolve as follows:

1. The City Engineer is hereby directed to file an Annual Engineer's Report in accordance with the provisions of the Landscaping & Lighting Act of 1972.
2. This Resolution is adopted pursuant to Section 23622 of the Streets and Highways Code.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 5<sup>th</sup> day of May 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

ABSENT:

\_\_\_\_\_  
DAVID T. SHUEY, Mayor

ATTEST:

\_\_\_\_\_  
Janet Brown, City Clerk

# # # # #

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton, California at a regular public meeting held on May 5, 2015.

\_\_\_\_\_  
Janet Brown, City Clerk



Agenda Date: 5-5-2015

Agenda Item: 3d

Approved:

Gary A. Napper  
City Manager

# AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CITY MANAGER

DATE: 05 MAY 2015

SUBJECT: APPROVAL OF TIME EXTENSION TO COLLECTIVE BARGAINING AGREEMENT (MOU), CLAYTON POLICE OFFICERS ASSOCIATION (CPOA)

## RECOMMENDATION

It is recommended the City Council, by minute motion, adopt the attached Resolution approve Addendum No. 1 with the Clayton Police Officers' Association (CPOA) to extend the date of expiration up to 30 June 2015 regarding the 2014 base Memorandum of Understanding (MOU) containing certain terms and conditions of employment and compensation with the City of Clayton.

## BACKGROUND

On 03 June 2014 the City entered into a 1-year MOU with the Clayton Police Officers Association (CPOA) concerning terms of employment and compensation for the ten (10) sworn members of our local law enforcement unit (note: the Chief of Police is not a member of this bargaining unit). This action was in accord with California state laws that require a public employer and each of its organized or undesignated collective bargaining units to meet and confer over terms and conditions of employment and compensation (ref. *Government Code Section 3500*, et. seq.). The CPOA's 1-year MOU is set to expire on 05 May 2015 (note: the approved MOU was retroactive to 04 May 2014).

In anticipation of that expiration date, representatives of the CPOA and the City's labor negotiator (i.e. City Manager) will have met on three (3) occasions to discuss collective bargaining matters but neither party has yet prepared specific details. Therefore, so as not to allow the elapsing conditions of public employment expire and generate chaos as to local law enforcement operations and employment starting 05 May 2015, the City and the CPOA have each agreed to continue the existing terms through the end of this fiscal year. This time extension will offer time for both parties to assemble individually and together to seek mutual agreement on successor employment conditions. Retroactive application of any successor terms and conditions is a matter as well for the negotiation table.

**FISCAL IMPACT**

Interim continuation of the existing terms and conditions of public employment between the City and the CPOA provides the desired stability for local law enforcement operations during the ensuing time period while the parties conduct further due diligence required of the collective bargaining process. Employment benefits associated with this collective bargaining group (e.g. CalPERS pension rates; medical/dental insurance premiums) are typically not subject to annual rate adjustments until July 1<sup>st</sup> or January 1<sup>st</sup>, respectively, of each year.

- Exhibits:
- A. Resolution [2 pp.]
  - B. Addendum No. 1 with CPOA Unit [2 pp.]

## RESOLUTION NO. - 2015

**A RESOLUTION APPROVING ADDENDUM NO. 1  
TO THE BASE MEMORANDUM OF UNDERSTANDING WITH  
THE CLAYTON POLICE OFFICERS' ASSOCIATION  
EFFECTIVE MAY 5, 2015**

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

**WHEREAS**, at its regular public meeting held on 03 June 2014 the Clayton City Council did approve a one (1) year Memorandum of Understanding (MOU) with a recognized collective bargaining unit, known as the Clayton Police Officers' Association (CPOA), setting and establishing terms and conditions of City employment, compensation, benefits and other related employment terms retroactive to 04 May 2014;

**WHEREAS**, in anticipation of the MOU's expiration on 05 May 2015, authorized representatives of the City of Clayton and the Clayton Police Officers' Association (CPOA) have been conversing and conferring in good faith regarding the status of certain matters including, but not limited to, wages, hours, and terms and conditions of employment with the City, pursuant to *California Government Code* Section 3500, et. seq.; and

**WHEREAS**, at this time neither party to the negotiations has tendered an initial offer nor demand related to a mutually-acceptable replacement MOU and it is unlikely such exchanges will result in a new MOU before the existing one expires on 05 May 2015; and

**WHEREAS**, at its second meeting held on 20 April 2015 authorized representatives of the CPOA indicated agreement to extend the terms and conditions of the current MOU through 30 June 2015 without any changes, and the City Manager, as the City's designated labor negotiator, does herein recommend approval of the resultant Addendum No. 1 to the CPOA's base MOU, as outlined in its entirety in "Exhibit B" attached hereto and by reference incorporated herein as if fully set forth below.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Clayton, California does hereby accept and approve Addendum No. 1 ("Exhibit B") to the underlying Memorandum of Understanding between the City and the Clayton Police Officers' Association during the term thereof, effective 05 May 2015, unless replaced or extended sooner by mutual agreement, and does duly authorize and instruct its City Manager to implement the agreed-upon terms and conditions accordingly.

Resolution No. - 2015  
Addendum No. 1 to Base MOU with Clayton Police Officers' Association  
05 May 2015

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held the 5th day of May 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

THE CITY COUNCIL OF CLAYTON, CA

---

David T. Shuey, Mayor

ATTEST:

---

Janet Brown, City Clerk

**ADDENDUM NO. 1**

This Addendum No. 1 is a modification to that 1-year Memorandum of Understanding (MOU) entered into by and between the City of Clayton ("City") and the Clayton Police Officers Association (CPOA), previously approved and authorized by the Clayton City Council at a regular public meeting thereof held the 3rd day of June 2014. Addendum No. 1 has been negotiated in good faith between the two named parties, pursuant to Section 3500, et. seq. of the *California Government Code*, and intends to and does hereby modify or restate the following specific employment terms and conditions sections of the underlying MOU, as herein contained below:

**ARTICLE 20: TERM**

Addendum No. 1 is effective on 05 May 2015 and continues through 30 June 2015, unless terminated sooner by mutual agreement through an extended, revised or replacement MOU or Addendum.

All other and existing terms and conditions of the underlying MOU between the parties remain in full force and effect through 30 June 2015, to the extent such are not in conflict with Addendum No. 1 above. In the event such a conflict arises, Addendum No. 1 does and shall prevail in effect and implementation.

**IN WITNESS THEREOF** this Addendum No. 1 is entered into this 20<sup>th</sup> day of April 2015, pursuant to the provisions of *California Government Code* Section 3500, et. seq., for presentation and recommendation to the City Council of the City of Clayton, CA.

\* \* \* \* \*

**CLAYTON POLICE OFFICERS ASSOCIATION (CPOA)**

By:

  
\_\_\_\_\_  
Richard Enea, II, CPOA President

Date: 042715

  
\_\_\_\_\_  
Tim Marchut, CPOA Representative

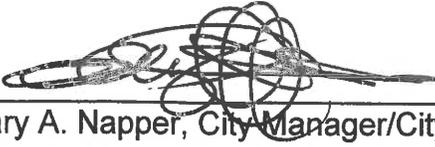
Date: 4-27-15

  
\_\_\_\_\_  
Bud D. Stone, CPOA Labor Representative

Date: 4/27/15

CITY OF CLAYTON, CA

By:



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

Date: 27 April 2015

#####

# JOHN BLATTER

Troop 492  
Muir District, Mt. Diablo Silverado Council  
Boy Scouts of America

for

Construction and installation of an  
additional shade structure in the Clayton Dog Park  
as his  
BSA Eagle Scout Project

April 2015

Agenda Item: 4a

Agenda Date: 5-5-2015

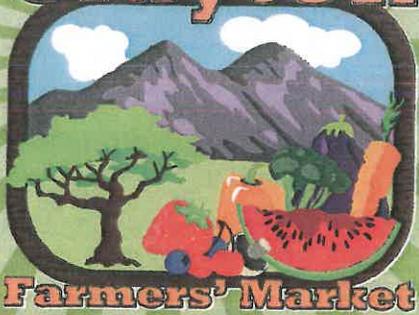
**DYLAN GORDILLO-WRITE**  
for  
"Doing the Right Thing"  
at  
Mt. Diablo Elementary School  
by exemplifying great "Integrity"  
March and April 2015

Agenda Date: 5-5-2015

Agenda Item: 4b

**ERIN ROBINSON**  
for  
"Doing the Right Thing"  
at  
Mt. Diablo Elementary School  
by exemplifying great "Integrity"  
March and April 2015

**Clayton**



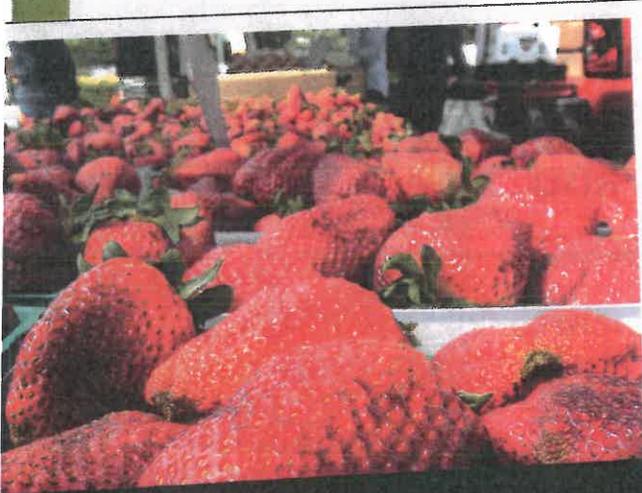
# CLAYTON FARMERS' MARKET

**SATURDAYS**

**8AM - NOON**

**MAY 9 THRU SEPT. 19**

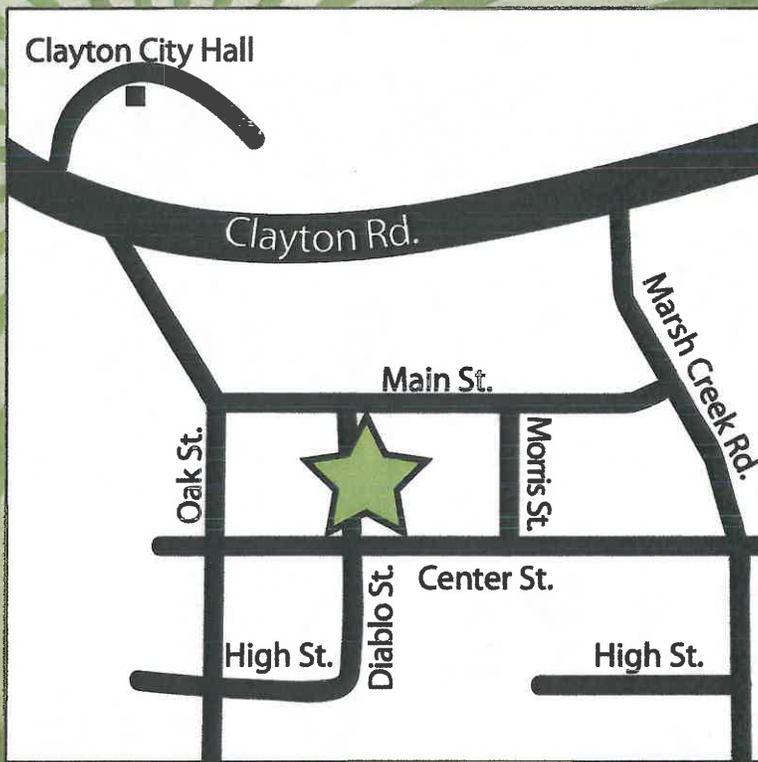
**CLOSED JUL. 4 & SEPT. 5**



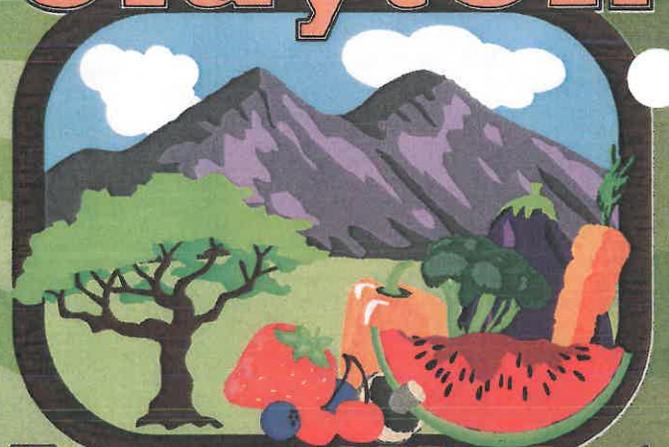
# DIABLO ST.

**BETWEEN**

**MAIN ST. & CENTER ST.**



# Clayton



## Farmers' Market

### Clayton Farmers' Market is back!

Join us every Saturday, 8 am to Noon, to celebrate the bounty that local farmers bring every week through September 19th. Along with the freshest fruits and crisp vegetables, the farmers' market brings you local bakeries, gourmet food items, and more!

**CLOSED JUL. 4 & SEPT. 5**

**SATURDAYS**

**8AM TO NOON**

**DIABLO ST.**

**BETWEEN MAIN ST.**

**& CENTER ST.**



**f FB.COM/CLAYTONFARMERSMARKET**



**We Gladly Accept:**  
**WIC/EBT**

[pcfma.com/clayton](http://pcfma.com/clayton)  
1.800.949.FARM





Agenda Date: 5-5-2015

Agenda Item: 8a

# STAFF REPORT

Approved:   
Gary A. Napper  
City Manager

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: RICK ANGRISANI, CITY ENGINEER**

**DATE: MAY 5, 2015**

**SUBJECT: CONSIDERATION OF A RESOLUTION AWARDING A CONTRACT TO MCK SERVICES, INC., IN THE AMOUNT OF \$867,373.21 FOR THE CONSTRUCTION OF THE 2015 NEIGHBORHOOD STREET PAVEMENT REHABILITATION PROJECT (CIP PROJECT NO. 10424).**

---

## RECOMMENDATION

Adopt a Resolution awarding a lowest bid construction contract to MCK Services, Inc. ("MCK") and transferring \$28,000 from the City's ADA Compliance Program (CIP Project No. 10394A) into the 2015 Neighborhood Street Pavement Project (CIP Project No. 10424) fund.

## BACKGROUND

At its February 17<sup>th</sup> meeting, the City Council provided direction to staff regarding which streets were to be included in the 2015 Pavement Rehabilitation Project. Consistent with prevailing Council policy, the worst conditioned streets are to be addressed first (as rated by the industry standard Pavement Condition Index or "PCI").

Bid plans were requested by several general contractors. On April 17<sup>th</sup>, staff opened bids for the project. Three very close bids were received as follows:

#	Bidder	2015 Pavement Rehabilitation	% Above Low
1	MCK Services, Inc.	\$867,373.21	-
2	Bay Cities Paving	\$868,593.43	0.14
3	Central Valley Engr.	\$875,985.96	0.99

Date: May 5, 2015

Page 2 of 2

---

The low bid included, along with the paving work, \$79,200 for ADA improvements and \$21,735 for replacement of Contra Costa Water District (CCWD) valve cans. The net amount for paving related work only is \$766,438.21.

The approved project budget and funding sources, per the latest approved 5-year Capital Improvement Program and as modified by the Finance Manager prior to the February 17<sup>th</sup> Council meeting, is as follows:

Engineer's Estimate:

Design and bidding	\$20,000
Construction (pavement only)	688,000
Inspection/Admin.	<u>20,000</u>
Total:	\$728,000

Funding Sources:

Gas Tax	\$350,807
Measure J (per capita & 28A)	<u>377,152</u>
Total	\$727,959

The pavement costs came in approximately \$78,000 higher than originally estimated (\$766k vs. \$688k). This discrepancy is primarily due to following:

- 1) The Engineer's Estimate for paving quantities was based on the areas shown in the latest Pavement Management Program report. When staff subsequently prepared the actual construction plans and specifications, an exact field measurement was made which increased the paving area by almost 20,000 square feet;
- 2) The unit price for the overlay work increased by almost 18% since 2013 (\$1.13 to \$1.33 per square foot), while staff had estimated a 10% increase.

The funding shortfall is also exacerbated by the \$79,200 for the required ADA curb ramp improvements (now mandated by federal law whenever an adjacent street is repaved). The City only has approximately \$28,000 set aside in our ADA Compliance Project fund (CIP Project No. 10394A) for this purpose. Consequently it created an additional \$51,000 shortfall in available funds for a total gap of \$129,000 (\$78k + \$51k).

**RECOMMENDATION**

To compensate for the funding shortfall, staff recommends two candidate streets with the highest pavement condition index (Haviland Place and Miwok Way, PCI 65 ±) be deleted. This would result in a total project cost of just under \$740,000 (including design, inspection, etc.) using the following revenue sources:

Gas Tax	\$350,807
Measure J (per capita & 28A)	377,152
ADA Compliance Program	28,000
CCWD (pays for water valve can work)	<u>18,270</u>
Total	<u>\$774,229</u>

Date: May 5, 2015

Page 3 of 3

---

This proposed action leaves the Project with a contingency amount of \$34,000 (4.3%)

### **PROJECT SCHEDULE**

Assuming the City Council awards the contract at its May 5<sup>th</sup> meeting as recommended, staff anticipates construction commencing the last week of May and being complete by the end of July 2015.

### **FISCAL IMPACT**

Based on the low bid received (and upon the preparation of a change order to eliminate the two streets as described above), the project will be within the previously approved budget and will have no impact upon the City's General Fund.

### **CONCLUSION**

Staff recommends the City Council approve the attached Resolution awarding a lowest bid construction contract to MCK Services, Inc. ("MCK") and authorize the transfer of \$28,000 from CIP Project No. 10394A to this project (CIP No. 10424).

Attachments:     1) Resolution  
                      2) Bids Results  
                      3) Low Bid w/deletion of 2 streets  
                      4) Proposed Streets  
                      4) MCK Contract

## RESOLUTION NO. - 2015

**A RESOLUTION DIRECTING THE FILING OF AN ANNUAL REPORT  
FOR THE DIABLO ESTATES BENEFIT ASSESSMENT DISTRICT (PURSUANT TO THE  
LANDSCAPING AND LIGHTING ACT OF 1972).**

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

**WHEREAS**, as requested by the development project's property owner and by Resolution No. 04-2012 adopted February 7, 2012, the Clayton City Council formed the Diablo Estates Benefit Assessment District pursuant to both the Landscaping & Lighting Act of 1972 and the Benefit Assessment Act of 1982; and

**WHEREAS**, an initial Engineer's Report was prepared by the project developer's own consultant, SCI Consulting Group; and

**WHEREAS**, an initial annual assessment, along with an allowable rate increase in accordance with annual increases in the San Francisco-Bay Area Consumer Price Index ("CPI"), was approved by the affected property owner(s) in a Proposition 218 ballot election; and

**WHEREAS**, although the Benefit Assessment Act of 1982 requires no further action to continue levying the annual assessment, the Landscaping & Lighting Act of 1972 does require that the City Council direct the Engineer of Work to prepare an Annual Engineer's Report prior to the levying of an assessment; and

**WHEREAS**, it is expedient for the City Council to commence said proceedings to ensure sufficient funds be assessed, levied, collected and expended each fiscal year to fulfill the property owner's intent and fiscal obligation to properly maintain, operate and repair the associated Diablo Estates subdivision improvements as private property owner beneficiaries;

**NOW THEREFORE**, the City Council of Clayton, California does hereby resolve as follows:

1. The City Engineer is hereby directed to file an Annual Engineer's Report in accordance with the provisions of the Landscaping & Lighting Act of 1972.
2. This Resolution is adopted pursuant to Section 23622 of the Streets and Highways Code.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 5<sup>th</sup> day of May 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

ABSENT:

\_\_\_\_\_  
DAVID T. SHUEY, Mayor

ATTEST:

\_\_\_\_\_  
Janet Brown, City Clerk

# # # # #

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Clayton, California at a regular public meeting held on May 5, 2015.

\_\_\_\_\_  
Janet Brown, City Clerk

CITY OF CLAYTON				MCK Services, Inc.		Bay Cities Paving & Grading		Central Valley Engineering & Asphalt, Inc.	
2015 Neighborhood Street Pavement Rehabilitation CIP 10424				P.O. Box 5697,		1450 Civic Court, Bldg B #400		216 Kenroy Lane,	
Bid Opening: April 16, 2015 at 2:30 PM				Concord, CA 94524		Concord, CA		Roseville, CA 95678	
CONTRACTORS BID TOTALS									
No.	Item Description	Quantity	Unit	Unit Cost	Amount	Unit Cost	Amount	Unit Cost	Amount
<b>2013 Neighborhood Street Pavement Rehabilitation</b>									
1	Remove & Replace Pedestrian Ramps	12	EA	\$ 3,800.00	\$ 45,600.00	\$ 6,200.00	\$ 74,400.00	\$ 3,400.00	\$ 40,800.00
2	Modify Pedestrian Ramps	20	EA	\$ 1,200.00	\$ 24,000.00	\$ 750.00	\$ 15,000.00	\$ 550.00	\$ 11,000.00
3	Install Truncated Domes on Pedestrian Ramps	16	EA	\$ 600.00	\$ 9,600.00	\$ 475.00	\$ 7,600.00	\$ 500.00	\$ 8,000.00
4	Base Failure Repair	760	SF	\$ 9.00	\$ 6,840.00	\$ 7.50	\$ 5,700.00	\$ 7.00	\$ 5,320.00
5	Thick Pavement Overlay (2.5")	22,208	EA	\$ 1.91	\$ 42,417.28	\$ 2.75	\$ 61,072.00	\$ 2.35	\$ 52,188.80
6	Thin Pavement Overlay (1.5")	490,121	EA	\$ 1.33	\$ 651,860.93	\$ 1.25	\$ 612,651.25	\$ 1.36	\$ 666,564.56
7	Replace Water Valve Can	69	EA	\$ 315.00	\$ 21,735.00	\$ 330.00	\$ 22,770.00	\$ 335.00	\$ 23,115.00
8	Adjust Monument Can	72	EA	\$ 265.00	\$ 19,080.00	\$ 285.00	\$ 20,520.00	\$ 280.00	\$ 20,160.00
9	Adjust Manhole Cover	64	EA	\$ 445.00	\$ 28,480.00	\$ 470.00	\$ 30,080.00	\$ 470.00	\$ 30,080.00
10	Adjust SSCO Cover	3	EA	\$ 445.00	\$ 1,335.00	\$ 470.00	\$ 1,410.00	\$ 470.00	\$ 1,410.00
11	Adjust Utility Vault Cover	3	EA	\$ 500.00	\$ 1,500.00	\$ 530.00	\$ 1,590.00	\$ 525.00	\$ 1,575.00
12	12" White Line (Thermoplastic)	995	LF	\$ 3.50	\$ 3,482.50	\$ 3.70	\$ 3,681.50	\$ 3.70	\$ 3,681.50
13	12" Yellow Line (Thermoplastic)	279	LF	\$ 3.50	\$ 976.50	\$ 3.70	\$ 1,032.30	\$ 3.70	\$ 1,032.30
14	4" Double Yellow Line (Thermoplastic)	158	LF	\$ 2.00	\$ 316.00	\$ 2.11	\$ 333.38	\$ 2.10	\$ 331.80
15	4" White Line (Thermoplastic)	800	LF	\$ 1.20	\$ 960.00	\$ 1.27	\$ 1,016.00	\$ 1.25	\$ 1,000.00
16	Detail 23	2,900	LF	\$ 1.60	\$ 4,640.00	\$ 1.69	\$ 4,901.00	\$ 1.70	\$ 4,930.00
17	Blue Reflective Marker	19	EA	\$ 20.00	\$ 380.00	\$ 21.00	\$ 399.00	\$ 21.00	\$ 399.00
18	"STOP" Marking	17	EA	\$ 95.00	\$ 1,615.00	\$ 100.00	\$ 1,700.00	\$ 100.00	\$ 1,700.00
19	Turn Arrow	4	EA	\$ 65.00	\$ 260.00	\$ 69.00	\$ 276.00	\$ 68.00	\$ 272.00
20	12" High - "Principal", "Staff", etc. Marking - Mt. Zion Drive	18	EA	\$ 60.00	\$ 1,080.00	\$ 65.00	\$ 1,170.00	\$ 63.00	\$ 1,134.00
21	"DO NOT STOP" Marking - Mt. Zion Drive	2	EA	\$ 220.00	\$ 440.00	\$ 235.00	\$ 470.00	\$ 231.00	\$ 462.00
22	"THRU" Marking - Mt. Zion Drive	2	EA	\$ 95.00	\$ 190.00	\$ 100.00	\$ 200.00	\$ 100.00	\$ 200.00
23	Turn Arrow - Mt. Zion Drive	9	EA	\$ 65.00	\$ 585.00	\$ 69.00	\$ 621.00	\$ 70.00	\$ 630.00
<b>TOTAL - BASE BID &gt;&gt;&gt;&gt;&gt;</b>					<b>\$ 867,373.21</b>		<b>\$ 868,593.43</b>		<b>\$ 875,985.96</b>
No.	Item Description	Quantity	Unit	Unit Cost	Amount	Unit Cost	Amount	Unit Cost	Amount
<b>ALTERNATE BID ITEM</b>									
1	Locate & Map Existing Water Valve Can	61	EA	\$ 200.00	\$ 12,200.00	\$ 200.00	\$ 12,200.00	\$ 65.00	\$ 3,965.00

CITY OF CLAYTON				MCK Services, Inc.	
2015 Neighborhood Street Pavement Rehabilitation CIP 10424				P.O. Box 5697,	
Bid Opening: April 16, 2015 at 2:30 PM				Concord, CA 94524	
CONTRACTORS BID TOTALS				CO 1	
No.	Item Description	Quantity	Unit	Unit Cost	Amount
<b>2013 Neighborhood Street Pavement Rehabilitation</b>					
1	Remove & Replace Pedestrian Ramps	12	EA	\$ 3,800.00	\$ 45,600.00
2	Modify Pedestrian Ramps	18	EA	\$ 1,200.00	\$ 21,600.00
3	Install Truncated Domes on Pedestrian Ramps	8	EA	\$ 600.00	\$ 4,800.00
4	Base Failure Repair	760	SF	\$ 9.00	\$ 6,840.00
5	Thick Pavement Overlay (2.5")	22,208	EA	\$ 1.91	\$ 42,417.28
6	Thin Pavement Overlay (1.5")	380,489	EA	\$ 1.33	\$ 506,050.37
7	Replace Water Valve Can	58	EA	\$ 315.00	\$ 18,270.00
8	Adjust Monument Can	54	EA	\$ 265.00	\$ 14,310.00
9	Adjust Manhole Cover	50	EA	\$ 445.00	\$ 22,250.00
10	Adjust SSCO Cover	3	EA	\$ 445.00	\$ 1,335.00
11	Adjust Utility Vault Cover	3	EA	\$ 500.00	\$ 1,500.00
12	12" White Line (Thermoplastic)	859	LF	\$ 3.50	\$ 3,006.50
13	12" Yellow Line (Thermoplastic)	279	LF	\$ 3.50	\$ 976.50
14	4" Double Yellow Line (Thermoplastic)	158	LF	\$ 2.00	\$ 316.00
15	4" White Line (Thermoplastic)	800	LF	\$ 1.20	\$ 960.00
16	Detail 23	2,200	LF	\$ 1.60	\$ 3,520.00
17	Blue Reflective Marker	15	EA	\$ 20.00	\$ 300.00
18	"STOP" Marking	14	EA	\$ 95.00	\$ 1,330.00
19	Turn Arrow	4	EA	\$ 65.00	\$ 260.00
20	12" High - "Principal", "Staff", etc. Marking - Mt. Zion Drive	18	EA	\$ 60.00	\$ 1,080.00
21	"DO NOT STOP" Marking - Mt. Zion Drive	2	EA	\$ 220.00	\$ 440.00
22	"THRU" Marking - Mt. Zion Drive	2	EA	\$ 95.00	\$ 190.00
23	Turn Arrow - Mt. Zion Drive	9	EA	\$ 65.00	\$ 585.00
<b>TOTAL - BASE BID &gt;&gt;&gt;&gt;&gt;&gt;</b>					<b>\$ 697,936.65</b>
No.	Item Description	Quantity	Unit	Unit Cost	Amount
<b>ALTERNATE BID ITEM</b>					
1	Locate & Map Existing Water Valve Can	61	EA	\$ 200.00	\$ 12,200.00

CO 1 - Delete:  
Haviland Place  
Miwok Way

ATTACHMENT 3

## 2015 PAVEMENT REHABILITATION PROJECT

### PROPOSED STREETS

	Street Name	Beg Location	End Location	Lanes	Functional Class	Area	PCI
1	MT. SEQUOIA PLACE - 4061	MT. DUNCAN ROAD	CUL-DE-SAC	2	R - Residential/Local	18,300	39
	KELLER RIDGE DRIVE - KELLER	Falcon Place	Kelok Way	2	C - Collector	165,279	53
2	MT. OLIVET COURT - 4063	MT. DUNCAN DRIVE	CUL-DE-SAC	2	R - Residential/Local	20,730	54
3	LA ENCINAL COURT - LAENCI	El Pueblo Place	Cul de sac	2	R - Residential/Local	21,257	54
4	ZINFANDEL CIRCLE - 4034	GAMAY DR. N.	GAMAY DR. S.	2	R - Residential/Local	47,668	55
5	FOUR OAKS LANE - 3018	MOUNT ZION DRIVE	MITCHELL CANYON ROAD	2	R - Residential/Local	11,825	56
6	MT. OLIVET PLACE - 4064	DUNCAN DRIVE	CUL-DE-SAC	2	R - Residential/Local	17,700	56
7	EL TORO COURT - 4093	EL PUEBLO PLACE	CUL-DE-SAC	2	R - Residential/Local	2,250	56
8	TUYUSHTAK COURT - TUYUSH	Obsidian Way	Cul de sac	2	R - Residential/Local	9,250	56
9	MT. WILSON WAY - 4049	MARSH CREEK ROAD	CLARK CREEK CIRCLE	2	R - Residential/Local	65,552	58
10	BLUE OAK LANE - BLUEOA	Wawona Lane	Cul de sac	2	R - Residential/Local	63,122	58
11	MICHIGAN BLVD - 2007	CITY LIMITS	EL CAMINO DRIVE	2	R - Residential/Local	6,528	59
12	MT. ZION - 3019	CLAYTON ROAD	PINE HOLLOW ROAD	2	R - Residential/Local	13,125	59
13	VERNA WAY EAST - 2017	NOTTINGHAM CIRCLE	MITCHELL CANYON ROAD	2	R - Residential/Local	11,760	61
14	PANADERO COURT - 3003	PANADERO WAY	CUL-DE-SAC	2	R - Residential/Local	7,448	61
15	GOLDEN EAGLE WAY - GOLDEW	Keller Ridge Drive	Windmill Canyon	2	R - Residential/Local	43,290	63
16	OBSIDIAN WAY - OBSIDW	Wawona	Obsidian Court	2	R - Residential/Local	39,072	65
17	INDIAN HEAD WAY - INDHEW	Oakhurst Drive	Indian Head Cirice	2	R - Residential/Local	24,024	66
18	MIWOK WAY - MIWOKW	Eagle Peak Avenue	Blue Oak Lane	2	R - Residential/Local	55,833	66
19	HAVILAND PLACE - 1008	TARA DRIVE	CUL-DE-SAC	2	R - Residential/Local	15,224	68

Included in Federal Aid Project later in the year  
 To Be Deleted Due To Funding Shortfall

**CITY OF CLAYTON  
CONSTRUCTION CONTRACT**

**2015 NEIGHBORHOOD STREET PAVEMENT REHABILITATION PROJECT  
CIP PROJECT NO. 10424**

**1. PARTIES AND DATE.**

This Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Clayton, a municipal corporation organized under the laws of the State of California ("City") and MCK Services, Inc., a California Corporation, with its principal place of business at P.O. Box 5697, Concord, CA 94524 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

**2. RECITALS.**

**2.1 City.** City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

**2.2 Contractor.** Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. The following license classification is required for this Project: Class A (General Engineering).

**2.3 Project.** City desires to engage Contractor to render such services to complete the **2015 NEIGHBORHOOD STREET PAVEMENT REHABILITATION PROJECT** ("Project") as set forth in this Contract.

**2.4 Project Documents & Certifications.** Contractor has obtained, and delivers concurrently herewith, performance bond, payment bond, public works contractor registration certification and insurance documents as required by the Contract.

**3. TERMS**

**3.1 Incorporation of Documents.** This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- a) This Contract
- b) Notice Inviting Sealed Proposals
- c) Contractor's Proposal
- d) Faithful Performance Bond
- e) Labor and Material (Payment) Bond
- f) General Conditions
- g) Special Provisions
- h) Standard Specifications

- i) Standard Plans
- j) Plans and Detailed Drawings

**3.2 Contractor's Basic Obligation; Scope of Work.** Contractor promises and agrees, at its own cost and expense, to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference.

**3.2.1 Change in Scope of Work.** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

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

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required

substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

**3.3 Period of Performance and Liquidated Damages.** Contractor shall perform and complete all Work under this Contract within ninety (90) Calendar days, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, the sum of Five Hundred dollars (\$500.00) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

**3.4 Standard of Performance; Performance of Employees.** Contractor shall perform all Work under this Contract 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. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

**3.5 Control and Payment of Subordinates; Contractual Relationship.** City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor 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, and workers' compensation insurance.

**3.6 City's Basic Obligation.** City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by

Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

### **3.7 Compensation and Payment.**

**3.7.1 Amount of Compensation.** As consideration for performance of the Work required herein and based upon the unit prices set forth in the Contractor's proposal, City agrees to pay Contractor the Total Contract Price of Eight Hundred Sixty-Seven Thousand Three Hundred Seventy Three and 21/100 Dollars (\$867,373.21) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

**3.7.2 Payment of Compensation.** If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

**3.7.3 Prompt Payment.** City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

**3.7.4 Contract Retentions.** From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

**3.7.5 Other Retentions.** In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which

Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

**3.7.6 Substitutions for Contract Retentions.** In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

**3.7.7 Title to Work.** As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

**3.7.8 Labor and Material Releases.** Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

**3.7.9 Prevailing Wages.** Contractor is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

**3.7.10 Apprenticeable Crafts.** When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

**3.7.11 Hours of Work.** Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

**3.7.12 Payroll Records.** Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor.

**3.7.13 Contractor and Subcontractor Registration.** Effective March 1, 2015, pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor shall complete and submit the Public Works Contractor Registration Certification attached hereto as Exhibit "B" to the City prior to Contract execution.

**3.7.14 Labor Compliance.** This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law.

### **3.8 Performance of Work; Jobsite Obligations.**

**3.8.1 Reservation of Right to Defend.** City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

**3.8.2 Training.** In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Consultant further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

**3.8.3 Safety.** Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor 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 as applicable shall include, but shall not be limited to, adequate life protection and life saving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

**3.8.4 Laws and Regulations.** Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same

extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City and its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

**3.8.5 Permits and Licenses.** Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, a City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

**3.8.6 Underground Utility Facilities.** To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

**3.8.7 Air Quality.** Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

**3.8.8 City and State Recycling Mandates.** Contractor shall comply with City and State Recycling Mandates. Prior to commencement of the work, Contractor shall provide the City with a list of recycling facilities he intends to use for the work. Prior to completion of the work and acceptance by the City, the Contractor shall provide proof of delivery of such materials from the recycling facilities, including actual quantities delivered and recycled. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

**3.9 Completion of Work.** When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

### **3.10 Claims; Government Code Claim Compliance.**

**3.10.1 Claims of \$375,000 or Less.** Notwithstanding any other provision herein, claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in California Public Contract Code §§ 20104, et seq.

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

**3.10.3 Government Code Claims.** In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

**3.11 Loss and Damage.** Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section 3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

### **3.12 Indemnification.**

**3.12.1 Scope of Indemnity.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City and its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor'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 required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

**3.12.2 Additional Indemnity Obligations.** Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, volunteers and agents 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. Contractor shall reimburse City and its officials, officers, employees, volunteers and agents, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City and its officials, officers, employees, volunteers and agents.

### **3.13 Insurance.**

**3.13.1 Time for Compliance.** Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

**3.13.2 Minimum Requirements.** Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

**3.13.2.1 Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.

**3.13.2.2 Minimum Limits of Insurance.** Contractor shall maintain limits no less than: (1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified

herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

**3.13.3 Insurance Endorsements.** The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

**3.13.3.1 General Liability.** (1) Such policy shall give the City of Clayton, its officials, officers, employees, volunteers and agents additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, volunteers and agents, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, officers, employees, volunteers and agents shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

**3.13.3.2 Automobile Liability.** (1) Such policy shall give the City of Clayton, its officials, officers, employees, volunteers and agents additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects City, its officials, officers, employees, volunteers and agents, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, officers, employees, volunteers and agents shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

**3.13.3.3 Workers' Compensation and Employer's Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officials, officers, employees, volunteers and agents for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

**3.13.3.4 Contractor's Pollution Liability Coverage.** The contractor's pollution liability policy shall include or be endorsed (amended) to state that: (1) the City, its officials, officers, employees, volunteers and agents shall be covered as additional insureds with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) Consultant agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, volunteers and agents, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, officers, employees, volunteers and agents shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

**3.13.3.5 All Coverages.** Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, employees, volunteers and agents.

**3.13.4 Builders'/All Risk Policy Requirements.** The builders'/all risk insurance shall provide that the City be named as loss payee. In addition, the insurer shall waive all rights of subrogation against the City.

**3.13.5 Separation of Insureds; No Special Limitations.** All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, officers, employees, volunteers and agents.

**3.13.6 Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, officers, employees, volunteers and agents; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**3.13.7 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

**3.13.8 Verification of Coverage.** Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to 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, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**3.13.9 Subcontractors.** All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, officers, employees, volunteers and agents as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

**3.13.10 Reporting of Claims.** Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

### **3.14 Bond Requirements.**

**3.14.1 Payment Bond.** Contractor shall execute and provide to City concurrently with this Contract, a Payment Bond in an amount equal to 100% of the Contract and in a form provided or approved by the City. No payment will be made to Contractor until the bond has been received and approved by the City.

**3.14.2 Performance Bond.** Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount equal to 100% of the Contract and in a form provided or approved by the City. No payment will be made to Contractor until the bond has been received and approved by the City.

**3.14.3 Bond Provisions.** Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

**3.14.4 Surety Qualifications.** Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

### **3.15 Warranty.**

**3.15.1 General Warranty.** Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions,

including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

**3.15.2 Manufacturer Warranties.** Any manufacturer or supplier guaranty provided for any equipment or materials used on the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply City with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers, which such warranties and guaranties shall be incorporated herein by this referenced and attached hereto under Exhibit "A" following receipt by the City.

### **3.16 Employee/Labor Certifications.**

**3.16.1 Contractor's Labor Certification.** By its signature hereunder, Contractor certifies that he 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 Work. A certification form for this purpose, which is attached to this Contract as Exhibit "A" and incorporated herein by reference, shall be executed simultaneously with this Contract.

**3.16.2 Equal Opportunity Employment.** Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. 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.

**3.16.3 Verification of Employment Eligibility.** By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

### **3.17 General Provisions.**

**3.17.1 City's Representative.** The City hereby designates the City Engineer, or his designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this

Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

**3.17.2 Contractor's Representative.** Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

**3.17.3 Termination.** This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

**3.17.4 Contract Interpretation.** Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

**3.17.5 Anti-Trust Claims.** This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

**3.17.6 Notices.** All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**CONTRACTOR:**

MCK Services, Inc.  
P.O. Box 5697  
Concord, CA 94524  
Attn: Mark Hazen

**CITY:**

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

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**3.17.7 Time of Essence.** Time is of the essence in the performance of this Contract.

**3.17.8 Assignment Forbidden.** Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

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

**3.17.10 Laws, Venue, and Attorneys' Fees.** This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Contra Costa, State of California.

**3.17.11 Counterparts.** This Contract may be executed in counterparts, each of which shall constitute an original.

**3.17.12 Successors.** The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

**3.17.13 Attorneys' Fees.** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Contract, the prevailing Party in such action shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

**3.17.14 Solicitation.** Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor 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

Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

**3.17.15 Conflict of Interest.** Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, 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 Contract, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

**3.17.16 Certification of License.**

**3.17.16.1 General.** Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

**3.17.16.2 State License Board Notice.** Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

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

**3.17.18 Attorneys' 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 attorneys' fees and all costs of such action.

**3.17.19 Entire Contract; Modification.** This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

**3.17.20 Non-Waiver.** None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

**3.17.21 City's Right to Employ Other Contractors.** City reserves the right to employ other contractors in connection with this Project or other projects.

IN WITNESS WHEREOF, each of the Parties has caused this Contract to be executed on the day and year first above written.

**CITY'S SIGNATURES**

**CITY OF CLAYTON**

By: \_\_\_\_\_  
David T. Shuey  
Mayor

*Attest:*

\_\_\_\_\_  
Janet Brown  
City Clerk

*Approved as to Form:*

\_\_\_\_\_  
Mala Subramanian  
Assistant City Attorney

**CONTRACTOR'S SIGNATURES**

<b>MCK SERVICES, INC.</b>	
By: _____ Signature	By: _____ Signature
_____ Name (Print)	_____ Name (Print)
_____ Title (Print)	_____ Title (Print)

**EXHIBIT "A"**  
**WORKERS COMPENSATION CERTIFICATION**  
**LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., 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 the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

**MCK SERVICES, INC.**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

**EXHIBIT "B"**  
**PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**  
**LABOR CODE - SECTION 1861**

**PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/PublicWorks/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Contractor: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

Contractor further acknowledges:

1. Contractor shall maintain a current DIR registration for the duration of the project.
2. Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of contract award and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in the rescission of the contract award.

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT "C"**

**LEGAL RELATIONS AND RESPONSIBILITIES**

Nothing in the provisions of this agreement is intended to create duties or obligations to or rights in third parties not parties to this contract or affect the legal liability of either party to the contract by imposing any standard of care different from the standard of care imposed by law.

It is understood and agreed that neither the City of Clayton ("City") nor any officer or employee is responsible for any damage or liability occurring by reason of anything done or omitted to be done by MCK SERVICES, INC (Contractor") under or in connection with any work, authority or jurisdiction delegated to the Contractor under this agreement. It is understood and agreed that pursuant to Government Code Section 895.4 Contractor shall defend, indemnify and save harmless the City, its officers and employees from all claims, suits or actions of every name, kind and description brought for or in account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by the Contractor under or in connection with any work, authority or jurisdiction delegated to the Contractor under this agreement.

The Contractor waives any and all rights to any type of express and implied indemnity and defense against the City, its officers and employees arising from any work, authority or jurisdiction delegated to the Contractor under this agreement.

Executed on \_\_\_\_\_, 2015

\_\_\_\_\_  
NAME OF CONTRACTOR

By \_\_\_\_\_

\_\_\_\_\_  
TITLE

**EXHIBIT "D"**

**BOND FORMS**

**A. PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Clayton (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

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

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

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

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

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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

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

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_).

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

Title \_\_\_\_\_

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

(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)

\_\_\_\_\_

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

**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

**B. PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Clayton (hereinafter designated as the "City"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_ has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows:

\_\_\_\_\_ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given,

and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

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

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Surety

By

\_\_\_\_\_  
Attorney-in-Fact

Title \_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notified and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

**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



Agenda Date: 5-5-2015

Agenda Item: 8b

Approved:

Gary A. Napper  
City Manager

# STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHARLIE MULLEN, COMMUNITY DEVELOPMENT DIRECTOR 

DATE: MAY 5, 2015

SUBJECT: CONSIDER THE STATE OF CALIFORNIA PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS FOR THE CITY OF CLAYTON, CONSISTING OF THE CALIFORNIAFIRST, FIGTREE AND HERO PROGRAMS (CDD-01-15).

## RECOMMENDATION

Staff recommends the City Council review and consider the City of Clayton's participation in the State of California Property Assessed Clean Energy (PACE) Programs, consisting of the CaliforniaFirst, Figtree and HERO Programs; if determined to be appropriate, adopt the attached enabling Resolutions and direct staff to complete any additional documents needed to authorize the three private company PACE programs for operation in the Clayton community.

## BACKGROUND

### Clayton 2015-2023 Housing Element

This past year the City was able to accomplish a streamlined update of our Housing Element for the eight-year 2015-2023 period. On October 14, 2014 the Planning Commission conducted a public hearing and adopted Resolution No. 04-14 recommending City Council approval of the 2015-2023 Housing Element, which was then followed by City Council public hearing review and approval on November 18, 2014 by adoption of Resolution No. 42-2014. The state's final approval/certification of the 2015-2023 Housing Element for the City of Clayton was provided in writing by HCD on December 11, 2014.

Under Chapter 8 of the 2015-2023 Housing Element, Goal V states the City shall "Encourage and maintain energy efficiency in new and existing housing" and Implementation Measure V.1.3 states "The City will explore home energy and water efficiency improvement financing opportunities available through PACE programs, such as HERO or Figtree PACE. To make this financing option available to Clayton residents, the City would need to adopt a resolution opting in to a Joint Powers Authority. These programs

*are available at no cost to the City".* The timing of this implementation measure was identified to occur in 2015. After attending a PACE workshop, conducting internal staff review of three PACE Programs expressing interest in the Clayton market along with associated materials and information, and after researching how other local communities have addressed this matter, staff brings consideration of the PACE programs to the City Council.

#### Planning Commission Action

On April 14, 2015 the Planning Commission reviewed and considered the City of Clayton's participation in the State of California **Property Assessed Clean Energy (PACE) Programs** and then passed a motion (4-0-1 abstention vote) recommending approval to the City Council. One representative of the CaliforniaFirst Program attended and responded to Commission questions. No other program representatives or members of the public attended or spoke on the matter.

### **DISCUSSION**

#### State Property Assessed Clean Energy (PACE) Programs

In 2008, the State of California approved Assembly Bill 811, amending the Improvement Act of 1911, allowing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by private real property owners. Subsequent bills were passed to expand the list of eligible projects to include water efficiency improvement (AB 474 in 2009) and electric vehicle charging infrastructure (SB 1340 in 2010). Programs developed under this legislation are referred to as Property Assessed Clean Energy programs or PACE programs. PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% (not to exceed 15% to 20% of their property value depending on the program) of energy efficiency, water efficiency and renewable energy projects with little or no up-front costs and pay it off over time as a voluntary property tax assessment through their existing property tax bill. The private property owner voluntarily enters into a contractual agreement with a special tax district in which one resides to access financing that is secured by a lien on one's private property and repaid as a special assessment on one's property tax bill. This means the participating property owner pays the special tax at the same time and in the same manner as other property taxes and assessments. Improvements commonly implemented through PACE include solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. One of the programs (CaliforniaFirst) also allows financing of seismic improvements through its PACE program.

PACE program financing is merely one option for private property owners to finance energy efficiency and water conservation improvements on one's property. PACE program financing is an alternative to other private financing mechanisms, such as using cash, a home equity line of credit or a credit card, to finance these improvements. PACE financing is unique in that qualifying for PACE financing is based primarily on a property owner's equity and timeliness of property tax and mortgage payments rather than individual credit rating or debt-to-income ratio. All PACE financing debt is linked to the physical property rather than to the property owner. The financed debt does not appear on a property owner's

individual credit report. PACE programs offer fixed long-term interest rates, the term of which is generally equal to the useful life of the improvement (from 5 to 25 years), which may be longer than the normal term of other competing loans. As such, PACE program financing may offer advantages over other forms of financing to some borrowers.

In order for private property owners in a jurisdiction to access PACE financing, the jurisdiction must create or join an existing special tax district and specifically authorize contracts between the special tax district and property owners for PACE financing. Since AB 811 passed in 2008, over 320 California cities and counties have joined or created such special tax districts and authorized property owners' participation in PACE programs. PACE financing requires a source of capital from which property owners can borrow and repay through corresponding special assessments. Therefore, the vast majority of cities and counties have joined existing special tax districts, which have partnered with private organizations to administer PACE programs in their jurisdictions. Only a small number of jurisdictions, including Sonoma County, the City of Sacramento, and Los Angeles County, have used their own internal funds to capitalize and support PACE funding.

The three leading PACE programs operating in Northern California are CaliforniaFirst, Figtree, and HERO, and all three have requested the City of Clayton to allow property owners to voluntarily participate in their PACE programs. Many jurisdictions have authorized all three of these organizations to work in their area to offer competition and program alternatives to interested property owners. The following cities in Contra Costa County have allowed participation in PACE programs offered by CaliforniaFirst, Figtree, and HERO, as marked with an "X".

City	CaliforniaFirst	Figtree	HERO
Antioch	X	X	X
Brentwood	X		X
Concord		X	X
Lafayette	X	X	X
Martinez	X		X
Oakley	X	X	X
Pittsburg	X	X	
Pleasant Hill	X	X	X
Richmond	X	X	X
San Pablo	X	X	X
San Ramon	X	X	X
Walnut Creek	X	X	X

During staff's research of the PACE programs we solicited feedback from other communities about the PACE programs, and received no negative feedback. Most communities consider the PACE programs to be a positive alternative and option for homeowners to finance energy efficiency and water conservation improvements. However, it is acknowledged that as with many private financing programs the consumer must do one's own research and make an informed decision on their own. The phrase "informed consumer" applies here.

The following is a summary discussion of the three PACE programs being considered at this time by the City of Clayton:

**A. CaliforniaFirst Program**

The CaliforniaFirst Program was created and approved by the California Statewide Communities Development Authority (CSCDA) and its participating local government members to assist private property owners who want to improve the energy and/or water usage of one's home while lowering utility bills and greenhouse gas emissions. The City of Clayton is already a member of CSCDA. Renewable Funding LLC administers the CaliforniaFirst Program and manages the Program's call center and daily activities of the program. CSCDA, through the program, provides the financing for residential property owners.

Through CSCCA and this program, property owners may finance the installation of eligible products and repay the financing through an assessment on the corresponding property tax bill. Residential property owners apply to finance energy efficiency and water conservation improvements, including but not limited to solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. CaliforniaFirst also allows financing of seismic improvements. Participation in the program is voluntary and requires the full consent of all owners on the property title. Property owners sign an assessment agreement and agree to repay the amount financed over a period of 5, 10, 15, 20 or 25 years, depending on the type of property, the financing amount, and the expected useful lifetime of the installed eligible products. An assessment lien is recorded on a property to secure the financing. Interest rates are subject to underwriting standards and competitive pricing based on market conditions, and currently range from 6.75% - 8.39% based on the term of the financing (5 - 25 years). The assessment lien is senior to liens for mortgages and other non-governmental liens on the property. The minimum assessment amount is \$5,000 with a maximum \$200,000 (but must be less than 15% of the value of the property). The assessment amount plus the mortgage-related debt must not exceed 100% of the value of a property (for more details, please see attached information provided by the CaliforniaFirst Program).

**B. Figtree Program**

The Figtree Program operates under the California Enterprise Development Authority (CEDA). CEDA is a Joint Powers Authority (JPA) that administers its program through a partnership with Figtree Financing. The City of Clayton must join CEDA as an associate member. The Figtree private financing program allows commercial property owners to voluntarily place assessment liens on their property for the purpose of installing renewable energy, energy efficiency, and water conservation improvements. Figtree representatives have stated they intend to expand their program in April 2015 to also include residential property owners. The Figtree interest rates are market-based and determined at the time of financing, but have been in the 4.50% to 7.50% range. The minimum amount financed is \$5,000 with a maximum not to exceed 10% of the total property value (up to 20% in some circumstances). The assessment liens are available in 5, 10, 15 and 20 year terms, not to exceed the useful life of the improvements. The Figtree Program includes processing, administration and prepayment fees. Figtree assessment liens are land-secured and

require no personal guarantee. Figtree states it is a full service, free market and flexible program offering financing plans that can be tailored to a property owner's specific need.

### **C. HERO Program**

The Home Energy Renovation Opportunity (HERO) Program operates under the joint powers authority of the Western Riverside Council of Governments (WRCOG). The City of Clayton must join WRCOG as an associate member to facilitate private property owner access to this PACE Program. The HERO Program is offered to property owners in participating cities and counties to finance renewable energy, energy and water efficiency improvements, and electric vehicle charging infrastructure on their property. If a property owner chooses to participate, the installed improvements will be financed by the issuance of bonds by the WRCOG. The bonds are secured by a voluntary contractual assessment levied on participating owner's property. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the amount borrowed through the voluntary contractual assessment collected together with one's local property tax payments. This financing is available for eligible improvements on both residential and non-residential properties.

## **OTHER DISCUSSION POINTS**

### **A. Federal Housing Finance Administration**

On July 26, 2010, the Federal Housing Finance Administration (FHFA) issued its statement entitled, "FHFA Statement on Certain Energy Retrofit Loan Programs" (FHFA Statement) which provided in part that:

...In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:

- Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
- Ensuring that loan covenants require approval/consent for any PACE loan;
- Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
- Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance..."

As a result of the FHFA's Statement, the PACE programs stopped accepting applications for the Program from residential properties and stopped providing financing through the program to residential property owners in the participating communities.

To address this issue, in March 2014, the Governor of the State of California created a PACE Loss Reserve Program. The PACE Loss Reserve Program, authorized by Senate Bill 96 (2013), is designed to address FHFA's financial concerns by making first mortgage lenders whole for any losses in a foreclosure or a forced sale that are attributable to a PACE loan. If a mortgage lender forecloses on a home that has a PACE lien, the reserve can be used to cover PACE payments during the foreclosure period. Alternatively, if a local

government sells a home for unpaid taxes and the sale price falls short of the outstanding tax and first mortgage amounts, the reserve can be used to cover the shortfall (up to the amount of outstanding PACE payments). By covering these types of losses, the Program puts the first mortgage lender in the same position it would be in without a PACE lien.

The \$10 million Loss Reserve is available for all PACE loans issued by enrolled PACE programs and reported to California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) for the length of their terms. PACE programs must report to CAEATFA semi-annually and pay a small administrative fee based on the principal amount of new loans they issue.

Coinciding with strong demand statewide by residential property owners to finance the installation of energy efficient and water conserving improvements, the PACE programs have regained traction and interest. However, there can be no assurance the FHFA will not act to reemphasize, or take other similar action to issuing, the FHFA Statement in the future. Property owners with assessment liens must also understand potential risk implications for a refinancing or sale of the property and must assume the associated risk.

#### B. Contra Costa County Association of Realtors

In January 2015, staff was informed by a representative of the Contra Costa Association of Realtors (CCAR) that its Board of Directors was opposed to the PACE programs, but they declined to put that position in writing. Staff recently reached out to CCAR to determine if it still opposed PACE programs; we were informed that CCAR has since altered its stance on PACE programs and it now takes "no position".

#### C. Indemnification Agreements

To protect the financial and liability interests of the City of Clayton for these private property owner programs, staff recommends the City require Indemnification Agreements with each of the three PACE program administrators: Renewable Funding, LLC for CaliforniaFirst; Figtree Company Inc. for Figtree; and Renovate America, Inc. for HERO. A template PACE Program Indemnification Agreement will be used that has been reviewed and approved by the City Attorney (attached to each Resolution).

#### D. Potential benefits to property owners include:

- Eligibility: In today's economic environment, alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements or electric vehicle charging infrastructure may not be available. Some property owners do not have financing options available that would provide funding for desired improvements that could lower one's utility bills.
- Savings: Energy and water rates continue to rise and investing in and installing energy efficient, water efficient and renewable energy improvements help to reduce utility bills.
- 100% voluntary. Property owners can choose to participate in a PACE Program solely at one's discretion. Improvements and properties must meet eligibility criteria in order to qualify for financing.
- Payment obligation stays with the property. The voluntary contractual assessment stays [runs] with the property upon transfer of ownership. Certain residential

conforming home mortgage lenders may, however, require the assessment be paid off at the time the property is refinanced or sold.

- Prepayment option. The property owner can choose to pay off contractual assessments at any time, subject to any applicable prepayment penalties.
- Customer oriented program. Part of the success of the PACE programs is their customer service. Committed funding partners provide funds promptly upon project completion resulting in both property owner and contactor satisfaction.

E. Potential benefits to the City include:

- An increase in local and regional jobs.
- An increase in property values (energy efficient homes and buildings generally carry more value).
- An increase in sales, payroll and property tax revenues.
- As in conventional assessment financing, the City neither assumes nor incurs any obligation nor liability to repay the special tax district bonds nor to pay any delinquent assessments levied on the participating real properties. The City is not the underwriter or the guarantor of a PACE program or accompanying private property loan.
- All PACE program and assessment administration, bond issuance and bond administration functions are handled by the three program administrators, namely CaliforniaFirst, Figtree and HERO. After implementation of the PACE programs, City staff time should be minimal and limited to referrals to the PACE program administrators.
- By joining and using these existing and already established PACE programs, the City simply refers inquiring property owners to these financing programs, rather than undertake time and costly expense of trying to establishment its own PACE program.
- The City will have completed Implementation Measure V.1.3 of its 2015-2023 Housing Element.

**CITY ROLE**

Other than approving participation Resolutions permitting designated PACE Programs to conduct business and operate within our municipal jurisdiction (along with the appropriate City Business License), the City assumes no role or responsibility in or of the PACE Programs. Each PACE Program is entirely independent of the City and the City is not the party for questions or concerns of prospective participants. The Indemnification Agreement signed by each PACE Program administrators will ensure the separation of any risk or program liability.

**FISCAL IMPACT**

Some initial staff time as well as printing costs have and will be associated with the preparation of this report and program implementation. Long term fiscal impacts should be negligible as the programs are independently operated by each program provider and minimal City staff time will be required.

Attachments:

1. Resolution - Approving Participation in CaliforniaFirst PACE Program w/  
Exhibit A – Indemnification Agreement with Renewable Funding, LLC
2. Resolution – Approving Associate Membership in CEDA(Figtree) w/  
Exhibit A – Associate Membership Agreement w/ CEDA
3. Resolution – Approving Participation in Figtree PACE Program w/  
Exhibit A – CEDA Resolution of Intention  
Exhibit B – Indemnification Agreement with Figtree Company, Inc.
4. Resolution – Approving Participation in the HERO PACE Program w/  
Exhibit A – JPA Amendment Agreement Relating to WRCOG  
Exhibit B – Indemnification Agreement with Renovate America, Inc.
5. April 14, 2015 Planning Commission Report w/ Attachments

X:\Com Dev\C D D\2015\CDD-01-15 - PACE Financing Program\CC Mtg. - 5-5-15\SRCC- Cal PACE Programs - 5-5-15.docx

**RESOLUTION NO. \_\_\_-2015**

**A RESOLUTION AUTHORIZING THE CITY OF CLAYTON TO PARTICIPATE IN THE CALIFORNIAFIRST PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE INCORPORATED TERRITORY OF THE CITY OF CLAYTON; AND AUTHORIZING RELATED ACTIONS**

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

**WHEREAS**, the California Statewide Communities Development Authority (“California Communities”) is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of Clayton (the “City”); and

**WHEREAS**, California Communities has established the CaliforniaFIRST program (the “CaliforniaFIRST Program”) and will provide financing for certain improvements authorized by Chapter 29 of Division 7 of the Streets & Highways Code (“Chapter 29”), including, but not limited to, renewable energy, energy efficiency and water efficiency improvements and seismic strengthening improvements (the “Improvements”) through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code (“Chapter 29”) and the issuance of improvement bonds (the “Bonds”) under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the “1915 Act”) upon the security of the unpaid contractual assessments; and

**WHEREAS**, Chapter 29 provides that real property assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

**WHEREAS**, the City desires to allow the owners of real property (“Participating Property Owners”) within the incorporated territory of the City to participate in the CaliforniaFIRST Program and to allow California Communities to conduct assessment proceedings under Chapter 29 within the incorporated territory of the City and to issue Bonds under the 1915 Act to finance the Improvements; and

**WHEREAS**, California Communities will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements;

**WHEREAS**, the City shall not be responsible or liable for the conduct of any assessment proceedings, the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments, or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program;

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

**Section 1.** This City Council hereby finds and declares that real properties in the City's incorporated area will benefit from the availability of the CaliforniaFIRST Program within the incorporated territory of the City and, pursuant thereto, the conduct of special assessment proceedings by California Communities pursuant to Chapter 29 and the issuance of Bonds under the 1915 Act.

**Section 2.** In connection with the CaliforniaFIRST Program, the City hereby consents to the conduct of special assessment proceedings by California Communities pursuant to Chapter 29 on any real property within its jurisdiction and the issuance of Bonds under the 1915 Act; provided, that

(1) The Participating Property Owners, who shall be the legal owners of such property, voluntarily and willingly execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(2) The City shall not be responsible or liable for the conduct of any assessment proceedings, the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments, or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program; and

(3) The issuance of Bonds will occur following receipt of a final judgment in a validation action filed by California Communities pursuant to Code of Civil Procedure Section 860 that the Bonds are legal obligations of California Communities.

**Section 3.** Pursuant to the requirements of Chapter 29, California Communities has prepared and will update from time to time the "Program Report" for the CaliforniaFIRST Program (the "Program Report"), and California Communities will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

**Section 4.** The appropriate officials and staff of the City are hereby authorized and directed to make applications for the CaliforniaFIRST program available to all real property owners who wish to finance Improvements; provided, that California Communities shall be responsible for providing to the City such applications and related materials at its own expense. The following staff person, together with any other staff person chosen by the City Manager from time to time, is hereby designated as the contact persons for California Communities in connection with the CaliforniaFIRST Program: Community Development Director.

**Section 5.** The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by California Communities in accordance with the Program Report to implement the CaliforniaFIRST Program for Participating Property Owners.

**Section 6.** The City Council hereby finds that adoption of this Resolution is not a “project” under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

**Section 7.** This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement (Exhibit A). The City Clerk is hereby authorized and directed to transmit a certified copy of this Resolution to the Secretary of California Communities.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 5<sup>th</sup> day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
David T. Shuey, Mayor

ATTEST

\_\_\_\_\_  
Janet Brown, City Clerk

I hereby certify that the foregoing Resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

\_\_\_\_\_  
Janet Brown, City Clerk

Attachment:  
Exhibit A – Indemnification and Insurance Agreement

X:\Com Dev\CDD\2015\CDD-01-15 - PACE Financing Program\CC Mtg. - 5-5-15\CalFirst - doc's\CalFirst - Reso. - CC mtg. - 5-5-15 (Final).docx

**INDEMNIFICATION AND INSURANCE AGREEMENT  
BY AND BETWEEN  
CITY OF CLAYTON  
AND  
RENEWABLE FUNDING, LLC**

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the City of Clayton a municipal corporation ("City") and Renewable Funding, LLC, a California limited liability company (the "Administrator"), the administrator of the CaliforniaFIRST Program, which is a program of the California Statewide Communities Development Authority, a California joint exercise of powers authority (the "Authority").

**RECITALS**

**WHEREAS**, the Authority is a joint exercise of powers authority whose members of which include the City in addition to other cities and counties in the State of California; and

**WHEREAS**, the Authority established the CaliforniaFIRST Program (for PACE financing) to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds, or other forms of indebtedness, under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

**WHEREAS**, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the City; and

**WHEREAS**, on May 5, 2015, the City Council of the City of Clayton, California adopted a Resolution authorizing the City to join the CaliforniaFIRST Program, and authorizing the Authority to accept applications from eligible real property owners and to conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

**WHEREAS**, the Authority is solely responsible for the formation, operation and administration of the CaliforniaFIRST Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the CaliforniaFIRST Program; and

**WHEREAS**, the Administrator is the administrator of the CaliforniaFIRST Program and agrees to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the CaliforniaFIRST PACE Program as set forth herein; and

**NOW, THEREFORE**, in consideration of the above premises and of the City's agreement to join the CaliforniaFIRST Program, the parties agree as follows:

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the CaliforniaFIRST Program except such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the CaliforniaFIRST Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

3. Amendment/Interpretation of this Agreement. This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

4. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

5. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

6. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

7. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator:

Renewable Funding, LLC  
500 12<sup>th</sup> Street, #300  
Oakland, CA 94607  
Attn: \_\_\_\_\_

If to the City:

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

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

9. Effective Date. This Agreement will be effective as of the date of the signature of City's representative as indicated below in the City's signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

APPROVED AS TO FORM:

“City”

City of Clayton, a municipal corporation

\_\_\_\_\_  
Name: Mala Subramanian, City Attorney

By \_\_\_\_\_  
Name: Gary A Napper, City Manager

Date: \_\_\_\_\_

“Administrator”

Renewable Funding, LLC

By \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

**EXHIBIT A**  
**INSURANCE**

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City Manager.

**B. Minimum Limits of Insurance**

Administrator shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by City Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. City of Clayton, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
  - b. Administrator's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided City, its officers, employees, agents, or contractors.
  - d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of Clayton, its officers, employees, agents and contractors.

### 3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

#### **E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City Manager.

#### **F. Verification of Coverage**

Administrator shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: [cityclerk@ci.clayton.ca.us](mailto:cityclerk@ci.clayton.ca.us), or mailed to the following postal address or any subsequent address as may be directed in writing by the City Manager:

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

#### **G. Subcontractors**

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**RESOLUTION NO. \_\_\_-2015**

**RESOLUTION APPROVING ASSOCIATE MEMBERSHIP BY THE CITY OF CLAYTON IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY AND AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF THE CITY OF CLAYTON IN THE AUTHORITY**

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

**WHEREAS**, the City of Clayton, California (the "City"), a municipal corporation, duly organized and existing under the Constitution and the laws of the State of California; and

**WHEREAS**, the City, upon authorization of the City Council, may pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "JPA Law") enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them; and

**WHEREAS**, the City and other public agencies wish to jointly participate in economic development financing programs for the benefit of businesses and nonprofit entities within their jurisdictions offered by membership in the California Enterprise Development Authority (the "Authority") pursuant to an associate membership agreement and Joint Exercise of Powers Agreement Relating to the California Enterprise Development Authority (the "Agreement"); and

**WHEREAS**, under the JPA Law and the Agreement, the Authority is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of the Authority will not be the debts, liabilities or obligations of the City or the other members of the Authority; and

**WHEREAS**, the form of Associate Membership Agreement (the "Associate Membership Agreement") between the City and the Authority is attached (Exhibit A); and

**WHEREAS**, the City is willing to become an Associate Member of the Authority subject to the provisions of the Associate Membership Agreement.

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

**Section 1.** The City Council hereby specifically finds and declares that the actions authorized hereby constitute public affairs of the City. The City Council further finds that the statements, findings and determinations of the City set forth in the preambles above are true and correct.

**Section 2.** The Associate Membership Agreement presented to this meeting and on file with the City Clerk is hereby approved. The Mayor of the City, the City Manager, the City Clerk and other officials of the City are each hereby authorized and directed, for and on behalf of the

City, to execute and deliver the Associate Membership Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3.** The officers and officials of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this resolution and the Associate Membership Agreement. All such actions heretofore taken by such officers and officials are hereby confirmed, ratified and approved.

**Section 4.** The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

**Section 5.** This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 5<sup>th</sup> day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
David T. Shuey, Mayor

ATTEST

\_\_\_\_\_  
Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

---

Janet Brown, City Clerk

Attachments:

Exhibit - A – Associate Membership Agreement with the Authority

X:\Com Dev\CDD\2015\CDD-01-15 - PACE Financing Program\CC Mtg. - 5-5-15\Figtree - doc's\Figtree - Resolution 1 - CC mtg. - 5-5-15.docx

**ASSOCIATE MEMBERSHIP AGREEMENT**

**by and between the**

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

**and the**

**CITY OF CLAYTON, CALIFORNIA**

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this "Associate Membership Agreement"), dated as of May 5, 2015 by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Authority") and the CITY OF CLAYTON, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the "City");

**WITNESSETH:**

**WHEREAS**, the Cities of Selma, Lancaster and Eureka (individually, a "Member" and collectively, the "Members"), have entered into a Joint Powers Agreement, dated as of June 1, 2006 (the "Agreement"), establishing the Authority and prescribing its purposes and powers; and

**WHEREAS**, the Agreement designates the Executive Committee of the Board of Directors and the President of the California Association for Local Economic Development as the initial Board of Directors of the Authority; and

**WHEREAS**, the Authority has been formed for the purpose, among others, to assist for profit and nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest; and

**WHEREAS**, the Agreement permits any other local agency in the State of California to join the Authority as an associate member (an "Associate Member"); and

**WHEREAS**, the City desires to become an Associate Member of the Authority;

**WHEREAS**, City Council of the City has adopted a resolution approving the Associate Membership Agreement and the execution and delivery thereof;

**WHEREAS**, the Board of Directors of the Authority has determined that the City should become an Associate Member of the Authority;

**NOW, THEREFORE**, in consideration of the above premises and of the mutual promises herein contained, the Authority and the City do hereby agree as follows:

**Section 1.** Associate Member Status. The City is hereby made an Associate Member of the Authority for all purposes of the Agreement and the Bylaws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by the City and the Authority, the City shall be and remain an Associate Member of the Authority.

**Section 2.** Restrictions and Rights of Associate Members. The City shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Voting Members of the Authority. In addition, no officer, employee or representative of the City shall have any right to become an officer or director of the Authority by virtue of the City being an Associate Member of the Authority.

**Section 3.** Effect of Prior Authority Actions. The City hereby agrees to be subject to and bound by all actions previously taken by the Members and the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

**Section 4.** No Obligations of Associate Members. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City.

**Section 5.** Execution of the Agreement. Execution of this Associate Membership Agreement and the Agreement shall satisfy the requirements of the Agreement and Article XII of the Bylaws of the Authority for participation by the City in all programs and other undertakings of the Authority.

**IN WITNESS WHEREOF**, the parties hereto have caused this Associate Membership Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

**CALIFORNIA ENTERPRISE  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Gurbax Sahota, Chair  
Board of Directors

Attest:

\_\_\_\_\_  
Michelle Stephens, Asst. Secretary

**CITY OF CLAYTON, CALIFORNIA**

By: \_\_\_\_\_  
David T. Shuey, Mayor  
City Council

Attest:

\_\_\_\_\_  
Janet Brown, City Clerk

**RESOLUTION NO. \_\_\_-2015**

**RESOLUTION AUTHORIZING THE CITY OF CLAYTON TO PARTICIPATE IN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF CLAYTON; AND AUTHORIZING RELATED ACTIONS**

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

**WHEREAS**, the California Enterprise Development Authority ("CEDA") is a joint exercise of powers authority, comprised of cities and counties in the State of California, including the City Clayton (the "City"); and

**WHEREAS**, CEDA has adopted the Figtree Property Assessed Clean Energy (PACE) and Job Creation Program (the "Program" or "Figtree PACE"), to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

**WHEREAS**, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

**WHEREAS**, the City desires to allow the owners of real property ("Participating Parcel") within its jurisdiction ("Participating Property Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

**WHEREAS**, CEDA will conduct assessment proceedings under Chapter 29 to establish an assessment district (the "District") and issue Bonds under the 1915 Act to finance Improvements; and

**WHEREAS**, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by CEDA in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit – A; and

**WHEREAS**, said ROI sets forth the territory within which assessments may be levied for Figtree PACE which territory shall be coterminous with the City's official boundaries of record at the time of adoption of the ROI (the "Boundaries"); and

**WHEREAS**, pursuant to Chapter 29, the City authorizes CEDA to conduct assessment proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue bonds or other forms of indebtedness to finance the Improvements in connection with Figtree PACE; and

**WHEREAS**, to protect the City in connection with operation of the Figtree PACE program, Figtree Energy Financing, the program administrator, has agreed to defend and indemnify the City; and

**WHEREAS**, the City will not be responsible or liable for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued in connection with Figtree PACE.

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

**Section 1. Good Standing.** The City is either a municipal corporation or other public body and a member of CEDA in good standing.

**Section 2. Public Benefits.** On the date hereof, the City Council hereby finds and determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

**Section 3. Appointment of CEDA.** The City hereby appoints CEDA as its representative to (i) record the assessment against the Participating Parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law"), (iii) prepare program guidelines for the operations of the Program and (iv) proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the California Government Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution.

**Section 4. Assessment Proceedings.** In connection with Figtree PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any real property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI; and
- (2) The Participating Property Owners, who shall be the legal owners of such real property, voluntarily and willingly execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

- (3) The City will not be responsible or liable for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in such assessment payments, or the issuance, sale or administration of the Bonds in connection with Figtree PACE.

**Section 5. Program Report.** The City Council hereby acknowledges that pursuant to the requirements of Chapter 29, CEDA has prepared and will update from time to time the "Program Report" for Figtree PACE (the "Program Report") and associated documents, and CEDA will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

**Section 6. Foreclosure.** The City Council hereby acknowledges that the Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. The City Council hereby designates CEDA as its representative to proceed with collection and foreclosure of the liens on the defaulting properties within the District, including accelerated foreclosure pursuant to the Program Report.

**Section 7. Indemnification.** The City Council acknowledges that Figtree will provided the City with an indemnification agreement (Exhibit B), for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby authorizes the appropriate officials and staff of the City to execute and deliver the Indemnification Agreement to Figtree.

**Section 8. City Contact Designation.** The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff person, together with any other staff person designated by the City Manager from time to time, is hereby designated as the contact persons for CEDA in connection with Figtree PACE: Community Development Director.

**Section 9. City Execution of Documents.** The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by CEDA in accordance with the Program Report to implement Figtree PACE for Participating Property Owners.

**Section 10. CEQA.** The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

**Section 11. Effective Date.** This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Figtree Energy Financing.

**Section 12. Costs.** Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 5<sup>th</sup> day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

---

David T. Shuey, Mayor

ATTEST

---

Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

---

Janet Brown, City Clerk

Attachments:

Exhibit - A – CEDA Resolution of Intention

Exhibit - B – Indemnification Agreement with Figtree

X:\Com Dev\CDD\2015\CDD-01-15 - PACE Financing Program\CC Mtg. - 5-5-15\Figtree - doc's\Figtree - Resolution 2 - CC mtg. - 5-5-15.docx

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT  
AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION  
OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES,  
ENERGY EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS IN  
THE CITY OF CLAYTON**

**WHEREAS**, the California Enterprise Development Authority (“CEDA”) is a joint powers authority organized and existing pursuant to the Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the “Agreement”) dated as of June 1, 2006, among the cities of Eureka, Lancaster and Selma; and

**WHEREAS**, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

**WHEREAS**, CEDA has obtained authorization from the City of Clayton (the “City”) located in the County of Contra Costa (the “County”) to conduct assessment proceedings and to enter into contractual assessments to finance the installation of Authorized Improvements within the jurisdictional boundaries of the City pursuant to Chapter 29; and

**WHEREAS**, CEDA desires to declare its intention to establish a Figtree PACE program (“Figtree PACE”) in the City, pursuant to which CEDA, subject to certain conditions set forth below, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:**

**Section 1. Findings.** The Board of Directors hereby finds and determines the following:

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.
- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.

- (d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

**Section 2. Determination of Public Interest.** The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the City pursuant to Chapter 29.

**Section 3. Identification of Authorized Improvements.** CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the "Report"), as that Report may be amended from time to time.

**Section 4. Identification of Boundaries.** Contractual assessments may be entered into by property owners located within the entire geographic territory of the City.

**Section 5. Proposed Financing Arrangements.** Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by Figtree Energy Financing (the "Program Administrator") upon consultation with Figtree PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that is payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date), and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of CEDA to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the Figtree PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the Figtree PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

**Section 6. Public Hearing.** Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the "Board"), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_ A\_, for the purposes of allowing interested persons to object to, or inquire about, the proposed Figtree PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings. The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

**Section 7. Notice to Water and Electric Providers.** Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

**Section 8. Report.** The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

- a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner within the City.
- c) A statement of CEDA's policies concerning contractual assessments including all of the following:

- (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
- (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
- (3) A maximum aggregate dollar amount of contractual assessments.
- (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.

d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.

e) A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the County, and a plan for financing the payment of those fees.

**Section 9. Nature of Assessments.** Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the County on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

**Section 10. Consultations with County Auditor-Controller.** CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

**Section 11. Preparation of Current Roll of Assessment.** Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

**Section 12. Procedures for Responding to Inquiries.** The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

**Section 13. Effective Date.** This resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CALIFORNIA ENTERPRISE  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Gurbax Sahota, Chair

ATTEST:

\_\_\_\_\_  
Larry Cope, Secretary

**INDEMNIFICATION AND INSURANCE AGREEMENT  
BY AND BETWEEN  
CITY OF CLAYTON  
AND  
FIGTREE COMPANY, INC.**

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the City of Clayton a municipal corporation ("City") and Figtree Company, Inc., a California corporation (the "Administrator"), the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program, which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the "Authority").

**RECITALS**

**WHEREAS**, the Authority is a joint exercise of powers authority whose members of which include the City in addition to other cities and counties in the State of California; and

**WHEREAS**, the Authority established the Figtree Property Assessed Clean Energy and Job Creation Program ("Figtree PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds, or other forms of indebtedness, under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

**WHEREAS**, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the City; and

**WHEREAS**, on May 5, 2015, the City Council of the City of Clayton, California adopted a resolution authorizing the City to join the Figtree PACE Program, and authorizing the Authority to accept applications from eligible real property owners and to

conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

**WHEREAS**, the Authority is solely responsible for the formation, operation and administration of the Figtree PACE Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the Figtree PACE Program; and

**WHEREAS**, the Administrator is the administrator of the Figtree PACE Program and agrees to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the Figtree PACE Program as set forth herein; and

**NOW, THEREFORE**, in consideration of the above premises and of the City's agreement to join the Figtree PACE Program, the parties agree as follows:

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the Figtree PACE Program except such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation

upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the Figtree PACE Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

3. Amendment/Interpretation of this Agreement. This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

4. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

5. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

6. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed

and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

7. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator:

Figtree Company, Inc.  
9915 Mira Mesa Blvd. Suite 130  
San Diego, CA 92131  
Attn: Chief Executive Officer

If to the City:

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

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

9. Effective Date. This Agreement will be effective as of the date of the signature of City's representative as indicated below in the City's signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

APPROVED AS TO FORM:

“City”

City of Clayton, a municipal corporation

\_\_\_\_\_  
Name: Mala Subramanian, City Attorney

By \_\_\_\_\_  
Name: Gary A Napper, City Manager

Date: \_\_\_\_\_

“Administrator”

Figtree Company, Inc. a California Corp.

By \_\_\_\_\_  
Name: Mahesh Shah  
Title: CEO

Date: \_\_\_\_\_

**EXHIBIT A**  
**INSURANCE**

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City Manager.

**B. Minimum Limits of Insurance**

Administrator shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by City Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. City of Clayton, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
  - b. Administrator's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided City, its officers, employees, agents, or contractors.
  - d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of Clayton, its officers, employees, agents and contractors.

### 3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

#### **E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City Manager.

#### **F. Verification of Coverage**

Administrator shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: [cityclerk@ci.clayton.ca.us](mailto:cityclerk@ci.clayton.ca.us), or mailed to the following postal address or any subsequent address as may be directed in writing by the City Manager:

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

#### **G. Subcontractors**

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**RESOLUTION NO. \_\_\_-2015**

**A RESOLUTION OF THE CITY COUNCIL OF THE CLAYTON,  
CALIFORNIA, CONSENTING TO PARTICIPATION IN AND THE  
INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN  
THE CALIFORNIA HERO PROGRAM TO FINANCE DISTRIBUTED  
GENERATION RENEWABLE ENERGY SOURCES, ENERGY AND  
WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE  
CHARGING INFRASTRUCTURE AND APPROVING THE AMENDMENT  
TO A CERTAIN JOINT POWERS AGREEMENT RELATED THERETO**

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

**WHEREAS**, the Western Riverside Council of Governments ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

**WHEREAS**, Authority has established the California HERO Program to provide for the financing of renewable energy distributed generation sources, energy and water efficiency improvements and electric vehicle charging infrastructure (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

**WHEREAS**, City of Clayton (the "City") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

**WHEREAS**, in Chapter 29, the Legislature has authorized cities and counties to assist real property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

**WHEREAS**, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the California HERO Program would promote the purposes cited above; and

**WHEREAS**, the City wishes to provide innovative solutions for its real property owners to achieve energy and water efficiency and independence, and in doing so cooperate with Authority in order to efficiently and economically assist real property owners in the City in financing such Improvements; and

**WHEREAS**, Authority established the California HERO Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers

Agreement Adding the City of Clayton as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is attached as Exhibit "A" hereto, to assist real property owners within the incorporated area of the City in financing the cost of installing Improvements; and

**WHEREAS**, the City shall not be responsible or liable for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

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

**Section 1.** This City Council finds and declares that real property owners in the City's incorporated area will be benefited by the availability of the California HERO Program to finance the installation of Improvements.

**Section 2.** This City Council consents to inclusion in the California HERO Program of all of the real properties in the incorporated area within the City and to the Improvements, upon the request by and voluntary and willingly agreement of owners of such real properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

**Section 3.** The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the California HERO Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent and be secured by such contractual assessments.

**Section 4.** This City Council hereby approves the JPA Amendment (Exhibit A) and authorizes the execution thereof by appropriate City officials.

**Section 5.** City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the California HERO Program within the City, and report back periodically to this City Council on the success of such program.

**Section 6.** The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

**Section 7.** This Resolution shall take effect once it is adopted and a fully executed indemnification agreement and insurance documentation has been provided to the City. The City Manager is authorized to execute the Indemnification Agreement (Exhibit B). The City Clerk is

hereby authorized and directed to transmit a certified copy of this Resolution to the Secretary of the Authority.

**PASSED, APPROVED AND ADOPTED** by the City Council of Clayton, California at a regular public meeting thereof held on the 5<sup>th</sup> day of May 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
David T. Shuey, Mayor

ATTEST

\_\_\_\_\_  
Janet Brown, City Clerk

I hereby certify that the foregoing resolution was duly adopted and passed by the City Council of the City of Clayton at a regular public meeting thereof held on May 5, 2015.

\_\_\_\_\_  
Janet Brown, City Clerk

Attachments:

Exhibit A – JPA Amendment Agreement Relating to WRCOG

Exhibit B – Indemnification Agreement with Renovate America, Inc.

X:\Com Dev\CDD\2015\CDD-01-15 - PACE Financing Program\CC Mtg. - 5-5-15\Hero - doc's\HERO - Resolution - CC mtg. - 5-5-15.docx

**AMENDMENT TO THE JOINT POWERS AGREEMENT  
ADDING CITY OF CLAYTON AS  
AN ASSOCIATE MEMBER OF THE  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
TO PERMIT THE PROVISION OF PROPERTY ASSESSED  
CLEAN ENERGY (PACE) PROGRAM SERVICES WITH  
SUCH CITY**

This Amendment to the Joint Powers Agreement (“JPA Amendment”) is made and entered into on the 5<sup>th</sup> day of May, 2015, by City of Clayton (“City”) and the Western Riverside Council of Governments (“Authority”) (collectively the “Parties”).

**RECITALS**

**WHEREAS**, Authority is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the “Joint Exercise of Powers Act”) and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the “Authority JPA”); and

**WHEREAS**, as of October 1, 2012, Authority had 18 member entities (the “Regular Members”).

**WHEREAS**, Chapter 29 of the Improvement Act of 1911, being Division 7 of the California Streets and Highways Code (“Chapter 29”) authorizes cities, counties, and cities and counties to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy (“PACE”) program, to fund certain renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure (the “Improvements”) that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

**WHEREAS**, Authority has established a PACE program known as the “California HERO Program” pursuant to Chapter 29 which authorizes the implementation of such PACE financing program for cities and counties throughout the state; and

**WHEREAS**, City desires to allow owners of property within its jurisdiction to participate in the California HERO Program and to allow Authority to conduct proceedings under Chapter 29, as it is now enacted or maybe amended hereafter, to finance Improvements to be installed on such properties; and

**WHEREAS**, this JPA Amendment will permit City to become an Associate Member of Authority and to participate in California HERO Program for the purpose of facilitating the implementation of such program within the jurisdiction of City; and

**WHEREAS**, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services, through the California HERO

Program, including the operation of such PACE financing program, within the incorporated territory of City; and

**WHEREAS**, the JPA Amendment sets forth the rights, obligations and duties of City and Authority with respect to the implementation of the California HERO Program within the incorporated territory of City.

### **MUTUAL UNDERSTANDINGS**

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

#### **A. JPA Amendment.**

1. The Authority JPA. City agrees to the terms and conditions of the Authority JPA, attached.

2. Associate Membership. By adoption of this JPA Amendment, City shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of City as an Associate Member are limited solely to those terms and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program within the incorporated territory of City. Except as expressly provided for by the this JPA Amendment, City shall not have any rights otherwise granted to Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee. City shall not be considered a member for purposes of Section 9.1 of the Authority JPA.

3. Rights of Authority. This JPA Amendment shall not be interpreted as limiting or restricting the rights of Authority under the Authority JPA. Nothing in this JPA Amendment is intended to alter or modify Authority Transportation Uniform Mitigation Fee (TUMF) Program, the PACE Program administered by Authority within the jurisdictions of its Regular Members, or any other programs administered now or in the future by Authority, all as currently structured or subsequently amended.

#### **B. Implementation of California HERO Program within City Jurisdiction.**

1. Boundaries of the California HERO Program within City Jurisdiction. City shall determine and notify Authority of the boundaries of the incorporated territory within City's jurisdiction within which contractual assessments may be entered into under the California HERO Program (the "Program Boundaries"), which boundaries may include the entire incorporated territory of City or a lesser portion thereof.

2. Determination of Eligible Improvements. Authority shall determine the types of distributed generation renewable energy sources, energy efficiency or water conservation improvements, electric vehicle charging infrastructure or such other improvements as may be authorized pursuant to Chapter 29 (the “Eligible Improvements”) that will be eligible to be financed under the California HERO Program.

3. Implementation of California HERO Program Within Program Boundaries. Authority will undertake such proceedings pursuant to Chapter 29 as shall be legally necessary to enable Authority to make contractual financing of Eligible Improvements available to eligible property owners within the Program Boundaries.

4. Financing the Installation of Eligible Improvements. Authority shall implement its plan for the financing of the purchase and installation of the Eligible Improvements under the California HERO Program.

5. Ongoing Administration. Authority shall be responsible for the ongoing administration of the California HERO Program, including but not limited to producing education plans to raise public awareness of the California HERO Program, soliciting, reviewing and approving applications from residential and commercial property owners participating in the California HERO Program, establishing contracts for residential, commercial and other property owners participating in such program, establishing and collecting assessments due under the California HERO Program, adopting and implementing any rules or regulations for the California HERO Program, and providing reports as required by Chapter 29.

City will not be responsible for the conduct of any proceedings required to be taken under Chapter 29; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

6. Phased Implementation. The Parties recognize and agree that implementation of the California HERO Program as a whole can and may be phased as additional other cities and counties execute similar agreements. City entering into this JPA Amendment will obtain the benefits of and incur the obligations imposed by this JPA Amendment in its jurisdictional area, irrespective of whether cities or counties enter into similar agreements.

**C. Miscellaneous Provisions.**

1. Withdrawal. City or Authority may withdraw from this JPA Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Authority within City. The provisions of Section 6.2 of the Authority JPA shall not apply to City under this JPA Amendment. City may withdraw approval for conduct of the HERO Program within the jurisdictional limits of City upon thirty (30) written notice to WRCOG without liability to the Authority or any affiliated entity. City withdrawal shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by WRCOG prior to the date of City’s notice of withdrawal.

2. Mutual Indemnification and Liability. Authority and City shall mutually defend, indemnify and hold the other party and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of the willful misconduct or negligent acts, errors or omissions of the indemnifying party or its directors, officials, officers, employees and agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorneys fees and other related costs and expenses, but excluding payment of consequential damages. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

3. Environmental Review. Authority shall be the lead agency under the California Environmental Quality Act for any environmental review that may be required in implementing or administering the California HERO Program under this JPA Amendment.

4. Cooperative Effort. City shall cooperate with Authority by providing information and other assistance in order for Authority to meet its obligations hereunder. City recognizes that one of its responsibilities related to the California HERO Program will include any permitting or inspection requirements as established by City.

5. Notice. Any and all communications and/or notices in connection with this JPA Amendment shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

Authority:

Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor. MS1032  
Riverside, CA 92501-3609  
Attn: Executive Director

City:

City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517  
Attn: Gary A. Napper, City Manager

6. Entire Agreement. This JPA Amendment, together with the Authority JPA, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation,

inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

7. Successors and Assigns. This JPA Amendment and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. A Party may only assign or transfer its rights and obligations under this JPA Amendment with prior written approval of the other Party, which approval shall not be unreasonably withheld.

8. Attorney's Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

9. Governing Law. This JPA Amendment shall be governed by and construed in accordance with the laws of the State of California, as applicable.

10. No Third Party Beneficiaries. This JPA Amendment shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this JPA Amendment to maintain a suit for personal injuries or property damages under the provisions of this JPA Amendment. The duties, obligations, and responsibilities of the Parties to this JPA Amendment with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

11. Severability. In the event one or more of the provisions contained in this JPA Amendment is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this JPA Amendment and the remaining parts of this JPA Amendment shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this JPA Amendment.

12. Headings. The paragraph headings used in this JPA Amendment are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

13. Amendment. This JPA Amendment may be modified or amended by the Parties at any time. Such modifications or amendments must be mutually agreed upon and executed in writing by both Parties. Verbal modifications or amendments to this JPA Amendment shall be of no effect.

14. Effective Date. This JPA Amendment shall become effective upon the execution thereof by the Parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto have caused this JPA Amendment to be executed and attested by their officers thereunto duly authorized as of the date first above written.

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

By: \_\_\_\_\_  
Executive Committee Chair  
Western Riverside Council of Governments

Date: \_\_\_\_\_

**CITY OF CLAYTON**

By: \_\_\_\_\_  
Name: David T. Shuey  
Title: Mayor

Date: \_\_\_\_\_

**INDEMNIFICATION AND INSURANCE AGREEMENT  
BY AND BETWEEN  
CITY OF CLAYTON  
AND  
RENOVATE AMERICA, INC**

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the City of Clayton a municipal corporation ("City") and Renovate America, Inc., a Delaware corporation (the "Administrator"), the administrator of the California HERO Program, which is a program of the Western Riverside Council of Governments, a California joint exercise of powers authority (the "Authority").

**RECITALS**

**WHEREAS**, the Authority is a joint exercise of powers authority whose members of which include the City in addition to other cities and counties in the State of California; and

**WHEREAS**, the Authority established the California HERO Program (for PACE financing) to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds, or other forms of indebtedness, under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

**WHEREAS**, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the City; and

**WHEREAS**, on May 5, 2015, the City Council of the City of Clayton, California adopted a Resolution authorizing the City to join the California HERO Program, and authorizing the Authority to accept applications from eligible real property owners and to conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

**WHEREAS**, the Authority is solely responsible for the formation, operation and administration of the California HERO Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the California HERO Program; and

**WHEREAS**, the Administrator is the administrator of the California HERO Program and agrees to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the California HERO Program as set forth herein; and

**NOW, THEREFORE**, in consideration of the above premises and of the City's agreement to join the California HERO Program, the parties agree as follows:

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the California HERO Program except such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the California HERO Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

3. Amendment/Interpretation of this Agreement. This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

4. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

5. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

6. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

7. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator:

Renovate America, Inc.  
15073 Avenue of Science #200  
San Diego, CA 92128  
Attn: \_\_\_\_\_

If to the City:

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

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

9. Effective Date. This Agreement will be effective as of the date of the signature of City's representative as indicated below in the City's signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

APPROVED AS TO FORM:

“City”

City of Clayton, a municipal corporation

\_\_\_\_\_  
Name: Mala Subramanian, City Attorney

By \_\_\_\_\_  
Name: Gary A Napper, City Manager

Date: \_\_\_\_\_

“Administrator”

Renovate America, Inc.

By \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

**EXHIBIT A**  
**INSURANCE**

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City Manager.

**B. Minimum Limits of Insurance**

Administrator shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by City Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. City of Clayton, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
  - b. Administrator's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided City, its officers, employees, agents, or contractors.
  - d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of Clayton, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City Manager.

**F. Verification of Coverage**

Administrator shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: [cityclerk@ci.clayton.ca.us](mailto:cityclerk@ci.clayton.ca.us), or mailed to the following postal address or any subsequent address as may be directed in writing by the City Manager:

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

**G. Subcontractors**

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**CITY OF CLAYTON  
PLANNING COMMISSION  
STAFF REPORT**

**Meeting Date:** April 14, 2015

**Item No.:** 7.a.

**From:** Charlie Mullen  
Community Development Director 

**Subject:** Consider the State of California Property Assessed Clean Energy (PACE) Programs for the City of Clayton, consisting of the CaliforniaFirst, Figtree and HERO programs (CDD-01-15).

**Applicant:** City of Clayton

---

**RECOMMENDATION**

Staff recommends the Planning Commission review and consider the State of California Property Assessed Clean Energy (PACE) Programs for the City of Clayton, consisting of the CaliforniaFirst, Figtree and HERO programs, and if determined to be appropriate, recommend participation in the PACE programs to the City Council.

**BACKGROUND**

**Clayton 2015-2023 Housing Element**

This past year the City was able to accomplish a streamlined update of our Housing Element for the eight-year 2015-2023 period. On October 14, 2014 the Planning Commission conducted a public hearing and adopted Resolution No. 04-14 recommending City Council approval of the 2015-2023 Housing Element, which was then followed up by City Council public hearing review and approval on November 18, 2014, with adoption of Resolution No. 42-2014. The final approval/certification of the 2015-2023 Housing Element for the City of Clayton was provided in writing by HCD on December 11, 2014.

Under Chapter 8 of the 2015-2023 Housing Element, Goal V states the City shall *“Encourage and maintain energy efficiency in new and existing housing”* and Implementation Measure V.1.3 states *“The City will explore home energy and water efficiency improvement financing opportunities available through PACE programs, such as HERO or Figtree PACE. To make this financing option available to Clayton residents, the City would need to adopt a resolution opting in to a Joint Powers Authority. These programs are available at no cost to the City”*. The timing of this implementation measure was identified to occur in 2015. After attending a PACE workshop, conducting internal staff review of three PACE Programs expressing interest in the Clayton market along with associated materials and information, and after researching how other local communities have addressed this matter, staff is now bringing forward the consideration of the PACE programs to the Planning Commission and then to the City Council.

### State Property Assessed Clean Energy (PACE) Programs

In 2008, the State of California approved Assembly Bill 811, amending the Improvement Act of 1911, authorizing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by property owners. Subsequent bills were passed to expand the list of eligible projects to include water efficiency improvement (AB 474 in 2009) and electric vehicle charging infrastructure (SB 1340 in 2010). Programs developed under this legislation are referred to as Property Assessed Clean Energy programs or PACE programs. PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% (not to exceed 15% to 20% of their property value depending on the program) of energy efficiency, water efficiency and renewable energy projects with little or no up-front costs and pay it back over time as a voluntary property tax assessment through their existing property tax bill. The property owner voluntarily enters into a contractual agreement with a special tax district in which they reside to access financing that is secured by a lien on their property and repaid as a special assessment on their property tax bill. This means the participating property owner pays the special tax at the same time and in the same manner as other property taxes and assessments. Improvements commonly implemented through PACE include solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. One of the programs (CaliforniaFirst) also allows financing of seismic improvements through its PACE program.

PACE program financing is only one option for property owners to finance energy efficiency and water conservation improvements on their property. PACE program financing is an alternative to other private financing mechanisms, such as using cash, a home equity line of credit or a credit card, to finance these improvements. PACE financing is unique in that qualifying for PACE financing is based primarily on a property owner's equity and timeliness of property tax and mortgage payments rather than individual credit rating or debt-to-income ratio. All PACE financing debt is linked to the physical property rather than the property owner. It does not appear on the property owner's individual credit report. PACE programs offer fixed long-term interest rates, the term of which is generally equal to the useful life of the improvement (from 5 to 20 years), which might be longer than the normal term of other loans. As such, PACE program financing may offer advantages over other forms of financing to some borrowers.

In order for property owners in a jurisdiction to access PACE financing, the jurisdiction must create or join an existing special tax district and specifically authorize contracts between the special tax district and property owners for PACE financing. Since AB 811 passed in 2008, over 320 California cities and counties have joined or created special tax districts and authorized property owners' participation in PACE programs. PACE financing requires a source of capital from which property owners can borrow and repay through the special assessments. Therefore, the vast majority of cities and counties have joined existing special tax districts, which have partnered with private organizations to administer PACE programs in their jurisdictions. Only a small number of jurisdictions, including Sonoma County, the City of Sacramento, and Los Angeles County, have used their own internal funds to capitalize and support PACE funding.

The three leading PACE programs operating in Northern California are CaliforniaFirst, Figtree, and HERO, and all three have requested the City of Clayton to authorize participation in their PACE programs. Many jurisdictions have authorized all three of these organizations to work in

their area, in order to offer competition and program alternatives to interested property owners. The following cities in Contra Costa County have authorized participation in PACE programs offered by CaliforniaFirst, Figtree, and HERO, as marked with an "X".

City	CaliforniaFirst	Figtree	HERO
Antioch	X	X	X
Brentwood	X		X
Concord		X	X
Lafayette	X	X	X
Martinez	X		X
Oakley	X	X	X
Pittsburg	X	X	
Pleasant Hill	X	X	X
Richmond	X	X	X
San Pablo	X	X	X
San Ramon	X	X	X
Walnut Creek	X	X	X

**DISCUSSION**

The following is a summary discussion of the three PACE programs being considered at this time by the City of Clayton:

**CaliforniaFirst Program**

The CaliforniaFirst program was created and approved by the California Statewide Communities Development Authority (CSCDA) and its participating local government members to assist property owners who want to improve the energy and/or water usage of their home while lowering utility bills and greenhouse gas emissions. Renewable Funding LLC administers the CaliforniaFirst Program and manages the program call center and daily activities of the program. CSCDA, through the program, provides financing for residential property owners. Through CSCCA and the program, property owners may finance the installation of eligible products and repay the financing through an assessment on the property tax bill. Residential property owners apply to finance energy efficiency and water conservation improvements, including but not limited to solar energy systems, heating and cooling system upgrades, window replacement, and insulation upgrades. CaliforniaFirst also allows financing of seismic improvements. Participation in the program is voluntary and requires the full consent of all owners on the property title. Property owners sign an assessment agreement and agree to repay the amount financed over a period of 5, 10, 15, 20 or 25 years, depending on the type of property, the financing amount, and the expected useful lifetime of the installed eligible products. An assessment lien is recorded on a property to secure the financing. Interest rates are subject to underwriting standards and competitive pricing based on market conditions, and ranging from 6.75% - 8.39% based on the term of the financing (5 - 25 years). The assessment lien will be senior to liens for mortgages and other non-governmental liens on the property. The minimum assessment amount is \$5,000 with a maximum \$200,000 (but must be less than 15% of the value of the property). The assessment amount plus the mortgage-related debt must not exceed 100%

of the value of a property (for more details please see attached information provided by the CaliforniaFirst Program).

### **Figtree Program**

The Figtree program operates under the California Enterprise Development Authority (CEDA). CEDA is a Joint Powers Authority (JPA) that administers the program through a partnership with Figtree Financing. The Figtree private financing program allows commercial property owners to voluntarily place assessment liens on their property for the purpose of installing renewable energy, energy efficiency, and water conservation improvements. Figtree representatives have stated they intend to expand their program in April 2015 to also include residential property owners. The Figtree interest rates are market-based and determined at the time of financing, but have been in the 4.50% to 7.50% range. The minimum amount finance is \$5,000 with a maximum not to exceed 10% of the total property value (up to 20% in some circumstances). The assessment liens are available in 5, 10, 15 and 20 year terms, not to exceed the useful life of the improvements. The Figtree program includes processing, administration and prepayment fees. Figtree assessment liens are land-secured and require no personal guarantee. Figtree states they are a full service, free market and flexible program, offering financing plans that can be tailored to a property owner's specific need.

### **HERO Program**

The Home Energy Renovation Opportunity (HERO) program operates under the joint powers authority of the Western Riverside council of Governments (WRCOG). The HERO program is being offered to allow property owners in participating cities and counties to finance renewable energy, energy and water efficiency improvements, and electric vehicle charging infrastructure on their property. If a property owner chooses to participate, the installed improvements will be financed by the issuance of bonds by the WRCOG. The bonds are secured by a voluntary contractual assessment levied on participating owner's property. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the amount borrowed through the voluntary contractual assessment collected together with their property taxes. This financing is available for eligible improvements on both residential and non-residential properties.

## **OTHER DISCUSSION POINTS**

### **Federal Housing Finance Administration**

On July 26, 2010, the Federal Housing Finance Administration (FHFA) issued its statement entitled, "FHFA Statement on Certain Energy Retrofit Loan Programs" (FHFA Statement) which provided in part that:

...In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:

- Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
- Ensuring that loan covenants require approval/consent for any PACE loan;

- Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
- Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance...”

As a result of the FHFA Statement, the PACE program stopped accepting applications for the Program from residential properties and stopped providing financing through the program to residential property owners in the participating communities.

To address this issue, in March 2014, the Governor of the State of California created a PACE Loss Reserve Program. The PACE Loss Reserve Program, authorized by Senate Bill 96 (2013), is designed to address FHFA’s financial concerns by making first mortgage lenders whole for any losses in a foreclosure or a forced sale that are attributable to a PACE loan. If a mortgage lender forecloses on a home that has a PACE lien, the reserve can be used to cover PACE payments during the foreclosure period. Alternatively, if a local government sells a home for unpaid taxes and the sale price falls short of the outstanding tax and first mortgage amounts, the reserve can be used to cover the shortfall (up to the amount of outstanding PACE payments). By covering these types of losses, the Program puts the first mortgage lender in the same position it would be in without a PACE lien.

The \$10 million Loss Reserve will be available for all PACE loans issued by enrolled PACE programs and reported to California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) for the length of their terms. PACE programs will report to CAEATFA semi-annually and pay a small administrative fee based on the principal amount of new loans they issue.

Coinciding with strong demand statewide by residential property owners to finance the installation of energy efficient and water conserving improvements, the PACE programs have regained traction and interest. However, there can be no assurance the FHFA will not act to reemphasize, or take other similar action to issuing, the FHFA Statement in the future. Property owners with assessment liens must also understand potential risk implications for a refinancing or sale of the property and must assume the associated risk.

#### Contra Costa County Association of Realtors

In January 2015, staff was informed by a representative of the Contra Costa Association of Realtors (CCAR) that its Board of Directors was opposed to the PACE programs, but they were not inclined to put that position in writing. Staff recently, reached out to CCAR to see if they still opposed the program and was informed that CCAR has since changed their stance on the PACE program and they now take “no position”.

#### Indemnification Agreements

To protect the financial and liability interests of the City of Clayton, staff will recommend the City enter into Indemnification Agreements with each of the three PACE program administrators, CaliforniaFirst, Figtree and HERO. A template PACE program Indemnification Agreement will be used that has been reviewed and approved by the City Attorney.

Potential benefits to property owners include:

- Eligibility: In today's economic environment, alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements or electric vehicle charging infrastructure may not be available. Some property owners do not have financing options available that would provide funding for improvements that lower their utility bills.
- Savings: Energy and water rates continue to rise and investing in and installing energy efficient, water efficient and renewable energy improvements help to reduce utility bills.
- 100% voluntary. Property owners can choose to participate in the program at their discretion. Improvements and properties must meet eligibility criteria in order to qualify for financing.
- Payment obligation stays with the property. The voluntary contractual assessment stays with the property upon transfer of ownership. Certain residential conforming mortgage providers will, however, require the assessment be paid off at the time the property is refinanced or sold.
- Prepayment option. The property owner can choose to pay off contractual assessments at any time, subject to applicable prepayment penalties.
- Customer oriented program. Part of the success of the PACE programs is their customer service. Committed funding partners provide funding promptly upon project completion resulting in both property owner and contractor satisfaction.

Potential benefits to the City include:

- An increase in local and regional jobs.
- An increase in property values (energy efficient homes and buildings are generally worth more money).
- An increase in sales, payroll and property tax revenue.
- As in conventional assessment financing, the City is not obligated to repay the bonds or to pay any delinquent assessments levied on the participating properties.
- All PACE program and assessment administration, bond issuance and bond administration functions are handled by the three program administrators CaliforniaFirst, Figtree and HERO. After implementation of the PACE programs, City staff time should be minimal and limited to referrals to the PACE program administrators.
- By joining and using these existing and already established PACE programs, the City can simply refer property owners to these financing programs, rather than undertake time and costly expense of trying to establishment its own PACE program.
- The City will have completed Implementation Measure V.1.3 of the 2015-2023 Housing Element.

City Role

Other than approving Resolutions permitting designated PACE Programs to conduct business and operate within our municipal jurisdiction (along with the appropriate City Business License), the City assumes no role or responsibility in or of the PACE Programs. Each PACE Program is entirely independent of the City and the City is not the party for questions or concerns of prospective participants. The Indemnification Agreement signed by each PACE Program business will ensure the separation of any risk or program liability.

**ATTACHMENTS**

1. CaliforniaFirst program brochures and/or information
2. Figtree program brochures and/or information
3. HERO program brochures and/or information

X:\Com Dev\CDD\2015\CDD-01-15 - PACE Financing Program\PC Mig. - 4-14-15\SRPC - PACE Programs - 4-14-15 (Final).docx

# **ATTACHMENT – 1**

## **CaliforniaFirst Program Brochures and/or Information**

# California**FIRST**

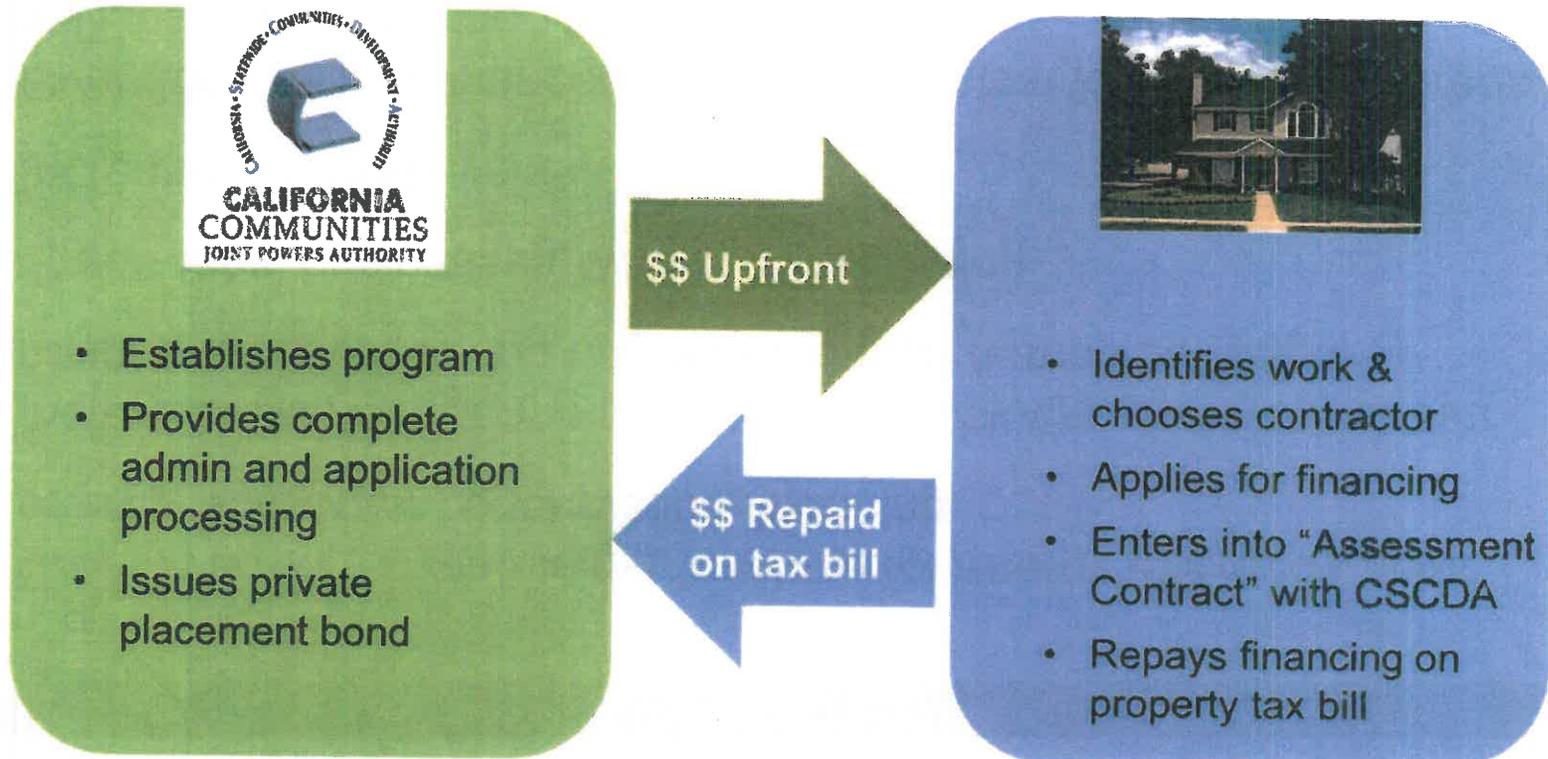
---

Bringing California**FIRST** PACE Financing to the City of Clayton's Businesses and Homeowners

RENEWABLE  FUNDING

# What Is PACE? (Property Assessed Clean Energy)

A ***voluntary, quickly accessed*** financing mechanism that can pay for an assortment of energy efficiency, renewable energy, water conservation, and seismic upgrades with ***no upfront costs to property owners, no costs to local governments, repayment appearing as a line-item on property tax bills***, and typically ***transferable*** to a new owner.



# PACE Benefits

---

- Creates a more dynamic marketplace for energy efficiency, solar energy, and water conservation financing
- Increases number of homeowners and business owners who can finance utility bill saving upgrades to their homes/buildings
- Grows local businesses, who increase hiring
- Increases property values
- Over \$500 million financed in CA over the last few years, hundreds of millions in the pipeline
- CaliforniaFIRST alone has \$300 million in capital ready to deploy today
- Reduces water consumption, electricity use, natural gas use
- Increases renewable energy generation

# Where is CaliforniaFIRST?

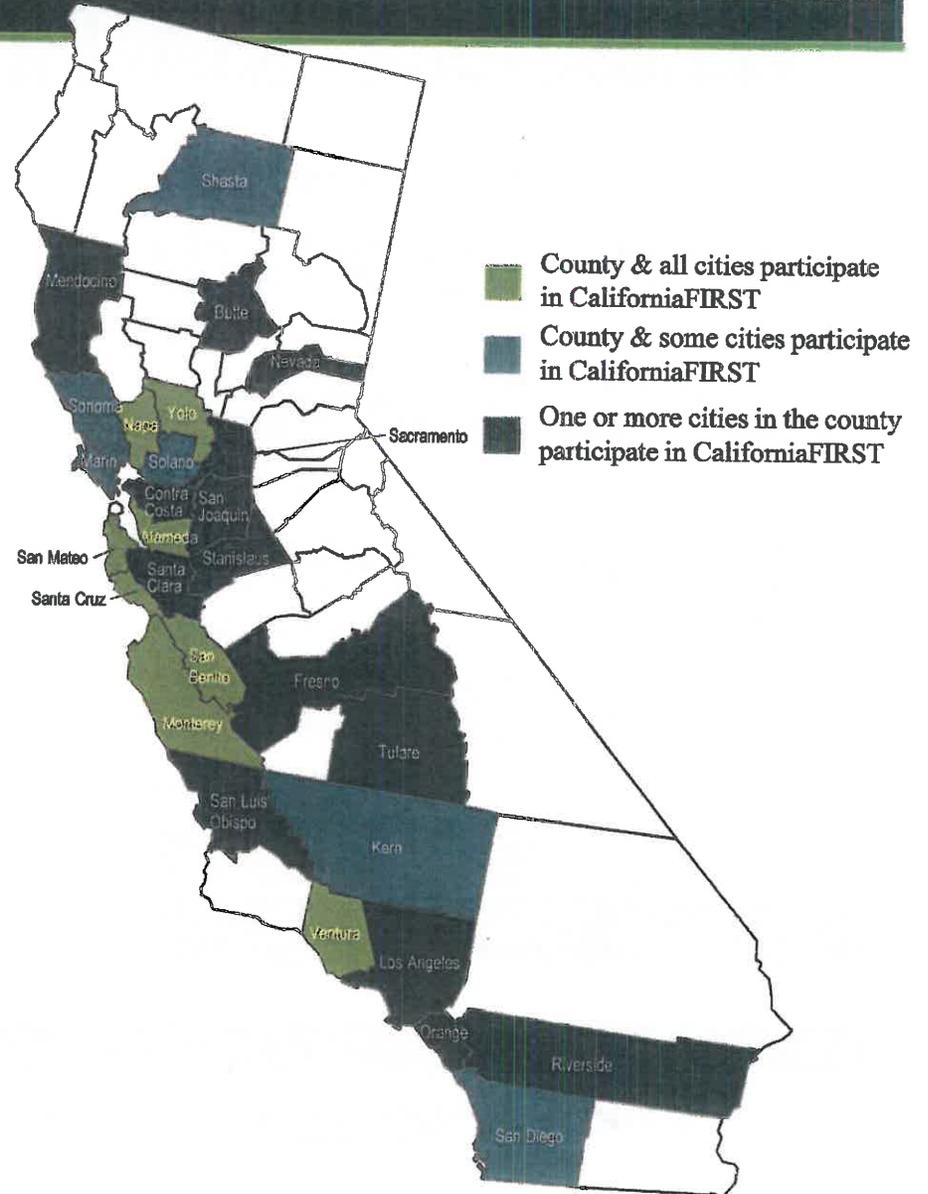
(by May, 2015)

## CaliforniaFIRST *(see map →)*

- Almost 300 active jurisdictions
- 20+ counties
- Covering 60+% of CA's pop.

## All PACE Programs

- Over 325 jurisdictions
- 40+ counties
- 80%+ of CA's pop.



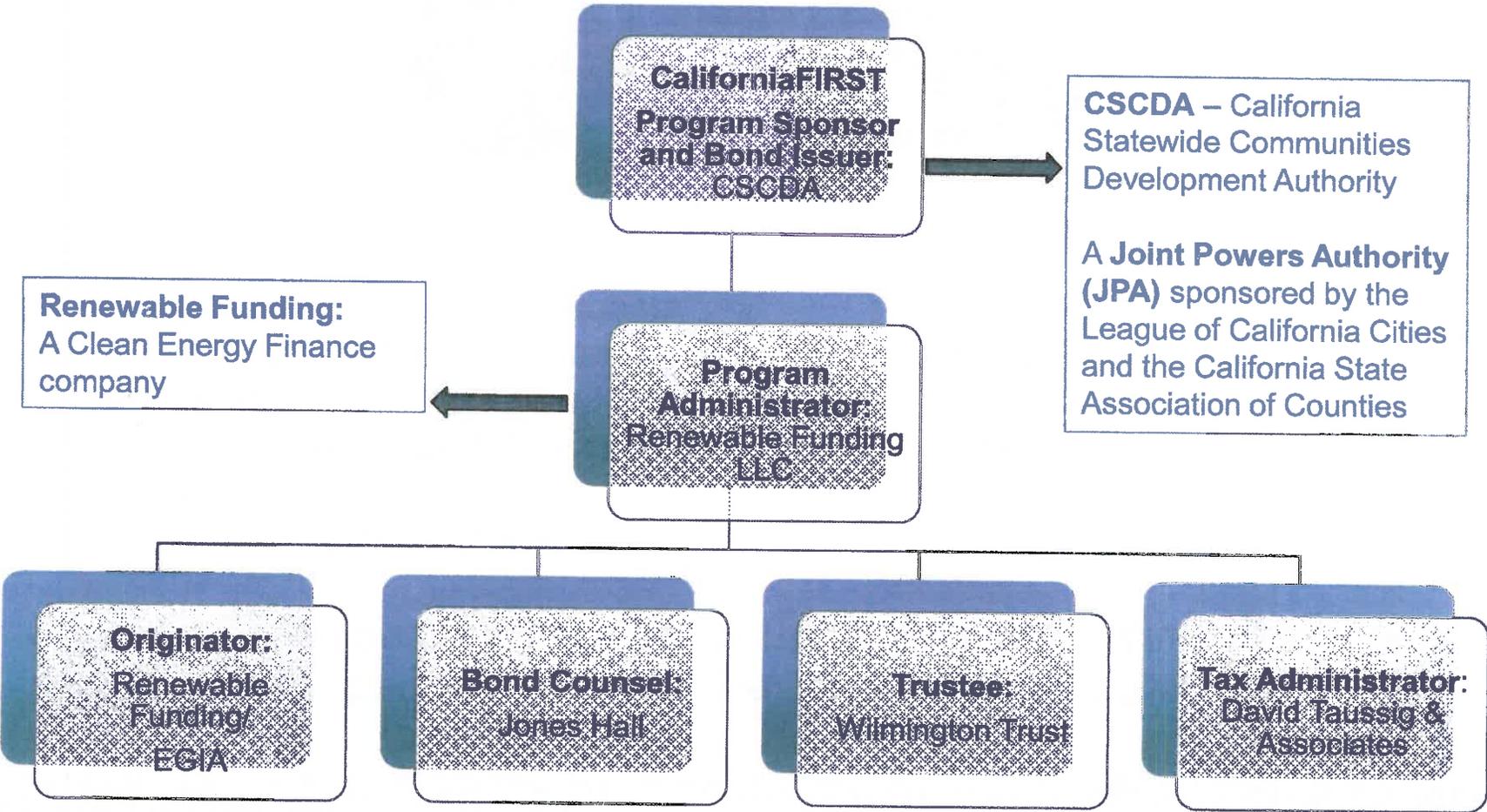
## Jurisdictions in Contra Costa County and PACE Opt-In Status

Jurisdiction	PACE
Antioch	Y
Brentwood	Y
Clayton	
Concord	Y
Danville	Y
El Cerrito	Y
Hercules	
Lafayette	Y
Martinez	Y
Moraga	

Jurisdiction	PACE
Oakley	Y
Orinda	
Pinole	
Pittsburg	Y
Pleasant Hill	Y
Richmond	Y
San Pablo	Y
San Ramon	Y
Walnut Creek	Y
Unincorporated County	

PACE programs in Contra Costa County are now available to 70%+ of the county's single family homeowners

# Who: CaliforniaFIRST's Team Structure



# Who: Contra Costa County and CSCDA

- \$1.8 billion in bonding activity since 1993 throughout the County
- Bonds issued on behalf of 100+ borrowing entities, including:
  - 15 of the County's Cities
  - The County
  - Fire and Flood Control and Water Conservation Districts
  - Non-profits
  - Industrial Companies (Industrial Development Bonds)
  - Affordable Housing Developers



# How Much?: Financing Terms

Years to Repay	Interest Rates*
5	6.75%
10	7.59%
15	7.99%
20	8.29%
25 (solar only)	8.39%
<i>Closing Costs (% of project costs):</i>	<i>~6.5%</i>
<i>No Prepayment Penalties</i>	

\* For most homeowners, the interest paid is tax deductible, much like with a mortgage. We advise all CaliforniaFIRST clients to consult with their CPA on this tax deductibility question.

# Qualifying for *Residential* PACE Financing

---

- No minimum FICO credit score required
- No recent missed mortgage or property tax payments
- Homeowner must have at least 10% equity in the home
- Project cost may not exceed 15% of the estimated market value of the home (or \$200,000, whichever is less)
- Minimum project cost: \$5,000
- Products to be installed must meet minimum efficiency and performance standards

# How We Ensure Quality: Consumer Protections

	CALFIRST	HELOC	HEL	Personal Unsecured Loan	Credit Card
Contractor Quality Verified	Yes	By homeowner			
Only high performing products	Yes	By homeowner			
3 <sup>rd</sup> Party verification of workmanship	Yes	No			
Contractor consequences for bad work	Yes	No			
Dispute resolution process	Yes	No			
All calls to call center recorded	Yes	N/A			

# Comparing PACE to Other Financing Options

Source of Funds→	CALFIRST	HELOC*	HEL	Personal Unsecured Loan	Credit Card
Interest Rate	6.75% - 8.39% (fixed)	3% - 7% (variable)	6% - 9% (fixed)	6% - 10% + (fixed)	5% - 25% (variable)
Tax Deductibility of Interest	Yes	Yes	Yes	No	No
Minimum Finance Amounts	\$5K	\$1	\$1,000	\$1	\$1
Maximum Finance Amounts, and Primary Limiting Factors	Lesser of \$200K or 10% of home equity	Limited by Combined LTV, DTI	Limited by Combined LTV, DTI	Limited by DTI	Limited by DTI
Minimum Loan Term	5 years	1 day	5 year	1 day	1 day
Maximum Loan Term	20 years (25 for solar)	20 years	20 years	Unlimited	Unlimited
Speed to Approve Financing Application	<1 day	1 month+	1 month+	1-2 weeks	1 day
Key Qualifying Criteria	Equity in the home	FICO, Combined LTV, DTI	FICO, Combined LTV, DTI	FICO, DTI	FICO, DTI
Transferability of Repayment*	Typically, yes	No	No	No	No

\* Only 12% of owner-occupied homes have a HELOC in place, 8% of homes owned by >65 years old, 7% of African-American owned homes, 9% of Hispanic-owned homes

# How a Local Government Participates in CALFIRST

## Pass CaliforniaFIRST Opt-In Resolution

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY OF \_\_\_\_\_ TO JOIN THE CALIFORNIAFIRST PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE INCORPORATED TERRITORY OF THE CITY; AND AUTHORIZING RELATED ACTIONS**

WHEREAS, the California Statewide Communities Development Authority ("California Communities") is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of \_\_\_\_ (the "City"); and

WHEREAS, California Communities has established the CaliforniaFIRST program (the "CaliforniaFIRST Program") and will provide financing for certain improvements authorized by Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), including, but not limited to, renewable energy, energy efficiency and water efficiency improvements and seismic strengthening improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") and the issuance of improvement bonds (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

Costs to Local Governments: \$0 – Nada – Zilch – Nothing - Zeeero

CaliforniaFIRST

RENEWABLE  FUNDING

# Thank you very much!

---

CaliforniaFIRST  
Jonathan Kevles  
[jkevles@renewfund.com](mailto:jkevles@renewfund.com)  
(510) 350-3709  
[www.CaliforniaFIRST.org](http://www.CaliforniaFIRST.org)  
[info@californiafirst.org](mailto:info@californiafirst.org)

California**FIRST**

RENEWABLE  FUNDING

# CaliforniaFIRST

Energy Saving Financing

## Frequently Asked Questions

### 1. What is CaliforniaFIRST?

[CaliforniaFIRST](#) is a Property Assessed Clean Energy (PACE) financing program for residential and commercial properties. CaliforniaFIRST allows property owners to finance the installation of energy and water improvements on homes or businesses without putting any money down. Property owners pay back the funds that were used to implement their home improvement project as a line item on their property tax bill.

[CaliforniaFIRST](#) is a program of the California Statewide Communities Development Authority (CSCDA), a joint powers authority co-sponsored by the California State Association of Counties and the League of California Cities. Renewable Funding administers CaliforniaFIRST.

### 2. Who are the members of CSCDA?

In order to “opt-in” to CaliforniaFIRST, a city or county must be a member of CSCDA (the vast majority of California cities and counties are already members – over 500 cities, counties and special districts in the state are [CSCDA members](#)). Becoming a member is easy and does not cost anything. The documents needed to join CSCDA are available on the [CaliforniaFIRST web site](#). Activation by CSCDA of a membership application typically takes two weeks.

### 3. How do I know if my city or county is participating in CaliforniaFIRST?

[CaliforniaFIRST](#) is currently available in 27 counties, with 180+ participating local governments (cities and unincorporated county areas) located throughout California. See the CaliforniaFIRST web site for a [list of all participating jurisdictions](#).

CaliforniaFIRST may only accept financing applications from property owners located in jurisdictions that have opted-in to the program. Local governments around the state can join CaliforniaFIRST by passing a simple “opt-in” resolution, which is available on the [CaliforniaFIRST web site](#). CaliforniaFIRST financing becomes available to property owners within the local government’s jurisdiction only one or two days after passage of the opt-in resolution.

### 4. Does CaliforniaFIRST use taxpayer dollars to fund projects or administer the program?

No. CaliforniaFIRST uses private capital to fund every project. Costs to administer the program are paid by program participants, through fees that are rolled into each project’s financing. County tax assessors and tax collectors incur small costs to place each PACE assessment on the tax rolls, and to collect and distribute the PACE assessment payments. Counties are reimbursed for these costs through the above-

mentioned fees. Cities do not incur any costs as a result of opting-in to the program. Some cities and counties may *voluntarily* expend resources to increase public awareness among property owners of PACE as a financing option.

**5. What are the benefits?**

CaliforniaFIRST solves many of the financial hurdles facing property owners wanting to install energy and water improvements.

- Competitive, fixed interest rates (which are effectively even more competitive when homeowners are eligible to deduct the interest portion of the PACE payments from their taxes<sup>1</sup>)
- Up to a 25 year payback term
- Decreased utility bills from reduced electricity and water usage
- Qualifying for financing is not based on personal credit scores
- The PACE lien payment obligation usually transfers to the new owner if the property is sold

**6. Is this a voluntary program?**

Yes. Utilizing CaliforniaFIRST financing is completely voluntary. Properties and property owners that don't participate remain unaffected.

**7. How is CaliforniaFIRST different from traditional financing?**

CaliforniaFIRST is financed through assessments collected on the property tax bill, and the assessment obligation may be assumed by the new owner when the property is sold.

**8. How do I qualify for financing?**

Qualifying for CaliforniaFIRST financing is based on:

1. The property's estimated market value;
2. The amount of the property owner's equity in the property;
3. The property owner's recent mortgage and property tax payment history; and
4. The dollar value of the proposed renewable energy and energy and water saving improvements.

Qualifying is not based on personal credit scores.

**9. How much money can I borrow?**

The minimum amount that can be financed is \$5,000. The maximum financing amount is 15% the property value, but may not exceed \$200,000.

---

<sup>1</sup> Homeowners are advised to consult with their tax preparers to receive guidance on whether or not they can take advantage of the tax deductibility of the interest portion of PACE payments.

### **10. What are the interest rates?**

As of November 12, 2014, our interest rates are:

Years to Repay	Interest Rates
5	6.75%
10	7.59%
15	7.99%
20	8.29%
25	8.39%

Homeowners should consult with their contractor to confirm if interest rates have changed.

### **11. How is the length of the repayment period determined?**

Repayment periods will range from 5, 10, 15, 20, or 25<sup>2</sup> years, depending on the homeowner's preference, and limited by the expected useful life of the most costly product of the project's CaliforniaFIRST-financed improvements.

### **12. How does repayment work?**

A property owner applying to [CaliforniaFIRST](#) will agree to the levy by CSCDA of a "contractual assessment" on its property. The property owner will receive funds to pay the up-front costs of installing the approved improvements. The PACE assessment will appear as a new line item on the property owner's property tax bill.

### **13. Are there any penalties for prepayment of the PACE assessment?**

There are no penalties for paying all or a portion of the PACE assessment early.<sup>3</sup> Please see Question #18 below for additional information.

### **14. What happens when I sell my property?**

As part of the property record, the assessment will be disclosed at the time of property sale, and the remaining unpaid balance of the financed amount will be transferred to the new property owner.

### **15. Can CaliforniaFIRST finance solar leases or Power Purchase Agreements (PPAs)?**

Yes, pre-paid solar leases and PPAs can be financed through CaliforniaFIRST.

### **16. Do I need to complete an energy audit of my home?**

---

<sup>2</sup> 25 year terms are only available for certain solar systems. Homeowners are advised to consult with their solar installer.

<sup>3</sup> Partial repayments must be for a minimum of \$2,500.

No, but it is encouraged. In certain cases a property owner may want to have a qualified auditor evaluate her home to determine the most cost-effective measures to reduce the home's energy use. The costs of an energy assessment can be financed with [CaliforniaFIRST](#) financing.

**17. Is there an application fee?**

No, there is no fee to apply for [CaliforniaFIRST](#) financing.

**18. Can I use any contractor?**

In order to participate, contractors must be registered with [CaliforniaFIRST](#). As long as contractors meet Program requirements, they can quickly and easily register by visiting [californiafirst.org/contractor](http://californiafirst.org/contractor). All participating contractors must have a valid and active contractor's license with CSLB. The same web page provides a list of participating contractors.

**19. How are tax credits, rebates, and other incentives incorporated into CaliforniaFIRST financing?**

Property owners are encouraged to pursue available Federal Investment Tax Credits (ITCs), utility rebates and any other incentives. All or a portion of total incentives may be subtracted from the amount financed under the Program; however, it is not required that the financed amount be reduced by the estimated value of the incentives. Once property owners receive their rebates and tax credits, those funds may be used to pay down the PACE assessment balance; the balance would then be re-amortized, resulting in lower annual PACE assessment payments.

**20. Is the interest on the PACE assessment payment tax deductible?**

The interest portion of payments made under the [CaliforniaFIRST](#) Assessment Contract may be deductible for income tax purposes. The interest portion will vary from year to year, and any tax savings will depend on the property owner's tax bracket and other variables. The property owner should consult with his tax advisor to determine if, and to what extent, he may deduct the interest component of payments made under the Assessment Contract.

**21. Who do I contact with additional questions?**

[CaliforniaFIRST](#) staff are available to answer additional questions via email at [info@CaliforniaFIRST.org](mailto:info@CaliforniaFIRST.org) or by phone at (844) 589-7953.



## CaliforniaFIRST's Quality Assurance and Consumer Protection Measures

The following quality assurance and consumer protection measures provided through CaliforniaFIRST do not exist when a homeowner finances their energy and water upgrade projects through their home equity line of credit, home equity loan, personal unsecured loan, or credit card.

- Participating contractors must become certified. Our certification process includes a check of the contractor's:
  - License status with the California Contractors State Licensing Board (CSLB)
  - Better Business Bureau grade (grade "B" or better)
  - Meet the CSLB's bonding and workers' compensation insurance requirements
  - Liability insurance (minimum coverage of \$1 million)
  - Evidence that they have been in operation for a minimum of one year and have installed the equipment, products or materials indicated on their contractor's license (or provide evidence of equivalent experience).
- All Eligible Products must be installed by a Participating Contractor.
- Only products from our Eligible Products list qualify for financing. To be on the list, a product must meet minimum efficiency and/or other performance standards.
- Project completion sign-off includes a check that all required permits from the city, county, and any other agency are completed and valid.
- A third party quality assurance firm conducts a minimum check of contractors' projects, with newer contractors and contractors on probation receiving more frequent checks.
- A process for putting contractors on probation for bad work quality or validated consumer complaints, which can ultimately lead to removal of the contractor from the Participating Contractor pool.
- A dispute resolution process for homeowners and contractors.
- 100% of calls to our call center are recorded.

---

**For additional information, please visit [www.CaliforniaFIRST.org](http://www.CaliforniaFIRST.org) or call (844) 589-7953.**

## Consumer Protections and Benefits

Financer	CAFirst	Home Equity Line of Credit	Home Equity Loan	Personal Unsecured Loan	Credit Card
Contractor Quality Verified	Yes	Verified by Homeowner			
Only High Performing Products	Yes	Verified by Homeowner			
3rd Party Verification of Workmanship	Yes	No			
Contractor Consequences for Bad Work	Yes	No			
Dispute Resolution Process	Yes	No			Maybe



For additional information, please visit [www.CaliforniaFIRST.org](http://www.CaliforniaFIRST.org) or call (844) 589-7953.

# Eligible Measures



## ENERGY EFFICIENCY PRODUCTS

- Air-Source Heat Pump
- Applied Window Films
- Attic Fan
- Attic Insulation
- Boiler
- Ceiling Fan
- Central Air Conditioner
- Cool Roof – Performance
- Cool Roof – Prescriptive
- Cool Wall
- Doors
- Duct Insulation
- Duct Replacement and/or Sealing
- Electric Heat Pump Tank Water Heater
- Evaporative Cooler
- Floor Insulation (over unconditioned space)
- Furnace
- Gas Pool Heater
- Gas Storage Tank Water Heater
- Gas Tankless Water Heater
- Geothermal Heat Pump
- Indoor Lighting Fixtures
- Outdoor Lighting Fixtures
- Pool Pump and Motor
- Programmable Thermostat Control
- Radiant Barrier
- Radiant Heating and/or Cooling (floor, wall, ceiling)
- Skylights and Tubular Daylighting Devices
- Ventilating Fans
- Wall Insulation
- Whole House Fan
- Windows

## RENEWABLE ENERGY PRODUCTS

- Advanced Energy Storage Systems
- Electric Vehicle Charging Station
- Small Wind Turbines
- Solar Inverters
- Solar Panels
- Solar Pool Heating
- Solar Water Heating

## WATER EFFICIENCY PRODUCTS

- Artificial Turf
- Drip Irrigation
- Greywater Systems
- Hot Water Delivery Systems
- Rainwater Catchment Systems
- Toilets
- Weather-Based Irrigation Control Systems

PLEASE NOTE: We will consider measures that are not listed on a case-by-case basis.

All eligible products must be installed by a CaliforniaFIRST-approved contractor.

# Property and Property Owner Eligibility

## PROPERTY ELIGIBILITY

- ▶ Property must be in a participating community
- ▶ Property must be residential
- ▶ Manufactured homes approved if permanently attached to property
- ▶ No current involuntary liens and/or judgments totaling more than \$1,000 for all property owners

## PROPERTY OWNER(S) ELIGIBILITY

- ▶ Applicant(s) must be the owner(s) of record of the property
- ▶ All property owners must sign all required documentation
- ▶ No current involuntary liens and/or judgments totaling more than \$1,000 for all property owners
- ▶ Property owner(s) must be current on their property taxes for the prior 12 months
- ▶ Property owner(s) must certify that property taxes have not been paid late more than once during the prior 3 years (or since the purchase if owned by them for less than 3 years)
- ▶ Property owners must be current on all subject property-secured debt at the time of application and cannot have had more than one 30-day mortgage-related late payment over the previous 12 months
- ▶ There must be no notices of default or foreclosure filed against the property within the last 2 years
- ▶ No bankruptcies (business or personal) in the last 2 years. The property must not be an asset in any bankruptcy proceeding
- ▶ Minimum financing amount is \$5,000
- ▶ Maximum amount financed is the lesser of \$200,000 or 10% of the value of the property and combined amount financed under the program plus mortgage-related debt cannot exceed 100% of the value of the property
- ▶ Energy efficiency, renewable energy, and water efficiency products; permanently fixed, new products; must meet minimum efficiency and/or other requirements for eligible products
- ▶ Property title cannot be subject to power of attorney, easements or subordination agreements restricting authority of the property owner(s) to a PACE lien

# **ATTACHMENT – 2**

**Figtree**

**Program Brochures and/or Information**



## Government Brochure

*February 2014*



1-877-577-7373 | info@figtreefinancing.com

## ABOUT FIGTREE FINANCING

Figtree is a San Diego-based clean energy finance company providing Property Assessed Clean Energy (PACE) funding that puts economic benefits of energy efficiency, renewable energy and water conservation upgrades within reach of most property owners.

Requiring no money down, Figtree's unique brand of PACE financing gives property owners the freedom to amortize payments for a period of up to 20 years via their property tax bills.

Figtree is the first company in the U.S. to successfully raise private capital for PACE projects via a multi-jurisdictional bond issue.

### Be Sustainable

• Lower Your Energy Bills

• Watch Your Savings Grow

## INTRODUCING PACE FINANCING FOR ENERGY UPGRADES

In these times of soaring energy costs and new environmental regulations, it's time to protect your finances. Property Assessed Clean Energy (PACE) financing from FIGTREE can help turn property owners' energy and water bills into thousands of dollars in savings each year through easy-to-implement energy efficiency, renewable energy and water conservation upgrades.

**It's a timely opportunity that can save money, provide a valuable hedge against rising energy costs and preserve precious natural resources.**



Property owners are prequalified for PACE financing in numerous cities and counties throughout California, and the number of jurisdictions authorizing FIGTREE to offer financing based on property values in their respective communities continues to grow. PACE financing requires no personal guarantee. Additionally, all loan balances can transfer to the next owner if you sell the property – you pay for only the benefits you receive. Payments are made as semi-annual assessment installments on your property tax bill, but participation is completely voluntary and the program does not rely on public funds.



## HUNDREDS OF WAYS TO SAVE

- Solar PV systems
- HVAC
- Boilers & chillers
- Energy efficient lighting
- Building controls
- Windows
- Occupancy sensors
- Solar water heating
- Pool systems
- Programmable thermostats
- Cool roofing
- Water-efficient plumbing
- And many more!

## DIFFERENT THAN TRADITIONAL LOANS

- Available financing of 10%-20% of property value
- No personal guarantee
- No money down
- Fixed rate
- Longer terms - up to 20 years
- Lien is transferable upon sale
- Secured by assessment on property

# HOW TO ADOPT FIGTREE PACE IN YOUR COUNTY OR CITY

## THE BOARD OF SUPERVISORS/ CITY COUNCIL WILL NEED TO:

1. Establish Membership with California Enterprise Development Authority (CEDA) (If not already a member)
  - Adopt Membership Resolution (no cost to join)
  - Execute Membership Agreement
2. Authorize CEDA to form the PACE Assessment District
  - Adopt Resolution of Authorization

## DOWNLOAD SAMPLE DOCUMENTS AND STAFF REPORTS ONLINE



## FOR ASSISTANCE CONTACT:

Erik Caldwell  
Director of Government Partnerships  
Office: 1.877.577.7373 ext. 1007  
Email: [ecaldwell@figtreefinancing.com](mailto:ecaldwell@figtreefinancing.com)

## ABOUT CEDA



The California Enterprise Development Authority (CEDA) is committed to helping bring financing options and information to businesses and economic developers. CEDA is a statewide Joint Powers Authority (JPA) which affords individual cities and counties economies of scale and reduced risk in the implementation of financing programs. As the sponsoring public agency of the FIGTREE PACE program, CEDA issues the PACE bonds which finance clean energy building improvements.



1-877-577-7373 | [info@figtreefinancing.com](mailto:info@figtreefinancing.com)



# The Figtree PACE Program City and County Action Plan

*October 2014*



# An Action Plan for Local Governments

This document provides an overview of how to implement the Figtree PACE program in your community.



Developing a successful Property Assessed Clean Energy (PACE) Program to deliver energy savings to property owners and to create jobs in your community requires time and resources. Figtree is one of the leading private PACE financing companies operating in the United States today. 82 municipalities throughout California have already partnered with us to help make renewable energy, energy efficiency, and water efficiency projects more affordable. Our program is a complete turn-key solution which will not cost your city or county anything, protects your city or county through an indemnification agreement, and has already financed renewable energy and energy efficiency retrofits for property owners across California.

By encouraging your property owners to use energy and water more efficiently, and by developing and supporting renewable energy to power buildings, your city or county can keep dollars in the local economy, create new green jobs, and improve community quality of life. Adopting the Figtree PACE program directly supports your communities climate action plan goals and by helping your residents secure a more sustainable future.

Our PACE program provides 100% upfront financing to residential and commercial property owners for a wide range of eligible property improvements. Repayment is made through a owner's property taxes with flexible repayment terms ranging from 5 to 20 years. PACE may also allow payments to be passed on to a new property owner if the property is sold before the PACE financing is paid in full.

The Figtree Program provides local governments the opportunity to implement an energy finance program without any formation costs, and is supported by the industry's best PACE professionals. Together with the California Association for Local Economic Development (CALED), through its affiliate the California Enterprise Development Authority (CEDA), Figtree delivers a comprehensive solution, that can invigorate your community with the infusion of financing for sustainable improvements. With this action plan, decide to make a difference, and discover how together we can build a better community by taking action today.

# An Action Plan for Local Governments

## Table of Contents

<b>PROGRAM OVERVIEW</b> .....	<b>4</b>
The Figtree PACE Advantage for Local Government.....	5
The Figtree PACE Advantage for Property Owners.....	7
<b>FIGTREE PACE PROGRAM</b> .....	<b>9</b>
Applying for Figtree PACE Financing.....	9
Eligibility Criteria.....	10
Contractors and Program Marketing.....	11
Elements Specific to Commercial PACE.....	12
<b>ASSESSMENT DISTRICT FINANCING STRUCTURE</b> .....	<b>13</b>
The Figtree / CEDA Relationship.....	14
<b>THE FIGTREE PROFESSIONAL TEAM</b> .....	<b>15</b>
<b>WHAT IF I ALREADY HAVE A PACE PROGRAM?</b> .....	<b>16</b>
<b>ADOPTING FIGTREE PACE</b> .....	<b>17</b>
Assessment District Formation Timeline.....	17

**For immediate assistance in getting started please contact Figtree at:**

Mr. Erik Caldwell  
VP of Government Partnerships  
Phone: (877) 577-7373  
[ecaldwell@figtreefinancing.com](mailto:ecaldwell@figtreefinancing.com)



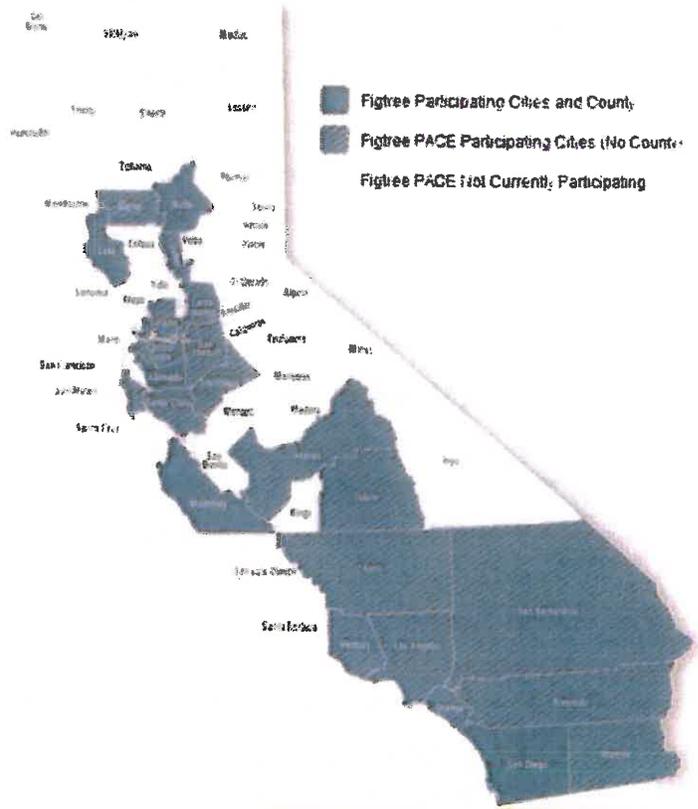
# Program Overview

Figtree's PACE program is focused on providing PACE financing solutions for both commercial and residential property owners. Our existing commercial PACE offering has established Figtree one of the leading private commercial PACE financing companies operating in California. We have completed several dozen projects, multiple bond offerings in the capital markets and operate with \$60 million of on-demand committed capital. This enables us to finance a wide variety of project sizes, ranging from \$5,000 to several million dollars on-demand, as soon as they are qualified. Figtree's residential PACE offering is being developed using the same framework as our successful commercial program.

**Success Story:** The Figtree PACE program is the first PACE Program to have financed energy retrofit projects across multiple cities and counties in California through the sale of municipal bonds. The Figtree PACE assessment bonds sold in December 2011, and financed a variety of energy efficiency and renewable energy projects in 4 different jurisdictions: The Cities of Fresno, Palm Springs, Clovis and Exeter.

Figtree's residential PACE program will launch in the first quarter of 2015 and will feature many of the same elements found in our commercial PACE program. The program will utilize the same legal structure and will be administered by the same professional financing team. In fact, Figtree's residential PACE program is already authorized in 82 California cities.

Cities and counties joining the Figtree program authorize CEDA to enroll both residential and commercial properties. Therefore, throughout the remainder of this document please note the information provided applies to both the residential and commercial PACE programs unless otherwise specifically noted.

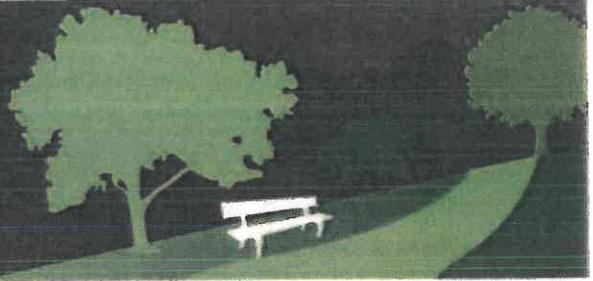


# Program Overview

## The Figtree PACE Advantage for Local Government

### Government Partnership Overview

*"Through a private-public partnership with Figtree, private capital is used to supply the upfront funding for the work so there's no financial impact to the city's General Fund and no upfront costs to owners who choose to make these improvements."  
Jerry Sanders, Mayor City of San Diego (2012)*



The Figtree PACE Program offers substantial economic, environmental, social and energy benefits to participating cities and counties. By offering energy and water efficiency financing through property based assessments, the benefits realized by local governments extends from energy savings to green jobs creation.

The Figtree PACE Program is offered by CEDA and Figtree as a non-exclusive, no cost, turn-key solution which enables cities and counties to offer PACE financing to its property owners. The program currently operates in 82 cities and counties in California. Our turn-key solution also eliminates risk to cities and counties as CEDA is the entity that contracts with property owners and capital providers, while Figtree fully indemnifies each participating municipality.

### Easy to Join, No Cost Program

The legal framework and program development of the Figtree PACE program has already been proven. Cities and counties need to adopt a resolution authorizing CEDA to implement the Figtree PACE Program. If a city or county is not already a member of CEDA, joining CEDA is also easily done via a single resolution and there are no costs or financial obligations to join.

### Statewide Judicial Validation

In 2012, the Figtree PACE Program has completed a statewide judicial validation. Judicial validation brings a comfort level to the legal counsel, underwriter and those involved in issuing Figtree's PACE bonds while assuring attorneys in cities/counties across the state that Figtree is in compliance with all legally-binding protocols and notifications.

**Success Story:** The Figtree PACE program is the first PACE Program to earn state-wide judicial validation.

# Program Overview

## The Figtree PACE Advantage for Local Government (Continued)

### **No Liability / No Exclusivity**

Your city/county is fully protected through complete indemnification provided by Figtree Financing. In addition, by adopting the Figtree PACE Program, your municipality is not required to sign an exclusivity agreement. This allows your city or county to make other PACE Programs available in the future.

### **Job Creation**

The benefit of the Figtree PACE Program is that local jobs are created. From local contractors to the building inspectors, new jobs are being created to meet the needs for energy efficient retrofit work. Energy retrofit projects create much needed jobs in local communities. A study by Johnson Controls estimates that approximately 20 new jobs are created for each \$1M invested into energy retrofit work.<sup>1</sup>

### **Greenhouse Gas Emissions (GHG) Reduction**

Cities and counties have instituted GHG reduction goals and Climate Action Plans either by state mandate or through local ordinance in order to do their part to help the environment. By offering the Figtree PACE Program to your property owners, energy retrofits can become a reality that will substantially reduce CO2 emissions.

### **Accessible Financing**

Figtree PACE financing is available based on the value of the property. This allows for PACE financing to be available to all property owners regardless of income level or the community they live in so long as they are in good financial standing with their property taxes and mortgage.

### **Funding Provided by CEDA**

Project funding is through taxable bonds, notes or other forms of indebtedness issued by the California Enterprise Development Authority (CEDA). A city/county will not be impacted or liable for any of the funding, but will benefit from the improvements in their communities.

1 - Johnson Controls White Paper: An Awakening in Energy Efficiency: Financing Private Sector Building Retrofits, Based on construction industry economic multipliers generated by the Regional Input-Output Modeling system (RIMS) from the Bureau of Economic Analysis, a bureau of the U.S. Department of Commerce.

# Program Overview

## The Figtree PACE Advantage for Property Owners

In light of the recent turmoil faced by financial institutions, financing options have become scarce for many property owners looking to make needed retrofits on their properties. Figtree PACE makes qualifying energy and water retrofits accessible and simple for property owners to realize.

### No Money Down

The Figtree PACE Program offers property owners the opportunity to finance all costs associated with the financing including any audit and application fees paid. Since PACE financing requires no money down many improvements and upgrades are cash flow positive from day one. This enables property owners to immediately start saving on their energy bills and put more money into their pockets. See figure 1.

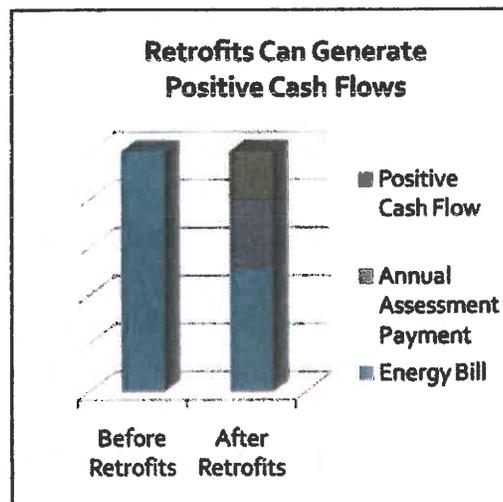


Figure 1. Positive Cash Flow

### Fixed Financing Rate

The property owner locks in their interest rate for the entire life of their financing. While their energy rates may continue to rise, property owners benefit from a fixed repayment schedule that doesn't increase over time. Figtree interest rates are market dependent.

### Residential Properties

Rates are currently projected to be between 5.50% to 7.50% with financing up to 10% of total property value.

### Commercial Properties

Rates are currently 4.63% to 6.65% and maximum financing is up to 10% of total property value. Alternative rates are available for projects in excess of 10% of property value and projects in excess of a million dollars.

### Long Term Financing, Up to 20 Years

The term of the financing will match the useful life of the property improvements. For solar, roofing, and HVAC systems the assessment term can be up to 15 or 20 years. For improvements with a shorter useful life, like lighting, the loan term will match. Most projects include a variety of improvements; in those cases Figtree will use a weighted average life to calculate the term length.

# Program Overview

## The Figtree PACE Advantage for Property Owners (cont.)

### Own the System and Keep Rebates and Tax Incentives

With PACE financing the property owner owns the equipment and systems allowing them to claim all tax benefits and rebates. In contrast to other financing mechanisms, like leases and power purchase agreements (PPA), where the lessor claims all rebates and incentives.

### Projects Can Generate Savings Immediately

Long term financing enables smaller annual payments. As a result most energy efficiency or renewable energy projects get better cash flow and net operating income. These smaller payments are often offset by rebates, incentives, and energy savings creating cash flow positive projects from day one.

### Transfer the Lien Upon Sale

A PACE assessment lien is tied to the property, not the individual owner. As a result, it is possible to transfer the lien to the next owner. The next owner then assumes the cost of the improvements while they are receiving the benefit.

Compare Figtree PACE	Figtree PACE	Traditional Bank Loan	Solar Power Purchase Agreement (PPA)	Lease
<b>Application Process</b>				
Business credit review required	No	Yes	Yes	Yes
Three year financials, tax returns, and history required	No	Yes	Yes	Yes
Down payment is required	No	Yes	Potentially	Potentially
<b>Financial Benefits</b>				
You keep and receive financial benefits from rebates and tax incentives	Yes	Yes	No	No
You permanently add financial value and environmental benefits to your property	Yes	Yes	No	No
Fixed interest, long term ownership financing	Yes	No	No	No
<b>General Considerations</b>				
You can purchase many different energy upgrades like cool roofing and solar panels with one financing	Yes	Yes	No	No
You make your payment on the annual property tax bill rather than each month	Yes	No	No	No
If the property is sold, the financed amount is transitioned to the next owner	Yes	No	Negotiated	Negotiated

# Figtree PACE Program

Figtree works with regional and national financial institutions to continually find the lowest cost of financing for participating property owners. The Figtree PACE Program is currently financed through the sale of bonds issued by CEDA. The bond proceeds are payable to:

**Approved Contractors** — as reimbursement for installation of equipment and improvements approved under the Figtree PACE Program.

**Approved Property Owners** — as reimbursement for approved out-of-pocket expenses.

The bonds are not a debt of the city/county, the State of California, or any of its political subdivisions (other than CEDA). Member agencies are not liable for payment. The bonds are special obligations of CEDA payable exclusively from the revenues (secured by assessment liens on voluntarily participating properties), and amounts held in certain funds and accounts created pursuant to the Indenture.

## Online Application Process

Property owners submit an application directly to Figtree for financing. Figtree evaluates the application and takes the necessary measures to ensure sound financing practices. Once a financeable amount has been approved, property owners may begin to take competitive bids from Figtree PACE registered contractors. When a bid has been selected by the property owner, Figtree works with the property owner to verify that all proposed retrofits are approved efficiency measures eligible for financing. As for billing, Figtree handles all contractor reimbursements and coordinates with the appropriate county tax collector to collect assessment repayments. The property owner repays the assessment as a line item on their property tax bill.

### 6 STEPS to a More Valuable Property

Figtree OnDemandPACE™ means capital is waiting for you. As soon as the first 4 steps are completed below, we can fund and you can begin your project. It's that easy to start saving on your utility bill and enjoying an improved property.



**CHECK  
ELIGIBILITY**



**COMPLETE  
APPLICATION**



**FINALIZE  
PROJECT SCOPE**



**GET LENDER  
ACKNOWLEDGEMENT**



**CLOSE  
THE FINANCING**



**COMPLETE  
THE PROJECT**



#### Eligible Properties

All commercial property types are eligible including office, industrial, retail, hotel, and multifamily. Up to 20% of the property value can be financed with a minimum project size of \$5,000.

#### Eligible Projects

Most energy efficiency, renewable energy, and water conservation projects are eligible: solar, HVAC, boilers & chillers, lighting, building controls, windows, cool roofing, water-efficient plumbing, and more.

#### Participating Areas

Property must be located in a participating area. Please visit our website for the latest list of cities and counties that have made the Figtree OnDemandPACE™ Program available to their property owners.

#### State, County, and City Supported

California state law AB-811 created PACE financing. With this legislation in place cities and counties then choose to adopt the Figtree OnDemandPACE™ Program. Everywhere Figtree OnDemandPACE™ is available, this has been reviewed and approved by local government.



# Figtree PACE Program

## Eligibility Criteria for Figtree Financing

Property owners who meet the following minimum criteria are eligible for financing through the Figtree PACE program:



### Residential Properties

- The amount of financing requested shall not exceed 10% of the value of the property.
- All existing private debt recorded against the property does not exceed 85% of the value of the property.
- There are no involuntary liens, defaults or judgments on the property in excess of \$1,000.
- Property owner has not declared bankruptcy in the past seven years.
- Property owner has remained current on their property tax and mortgage payments for the past three (3) years or since owning the Property, if less than 3 years.
- The Property title is not subject to power of attorney, easements, or subordination agreements restricting our authority to subject the Property to a PACE lien.

### Commercial Properties

- Property owner is current on property taxes for the property.
- Property owner is current on private property debt and has not been delinquent in the past three years.
- Property owner has not declared bankruptcy in the past five years
- Property is not listed as an asset in bankruptcy.
- The lien-to-value ratio (excluding assessed financing amount) does not exceed one hundred percent (i.e. no negative equity).
- Property is developed and located within the jurisdiction of a Participating Agency.



# Figtree PACE Program

## Contractors and Program Marketing

### Contractors and Training

All contractors are eligible to participate in the Figtree PACE Program. The majority of our existing contractors are local businesses that provide services regionally or throughout California. We require contractors to have 3 years of experience (or provide 3 customer references), be a licensed contractor with the State, and maintain \$1 million in general liability insurance and workers compensation insurance in order to participate in the PACE program.

As a Figtree Registered Contractor in our program contractors receive a comprehensive 1 hour one-on-one training session to review how to utilize PACE successfully, how it can help grow their business, and to answer any questions they have on the program. During this training we share best practices on rebates, incentives, and how to maximize the financial value for property owners with energy efficiency upgrades.

In addition, our program approaches property owners directly to educate them on the availability of PACE financing. If a contractor engages a property owner we are available to support them as they request to facilitate the financing of the project. This includes phone calls, Q&A, and face to face meetings.

As part of our Registered Contractors Program, Figtree performs financial modeling of projects. We create proposals that contractors can utilize to communicate the long term value of implementing energy efficiency and renewable energy measures to property owners. This helps translate the benefits to financially savvy senior decision makers. This program is in addition to our marketing materials, webinars, and on demand trainings available online.

### Marketing Efforts

Truly effective marketing is one of the most challenging aspect of successfully implementing a PACE program. Understanding the channels of commerce that drive volume and executing a pro-active marketing plan is essential to achieving success. Figtree has crafted marketing strategies to overcome challenges concerning the adoption of PACE financing among property owners and contractors. These marketing strategies have rapidly expanded our growth in 2014 and have set the program up for future success.

### Direct Outreach to Property Owners

Property owners need to be reached directly. They are looking for alternative financing options that allow them to update their homes and buildings. Key messages include savings on energy efficiency, increased net operating income and property value, and the availability of incentives to engage property owners.



# Figtree PACE Program

## Elements Specific to Commercial PACE

Figtree's commercial and residential programs are both built on the same proven platform. However the commercial program has a few key differences from our residential program offering:

### Requires Lender Acknowledgement

One key factor for a commercial property owner to qualify for PACE financing is lender acknowledgement. Since most commercial mortgages have a "Due on Encumbrance" clause that would give the mortgage holder the right to call the loan due if additional debt is placed on the property without prior acknowledgement, the mortgage lien holder is required to provide written acknowledgement before PACE financing is provided by Figtree. Figtree coordinates the process and reaches out to the mortgage lender directly to obtain the required acknowledgement on behalf of the property owner.

**Success Story:** Figtree successfully negotiated lender acknowledgements from regional banks like Premier Valley Bank and WestAmerica Bank as well as national banks like Wells Fargo and US Bank.



### Free Up Capital Budgets and Preserve Credit

Utilizing PACE financing preserves capital expenditure or maintenance budgets for other projects. In addition, off balance sheet PACE financing does not inhibit the property owner's credit, preserving their borrowing capacity for future needs or working capital.

### Pass Through Costs to Tenants with Triple Net Lease

PACE assessment liens are administered through a property's tax bill. Triple net leases allow for an allocated portion of the property taxes to be paid in the lease. Since the PACE assessment is on the property tax bill the tenant can share in the cost of the upgrades. Passing the costs through to the tenant solves the split incentive issue commonly found with leased spaces. The tenant is now paying for the benefits they receive in better facilities and the energy savings.



# Assessment District Financing Structure

## Legal Authority for PACE

Assembly Bill 811, signed into law in 2009, amended existing California law which already allowed for contractual assessment financing for public improvements. The law specifically allows cities and counties to establish PACE programs to finance privately owned renewable energy, energy efficiency, and water conservation measures. Additionally, the law requires improvements financed using PACE to be permanently fixed to real property. California law also enables municipalities to authorize more than one PACE provider.

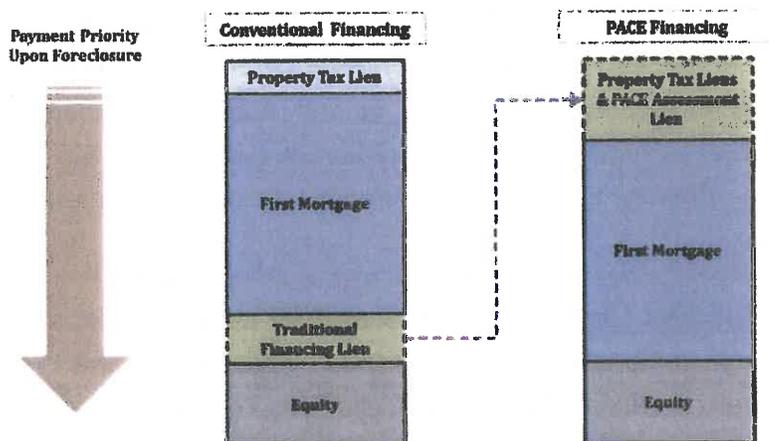


Figure 2. PACE Lien Priority

## Assessment Districts are Well Established in Law

Municipal assessment financing has been around for over 100 years and many property owners around the country will find assessment line items on their property tax bill for improvements to sewer systems, sidewalks, street lighting and many other purposes. In fact, coordinating between tax assessors and bond trustees to ensure proper billing and remittance for all the various assessment districts in existence has evolved into a specialized business expertise known as assessment district administration. Figtree has incorporated this expertise into its PACE program in California by partnering with Willdan Financial Services (Willdan). Willdan is the leading assessment district administrator nationwide.

The role this Willdan plays in Figtree's PACE Program is in many ways akin to a loan servicer in more traditional financing products. Although there are many different taxing jurisdictions participating Figtree's program and therefore many different tax assessor's offices, there is only one entity coordinating remittances and interfacing with the bond trustee for the benefit of our capital partners.

# Assessment District Financing Structure

## The Figtree / CEDA Relationship

Perhaps the most important relationship in Figtree's California program is with the California Enterprise Development Authority. CEDA is a statewide Joint Powers Authority (JPA) created under California statute as a governmental membership organization with a controlling board distinct from any of its members. In this context, CEDA is the legal entity at the center of the Figtree PACE program. As such, CEDA is responsible for:

- Entering into Associate Membership Agreements with municipalities that wish to join the Figtree PACE Program;
- Executing Contractual Assessment Agreements with property owner specifying the assessment terms;
- Placing PACE assessment liens on properties and enforcing assessment collection remedies; and
- Issuing bonds secured by PACE assessment liens.

Figtree is the administrator of the program under a Program Administration Agreement executed with CEDA, and not individual municipalities. This eliminates the need for a lengthy procurement process. Under this agreement, Figtree is responsible for:

- Developing the legal infrastructure;
- Developing and maintaining the program report;
- Arranging for financing capital;
- Promoting expansion and municipal adoption of the program;
- Marketing the program in the marketplace as the Figtree PACE Program; and
- Originating PACE assessments in compliance with statute and programmatic underwriting guidelines.

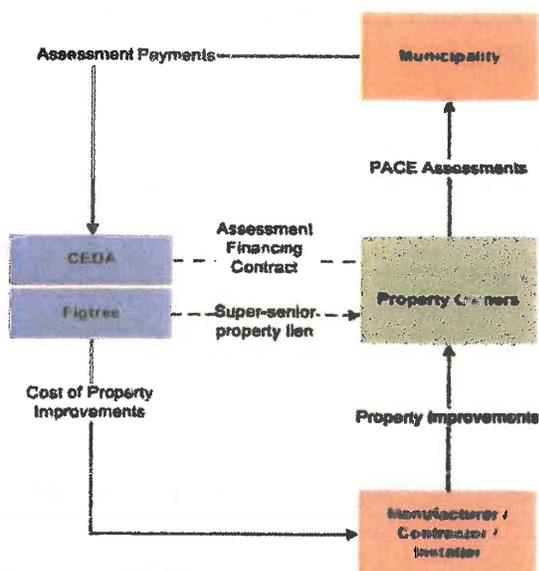


Figure 3. Figtree PACE Financing Cycle

The relationship between Figtree and CEDA is a partnership based on shared objectives around providing a cost effective successful PACE financing product to commercial property owners within CEDA's membership jurisdictions. Both Figtree and CEDA are compensated for their roles from upfront and ongoing fees funded by the participating property owners as established in each Contractual Assessment Agreement.

# The Figtree Professional Team

Figtree has assembled a strong professional team of strategic partners within our program. Our current strategic partners are as follows:



**Program Administrator and Originator:** Figtree Company, Inc. program finance and administration.



**Statewide Governmental Conduit:** California Enterprise Development Authority (CEDA) is a California Joint Powers Authority established by the California Association for Local Economic Development (CALED). Figtree and CEDA have established an exclusive partnership to offer the Figtree PACE Program to municipalities across California.



Deutsche Bank

**Bond Trustee:** Deutsche Bank's Trust & Securities Services unit has nearly 2 trillion of assets under custody and is one of the world's largest and most experienced providers of administrative services for capital market instruments and other types of financing. It provides custody, clearing and related services in more than 30 markets.



**Asset Servicer:** Willdan Financial Services (Willdan), a subsidiary of publicly traded Willdan Group, Inc. (NASDAQ: WLDN), has a proven, specialized assessment administration practice that has been forming and administering assessment districts for over 20 years.



**Issuer Counsel & Bond Counsel:** Kutak Rock LLP is a national law firm of more than 500 lawyers with offices from coast to coast. The firm has represented hundreds of state and local governmental units and a substantial number of Fortune 500 corporations.



**Securitization Counsel:** Kramer Levin Naftalis & Frankel, LLP is a global law firm with an unqualified expertise in the process of securitization. The lawyers of their Securitization group have been, and continue to be, leading innovators in this constantly evolving discipline.



**Corporate Counsel:** Stradling Yocca Carlson & Rauth, P.C.



**Structuring Advisor and Placement Agent:** KGS-Alpha Capital Markets, L.P.



# What if I already have a PACE program?

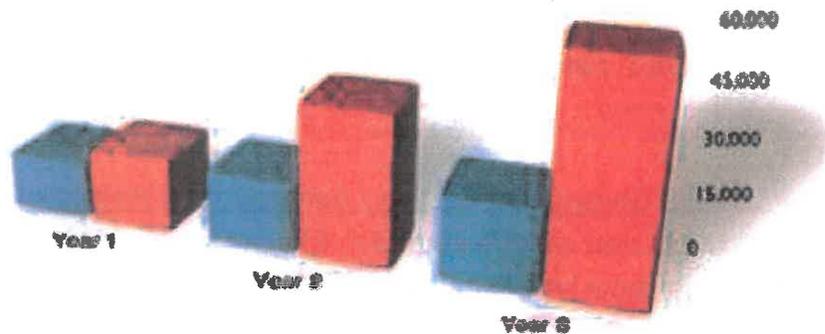
## Benefits of a Non-Exclusive Arrangement

Property owners are best served when municipalities allow for multiple PACE programs to operate. A growing number of private companies are implementing privately-funded PACE programs on a significant scale. While the core service provided by each of these companies may appear to be similar, each has a different approach that may make their business model more or less beneficial to different property owners. Additionally, the interest rates offered by these companies will vary over time, no different than identifying who provides the lowest interest rates on mortgages, auto loans, or any other loan.

Municipal governments rarely insert themselves into the process of determining which private companies are allowed to offer services within their communities; they allow the supply and demand of the marketplace determine which companies offer the best services to meet the needs of their residents. This same principle should apply to PACE financing as well.

A non-exclusive open PACE marketplace ensures that PACE program benefits and services will be robust and lasting. Competition is good for business. It improves the product, program, and experience for property owners by encouraging companies to provide what they believe to be the best possible product, including quality customer service.

In California, establishing a non-exclusive marketplace has become a best practice among municipalities. They are still taking the time to ensure programs are appropriately vetted and that they meet their requirements. But their risk assessment process is now less arduous, because providing an open marketplace is more straightforward than comparing the pros and cons of individual programs, especially since a winning solution can change based on the consumers need.



# Adopting Figtree PACE

Adopting the Figtree PACE Program is easy. CEDA will perform the assessment district proceedings required on behalf of your city or county. This includes passing the Resolution of Intention and Holding the Public Hearing. All your public agency needs to do is pass a resolution authorizing CEDA to perform the assessment district proceedings on behalf of your public agency. If your city or county is not already a member of CEDA, then an additional resolution joining CEDA would also be adopted.

As the program administrator, Figtree will provide you the resolutions needed as well as a sample staff report that can be used.

## Assessment District Formation Timeline

Since there are many Cities and Counties that CEDA will be performing the assessment district proceedings for, it is necessary for your public agency to notify Figtree as soon as possible of your interest to participate. See Figure 3 for the assessment district formation schedule sample.

	ACTION	DETAIL
Date TBD	Adopt Resolution Authorizing CEDA	Your city/county adopts a Resolution Authorizing CEDA to perform Assessment Proceedings on your city/county's behalf.
Date TBD	Utility Notices	Figtree mails out utility notices to Utility Providers per Streets & Highways Code Section 5898.24(b), 60 days prior to CEDA Public Hearing
Date TBD	Resolution of Intention	CEDA initiates assessment proceeds and Adopts the Resolution of Intention.
Date TBD	Publication	CEDA publishes Notice of Public Hearing per Streets & Highways Code Section 5898.24(a) at least 20 days before hearing.
Date TBD	Public Hearing	CEDA holds Public Hearing and Figtree PACE Program goes live in participating public agencies.

Figure 3. Assessment District Formation Schedule Sample

Please visit our website [Government Section / Agreements & Resolutions](#) for additional detail and resolutions. You can also call Erik Caldwell, Director of Government Partnerships at (877) 577-7373 to learn more about how to get started.



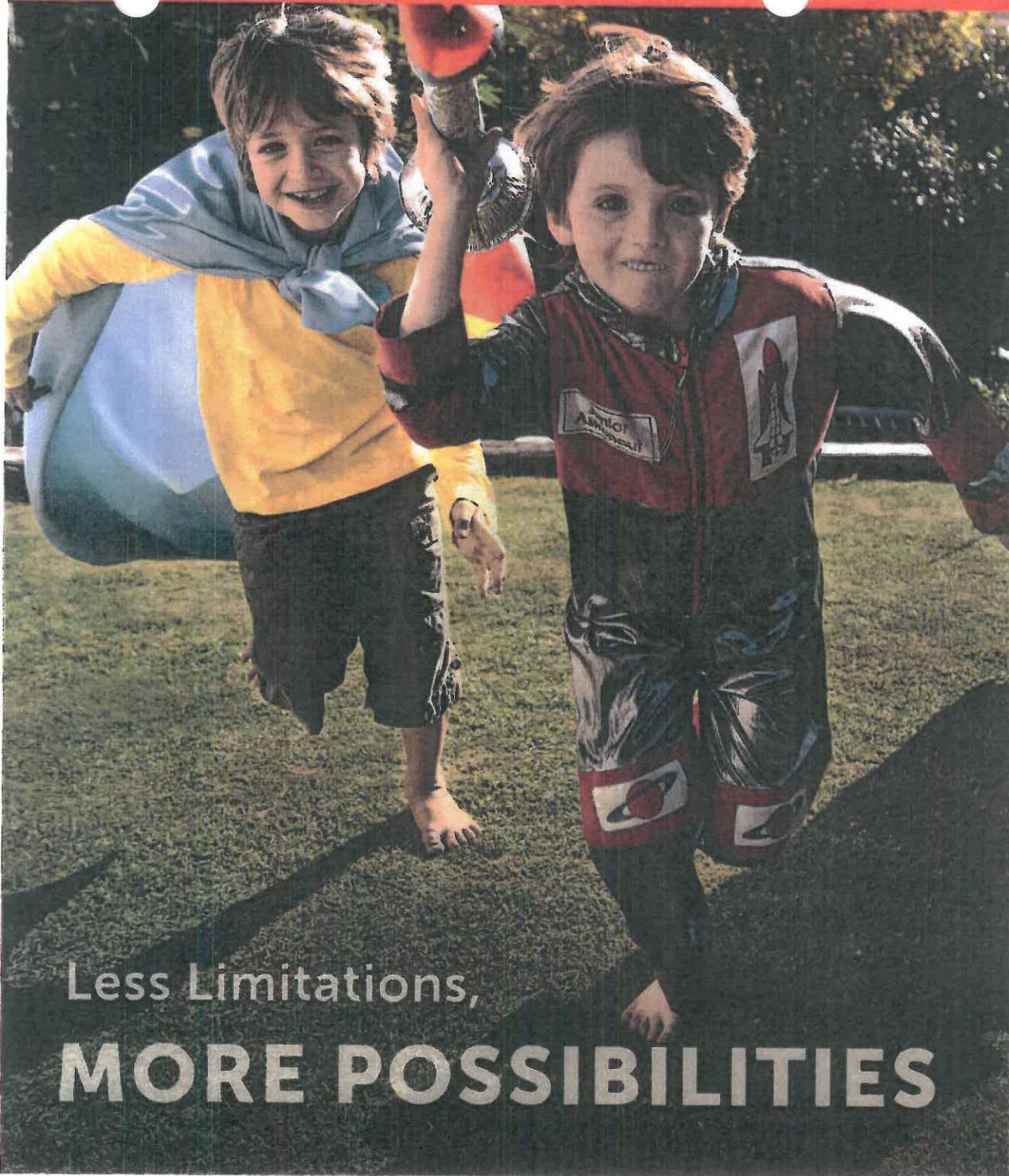
# **ATTACHMENT – 3**

## **HERO**

### **Program Brochures and/or Information**



Your energy efficient future, today.



Less Limitations,  
**MORE POSSIBILITIES**

## Contents:

### Overview

Why HERO? .....	3
HERO Advantage .....	4
PACE Track Record .....	5

### Platform

Integrated Technology .....	6
HERO Gov .....	7
HERO Pro .....	8

### Services

Support Services .....	9
Contractor Registration .....	10
Consumer Protection .....	11

### Results

Awards & Recognition .....	12
HERO Communities .....	13
Get HERO .....	14

# Why HERO?

HERO is helping communities across California realize the promise of an energy efficient future by making the energy efficient choice the safe and affordable choice for property owners.



## Community Impact

When property owners invest in energy efficient upgrades, they do more than save energy. HERO also helps communities create new jobs, save water and increase property values. HERO provides:

### Consumer Protection:

- Price / Value Confirmation
- Pay Upon Job Completion
- Dispute Resolution

### Economic Stimulus:

- Lower Utility Bills
- New Job Creation
- Increased Property Values

### Environmental Benefits:

- Reduced CO<sup>2</sup> Emissions
- Decreased Energy Consumption
- Water Savings

# HERO Advantage

When you approve HERO in your community you're protecting consumers before, during and upon completion of every project. Contractors must be in good standing with the Program and are only paid after the job is completed to the consumer's satisfaction.

Consumer Protection		Before HERO	After HERO
<b>Training</b>	Eligibility Requirements Proposal Automation Estimating Calculators Application Verification	✗	✓
<b>Compliance</b>	Marketing Product Eligibility Fair Pricing CSLB Confirmation Permit Verification	✗	✓
<b>Protection</b>	Pay Upon Completion ID Verification Terms Confirmation In Good Standing Dispute Resolution	✗	✓

## HERO Features:

- Quality Control
- Approvals Based on Home Equity
- Long-Term Low Fixed Interest Rates

## HERO Products:

Over 900,000 models of energy saving products qualify:

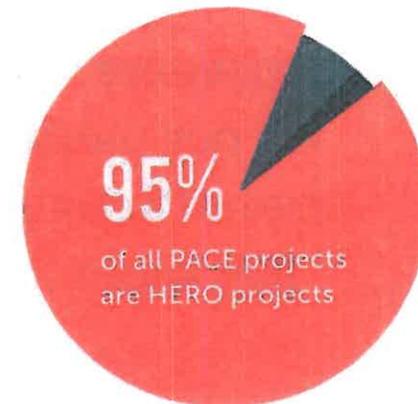
- Solar
- HVAC
- Roofing
- Windows
- Artificial Turf
- Pool Pumps
- Water Savings
- Insulation

# PACE Track Record

HERO is the largest and most successful residential PACE based financing program in the nation, and the only program that has successfully securitized PACE based loans. All funding, support services and technology are provided at no cost to the municipality.

Our proven model enables us to continue to provide:

- ✓ Ongoing Lending Capital
- ✓ Dependable Support Services
- ✓ Comprehensive Technology Infrastructure
- ✓ Unrivaled Consumer Protections



# Integrated Technology

HERO provides communities an extensive technology platform designed to deliver accurate and timely information during every step of the process.

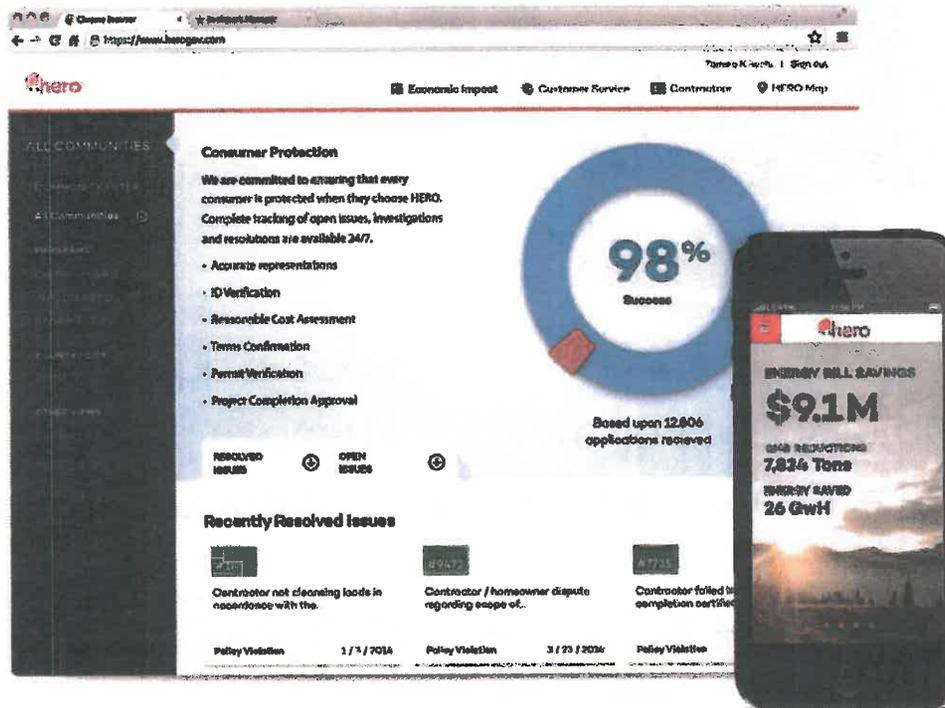
## Real-time Tracking:

- Project Types
- Active Contractors
- New Job Creation
- CO<sup>2</sup> Reduction
- Economic Impact



# HERO Gov

HERO Gov provides municipalities direct insight on Program performance and transparency on all consumer protection support items.



## Features:

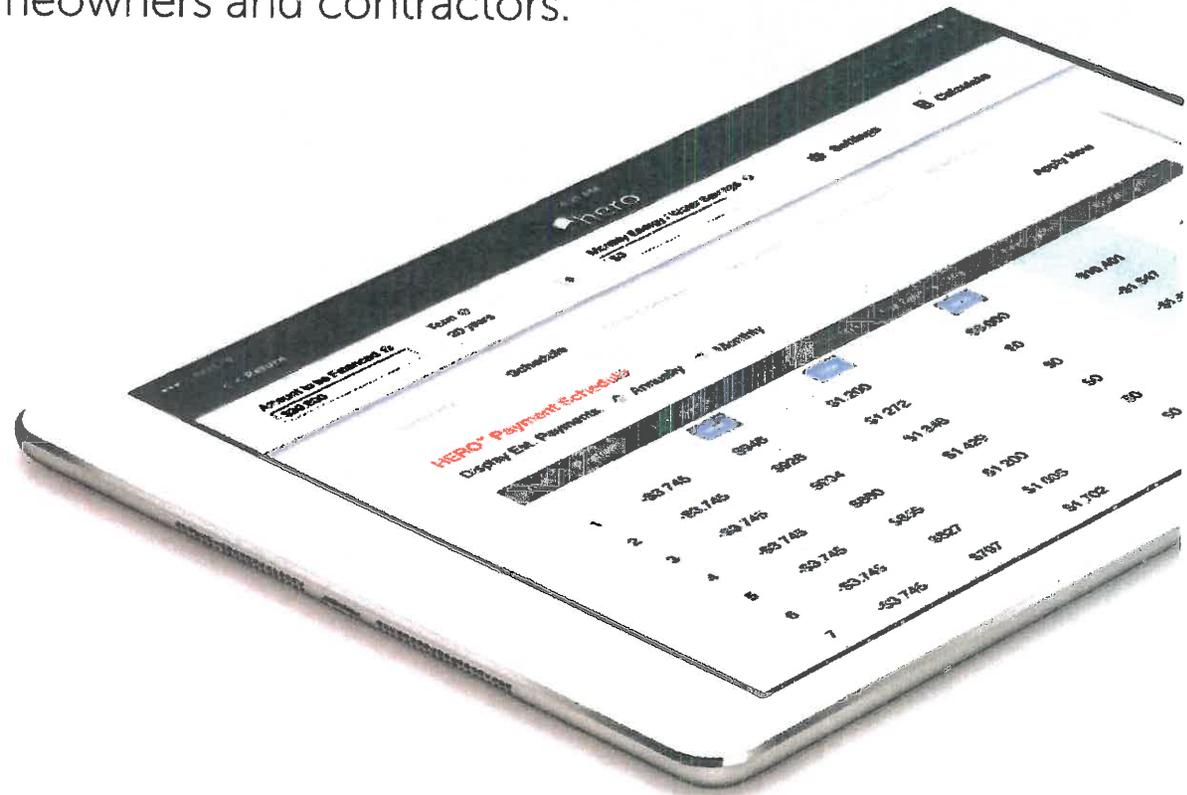
- HERO Map
- Mobile App
- Real Time Data
- Projects Financed
- Amounts Financed
- Environmental Impact
- Jobs Created
- Consumer Protection Inquiries and Resolutions

# HERO Pro

An integrated, secure platform designed to make the estimating, approval, documentation and funding process as easy as possible for homeowners and contractors.

## Features:

- Interactive Sales Tools
- Estimating Calculators
- Energy Savings Calculators
- Financing Document Generation
- Electronic Signature Capabilities
- Information and Updates
- Web Based Training Curriculum
- Webpage at [heroprogram.com/companyname](http://heroprogram.com/companyname)



# Community Support

We provide dedicated support to consumers, contractors and municipalities through every step of the process.

## Contractor Training

Our representatives in the field deliver training and provide ongoing support for application processing and program implementation.

## Municipal Support

Dedicated account managers are assigned to every municipality to provide training, ongoing support, and to respond to any constituent inquiries.

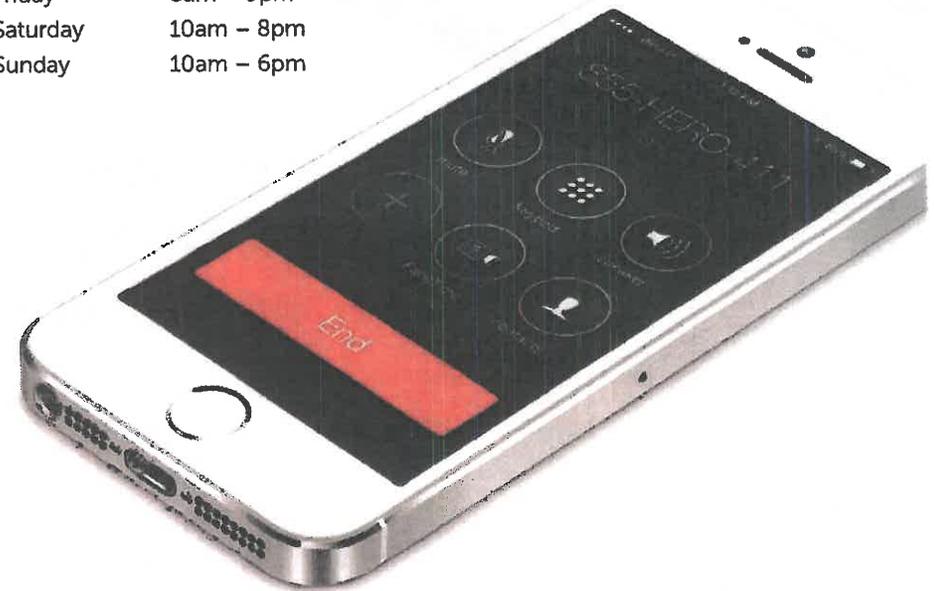
## Dispute Resolution

Every consumer complaint receives a full investigation. When necessary, our investigators with law enforcement experience will intervene to resolve any disputes.

## HERO Hotline (855-HERO-411)

Our full service call center is available to consumers and contractors from project start to completion.

Mon-Th	8am – 10pm
Friday	8am – 9pm
Saturday	10am – 8pm
Sunday	10am – 6pm



# Contractor Training & Registration

The HERO Program provides a comprehensive training program, designed to get contractors comfortable with the all of the financing terms and the property owner approval process.

## Training includes:

- Sales Training
- Software Training
- Product Eligibility
- Document Processing
- Completion Certification
- Payment Options
- Co-Marketing Policies
- Brand Usage Guidelines



# Consumer Protection Policy

HERO has developed the #1 Consumer Protection Policy in the home energy improvement financing sector.

## Contractor ID Verification

Every contractor must be in good standing with the Program, and have active license status with the CSLB.

## Pricing Controls

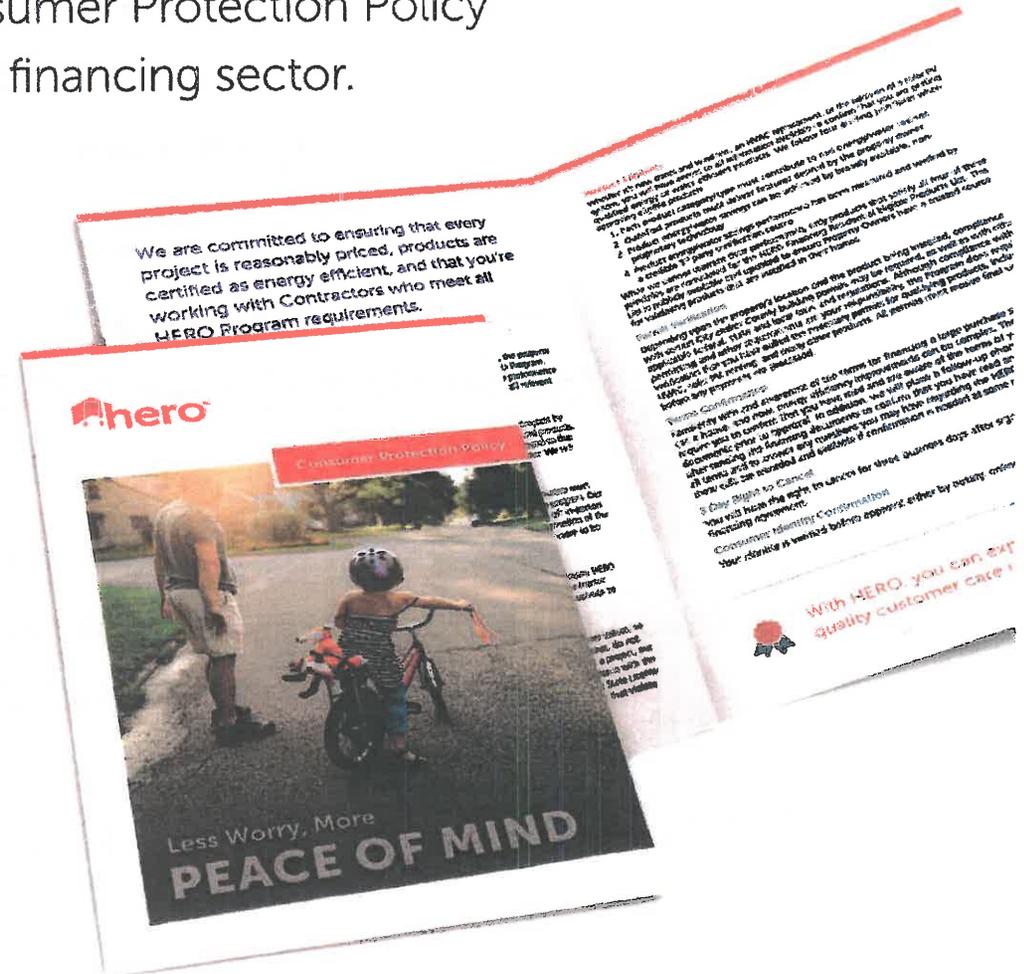
We conduct a Reasonable Cost Test on all major product types and projects to ensure consumers get a fair price.

## Permit Verification

We require verification that the necessary permits for qualifying products (including HVAC, solar PV, roofing, and many other products) have been issued.

## Payment Protection

No payments are made to the contractor until the property owner signs a completion certificate to verify the project has been completed to their satisfaction.



# Awards & Recognition

HERO delivers real impact and has been recognized by industry leaders for excellence and innovation.



## **ENVIRONMENTAL & ECONOMIC PARTNERSHIP** | Governor of California

Awarded California's highest honor by Governor Brown for exceptional leadership in environmental preservation and economic stimulus.



## **BEST RESIDENTIAL PARTNERSHIP** | U.S. Green Building Council

Recognized as a Top 10 Green Building Policy in California, serving as a national model for financing energy efficiency and water conservation retrofits.



## **BEST OF THE BEST** Urban Land Institute

Recognized for sustainable community development and organizational leadership in providing: economic value, environmental quality, and social equity.

## **BUSINESS ACHIEVEMENT AWARD** Climate Change Business Journal

Recognized for successfully partnering with local governments to develop residential financing programs for energy efficiency and renewable energy systems.

## **PRESIDENT'S AWARD FOR EXCELLENCE** Southern CA Association of Governments

Recognized for creating successful public-private partnerships and economic stimulus by bringing private funding into communities.

# HERO Communities

## **Fresno County**

Fresno  
Clovis

## **Imperial County**

Brawley  
El Centro

## **Kern County**

Delano  
Kern County  
Unincorporated  
Ridgecrest  
Taft

## **Kings County**

Lemoore

## **Los Angeles County**

Alhambra  
Arcadia  
Azusa  
Baldwin Park  
Bellflower  
Bradbury  
Carson  
City of Industry  
Claremont  
Covina  
Diamond Bar  
El Monte  
El Segundo  
Gardena  
Glendora  
Hawthorne

## *Hermosa Beach*

*Inglewood  
Irwindale  
La Cañada Flintridge  
La Verne  
Lawndale  
Lomita  
Monrovia  
Montebello  
Monterey Park  
Palmdale  
Pomona  
Rancho Palos Verdes  
Rolling Hills  
Rolling Hills Estates  
Rosemead  
San Dimas  
San Gabriel  
San Marino  
Santa Monica  
South El Monte  
South Pasadena  
Temple City  
Torrance  
Walnut  
West Covina*

## **Merced County**

Atwater  
Merced County  
Unincorporated

## **Mono County**

Mono County  
Unincorporated  
Mammoth Lakes

## **Monterey County**

Monterey  
Monterey County  
Unincorporated

## **Napa County**

American Canyon  
Calistoga  
Napa  
Napa County  
Unincorporated  
Yountville

## **Orange County**

Anaheim  
Brea  
Buena Park  
Costa Mesa  
Garden Grove  
Huntington Beach  
La Palma  
Laguna Hills  
Newport Beach  
Placentia  
Santa Ana  
Stanton  
Tustin  
Westminster

## **Riverside County**

Banning  
Calimesa  
Canyon Lake  
Corona  
Eastvale  
Hemet

## Jurupa Valley

Lake Elsinore  
Menifee  
Moreno Valley  
Murrieta  
Norco  
Perris  
Riverside  
Riverside County  
Unincorporated  
San Jacinto  
Temecula  
Wildomar

## **Sacramento County**

Citrus Heights

## **San Bernardino County**

Adelanto  
Apple Valley  
Barstow  
Big Bear Lake  
Chino  
Chino Hills  
Colton  
Fontana  
Grand Terrace  
Hesperia  
Highland  
Loma Linda  
Montclair  
Needles  
Ontario  
Rancho Cucamonga

## Redlands

Rialto  
San Bernardino  
San Bernardino County  
Unincorporated  
Twentynine Palms  
Upland  
Victorville  
Yucaipa  
Yucca Valley

## **San Diego County**

Carlsbad  
Escondido  
Lemon Grove  
Oceanside  
San Diego  
San Diego County  
Unincorporated  
San Marcos  
Solana Beach  
Vista

## **San Joaquin County**

Stockton  
Tracy

## **San Mateo County**

Menlo Park

## **Santa Barbara County**

Lompoc

## **Santa Clara County**

San Jose

## **Santa Cruz County**

Scotts Valley

## **Solano County**

Solano County  
Unincorporated  
Vacaville

## **Stanislaus County**

Modesto  
Newman  
Oakdale  
Turlock  
Waterford

## **Tulare County**

Visalia

---

HERO Communities  
as of May 2014

*(Italicization indicates  
pre-launch phase)*

# Get HERO

It's easy to bring HERO to your community. Learn more by visiting [heroprogram.com](http://heroprogram.com) or calling 855-HERO-411.



"Why HERO? It's made our community better by lowering unemployment, increasing environmental efforts, and boosting our economy!"

Mayor Rusty Bailey, Riverside, CA

"As HERO helps our residents lower their utility bills, San José furthers its sustainability goals by reducing energy and water use. Our economy and job market benefits from home improvement-related activity making it a win-win for all aspects of San José."

Kerrie Romanow, Director of Environmental Services, San José, CA

Chat Now

Login 855-HERO-411



Home Energy Products

HERO Communities

Learn More

Apply Now



## 291 HERO Communities

Don't see your community? **GET HERO** ›

### California

#### COMING SOON

Alameda County	Los Angeles County	Madera County	Sacramento County	Santa Cruz County
Albany	Alhambra	Unincorporated Area	Citrus Heights	Capitola *
Berkeley	Arcadia		Elk Grove *	Scotts Valley
	Artesia *	Merced County	Rancho Cordova	Unincorporated Area
Contra Costa County	Avalon *	Atwater	Unincorporated Area *	
Antioch *	Azusa	Livingston		Solano County
Brentwood	Baldwin Park	Merced	San Bernardino County	Benicia
Concord	Bell Gardens *	Unincorporated Area	Adelanto	Dixon
Danville *	Bellflower		Apple Valley	Vacaville
El Cerrito *	Beverly Hills *	Mono County	Barstow	Vallejo
Lafayette *	Bradbury	Mammoth Lakes	Big Bear Lake	Unincorporated Area
Martinez *	Burbank *	Unincorporated Area	Chino	
Oakley	Calabasas *		Chino Hills	Sonoma County
Pittsburg *	Carson	Monterey County	Colton	Sebastopol
Pleasant Hill *	City of Industry	Carmel-by-the-Sea *	Fontana	Sonoma *
Richmond *	Claremont	Del Rey Oaks *	Grand Terrace	Unincorporated Area
San Pablo	Commerce	Monterey	Hesperia	
San Ramon	Covina	Pacific Grove *	Highland	Stanislaus County
Walnut Creek	Cudahy *	Unincorporated Area	Loma Linda	Hughson
	Culver City *		Montclair	Modesto
El Dorado County	Diamond Bar	Napa County	Needles	Newman
South Lake Tahoe	Downey *	American Canyon	Ontario	Oakdale
	Duarte *	Calistoga	Rancho Cucamonga	Riverbank
Fresno County	El Monte	Napa	Redlands	Turlock
Clovis	El Segundo	St. Helena	Rialto	Waterford
Fresno	Gardena	Yountville	San Bernardino	
Kerman *	Glendale *	Unincorporated Area	Twenty Nine Palms	Tulare County

Kingsburg	Glendora	Orange County	Upland	Tulare *
Parlier	Hawaiian Gardens *	Aliso Viejo	Victorville	Visalia
Reedley	Hawthorne	Anaheim	Yucaipa	
Sanger	Hermosa Beach	Brea	Yucca Valley	Ventura County
Selma	Hidden Hills *	Buena Park	Unincorporated Area	Fillmore
Unincorporated Area	Huntington Park *	Costa Mesa		Ojai
	Inglewood	Cypress	San Diego County	Oxnard
Imperial County	Inwindale	Fountain Valley	Carlsbad	Port Hueneme
Brawley	La Canada Flintridge	Garden Grove	Coronado	Santa Paula
Calexico	La Habra Heights *	Huntington Beach	Del Mar *	Simi Valley
Calipatria	La Mirada *	La Habra	El Cajon	Ventura *
El Centro	La Puente *	La Palma	Encinitas	
Holtville	La Verne	Laguna Hills	Escondido	Yolo County
Imperial *	Lakewood *	Lake Forest	Imperial Beach	Winters *
Unincorporated Area	Lancaster	Newport Beach	La Mesa	
	Lawndale	Placentia	Lemon Grove	
Kern County	Lomita	Rancho Santa Margarita	National City	
Arvin	Long Beach *	San Clemente	Oceanside	
Bakersfield	Los Angeles *	Santa Ana	Poway	
California City	Lynwood *	Stanton	San Diego	
Delano	Malibu *	Tustin	San Marcos	
McFarland	Manhattan Beach *	Westminster	Santee	
Ridgecrest	Monrovia	Yorba Linda *	Solana Beach	
Shafter	Montebello		Vista	
Taft	Monterey Park	Riverside County	Unincorporated Area	
Tehachapi	Norwalk *	Banning		
Wasco	Palmdale	Beaumont	San Francisco County	
Unincorporated Area	Palos Verdes Estates *	Blythe *	San Francisco	
	Paramount *	Calimesa		
Kings County	Pasadena *	Canyon Lake	San Joaquin County	
Lemoore	Pico Rivera *	Cathedral City *	Lodi	
	Pomona	Coachella	Manteca *	
	Rancho Palos Verdes	Corona	Ripon	
	Redondo Beach	Desert Hot Springs	Stockton	
	Rolling Hills	Eastvale	Tracy	
	Rolling Hills Estates	Hemet		
	Rosemead	Indian Wells *	San Mateo County	
	San Dimas	Indio	Daly City	
	San Fernando	Jurupa Valley	Foster City	
	San Gabriel	La Quinta *	Menlo Park	
	San Marino	Lake Elsinore	Redwood City	
	Santa Clarita *	Menifee	San Bruno	
	Santa Fe Springs *	Moreno Valley	San Carlos *	
	Santa Monica	Murietta	San Mateo *	
	Sierra Madre	Norco	South San Francisco *	
	Signal Hill *	Palm Desert	Woodside	
	South El Monte	Palm Springs *		

South Gate *	Perris	Unincorporated Area
South Pasadena	Rancho Mirage *	
Temple City	Riverside	Santa Barbara County
Torrance	San Jacinto	Lompoc *
Walnut	Temecula	
West Covina	Wildomar	Santa Clara County
West Hollywood *	Unincorporated Area	Gilroy *
Whittier *		Morgan Hill *
Unincorporated Area *		San Jose

**HERO PROGRAM**

- For Homeowners
- For Contractors
- For Municipalities
- For Real Estate Agents
- For Commercial
- HERO Communities

**HELP & INFO**

- Contact
- FAQs
- News

**FOLLOW US**

- Facebook
- Twitter
- Blog
- Instagram
- YouTube

Enter Email Address For HERO Updates

**Signup**

Privacy Policy | Terms & Conditions | Copyright © 2015 Renovate America Inc. All Rights Reserved

## HERO Footprint & Program Stats

**45,000** approved applications for \$2.0 Billion

**50%** California households can participate in the Program - 29 counties, 6.8 Million households

**23,000** completed residential projects

**\$435 Million** funded in upgrades

**3,700** local jobs created

**\$760 Million** in annual economic impact

**44,000 Tons** of abated CO<sub>2</sub> emissions

**\$22 Million** in utility bill savings





Approved:   
Gary A. Napper  
City Manager

# AGENDA REPORT

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**

**FROM: CITY MANAGER**

**DATE: 05 MAY 2015**

**SUBJECT: CONTINUED DISCUSSION OF CURRENT LAND USE DESIGNATIONS  
GROUND FLOOR IN THE CLAYTON TOWN CENTER**

---

## RECOMMENDATION

It is recommended the City Council, following discussion and opportunity for public comment, provide general policy direction regarding the City's existing ground floor land use designations on public and privately-owned real properties in the Clayton Town Center.

## CONTINUED DISCUSSION

At its April 21<sup>st</sup> regular public meeting, the Clayton City Council held an open discussion regarding the City's existing ground floor land use designations on public and privately-owned real properties in its downtown area. The City Council received input from Mr. Ed Del Beccaro, Managing Director of Transwestern Property Company West, outlining detailed efforts within the last year to market the City's real properties for sale to commercial and retail developers. Mr. Del Beccaro shared professional perspectives on the City's long-held vision for retail commercial businesses on City properties for sale as well as private properties designated for "Town Center Commercial" ("TC") in the Clayton Town Center. No members of the public were present to offer comment on this policy matter.

Following receipt of that information, members of the City Council expressed preliminary interest in launching a series of Town Meetings with its community, as well as its Planning Commission, to consider whether modifications to the Town Center Specific Plan and General Plan of the City were warranted. Should "Town Center Commercial" remain the predominant ground floor vision for real properties in the Clayton Town Center, or should the City entertain changes or hybrid land uses coupling limited commercial with ground floor residential? In consideration of one member of the City Council's absence that evening (Vice Mayor Geller), the Council deferred discussion to its May 5<sup>th</sup> meeting whereat a full City Council could engage in this key land use policy question.

Procedurally, staff wishes to note it is not necessary to comprehensively overhaul or alter every TC-designated real property in the Clayton Town Center in effort to accommodate a form of ground floor residential use on the City's owned parcel off Main Street. According to

the City Attorney there is sufficient uniqueness to the size and location of the City's largest parcel for sale/development as well as public benefit to justify a change in land use designation and withstand a claim of "spot zoning". Spot zoning results when a small parcel of land is subject to more or less restrictive zoning than surrounding properties. Usually spot zoning involves a small parcel of land; the larger the property the more difficult it is to sustain an allegation of spot zoning. Likewise, where the "spot" is not an island but is connected on some sides to a like zone the allegation of spot zoning is more difficult to establish since lines must be drawn at some point. Here, the City's parcel is not an island but is connected with varying uses, such as public/quasi-public, public park/open space/open space and recreational, and institutional density. Furthermore, spot zoning may be upheld where a public benefit exists for such a classification.

### **BACKGROUND**

Presently, the City holds title to several real properties within the Clayton Town Center area that it previously attempted, with marginal progress, to self-advertise for sale and development to a private developer for construction of improvements consistent with the City Council's vision for its downtown contained in the *Clayton Town Center Specific Plan*. The real properties available are:

1. An unimproved vacant parcel with some frontage on Main Street (with dual access rights) consisting of approximately 1.67 acres acquired by the City in April 2013 from the Clayton Community Church. The land has two (2) signs posted on it by Transwestern noticing the property for sale (APN 118-560-010). Including original purchase price, escrow expenses and carrying costs, at this time the City has approximately \$1.045 million of taxpayer monies for title to the property; and
2. Three smaller parcels with frontage on the west side of Oak Street, between Center and High Streets, comprised of two (2) unoccupied ramshackle bungalows abutting Mitchell Creek, along with an unimproved adjacent hillside parcel to the west. Records indicate City ownership going back to 1974 and 1986.

The latter parcels listed above enjoy, through significant financial efforts of the former Clayton Redevelopment Agency (RDA), a fully-entitled City-approved development project known as "Creekside Terrace." This commercial mixed-use project involves the permitted construction of a mixed-use two story building with a western-style frontage characteristic of architectural themes suggested in the *Town Center Specific Plan*. The first floor plans for approximately 7,200 sq. ft. of retail commercial space with a 20-foot ceiling. The second floor calls for seven (7) residential units which originally were targeted for affordable housing opportunities with additional financial assistance of the RDA. In the current entitled plan, the residential units are 1-bedroom with several containing dens.

The Creekside Terrace Project received its City entitlements on 06 July 2010, and those land use permits have been extended by City Planning Commission actions to now expire on 06 January 2016 (note: further extensions are eligible). The City initially placed small billboards on the property depicting and illustrating with color renderings the front elevations

of the approved project. Those postings elicited several telephone calls and interests. At this time, the City has one (1) prospective developer slowly performing due diligence work to acquire and construct the project, including the exchange of bona fide offers on the lands.

### **COMMERCIAL BROKER RETAINED**

At its public meeting on 01 April 2014, following the City's solicitation of proposals from several commercial realty companies, the City Council unanimously approved an agreement with Transwestern Property Company West, Inc. (dba Transwestern) to list and to market the City's vacant and underutilized real properties in the Town Center. Since that time, Transwestern has created and developed a marketing plan, has outreached to numerous retail commercial companies and prospective developers, and has brought several interested developers to meet with the City Council Sub-Committee on Economic Development and City staff.

The Exclusive Sales Listing Agreement with Transwestern was approved for an extension of time to 02 January 2016 at the last City Council meeting.

### **PROGRESS ON MARKETING CITY PROPERTIES**

Since receiving the Listing Agreement, Transwestern (Ed Del Beccaro, Managing Director) reports his company has presented the real properties to approximately 650-700 distinct retailers (yes, including Trader Joe's). Although Clayton is a desirable community (11,200 pop.), when retailers do respond to our outreach pushing retail commercial land uses on the ground floor, Transwestern indicates the dominant response is "not interested" due to the lack of density (i.e. population, building mass) in the surrounding area to justify larger retail commercial investment and operation. The same variables that make Clayton desirable to so many (e.g. small town, geographic setting, less traffic volumes, low housing density, etc.) are also the same factors impeding the likelihood of significant retail commercial interest in the properties. While many Claytonians enjoy the quaintness and nostalgia of our Clayton Town Center, there simply are insufficient numbers of actual or potential consumers to frequent the Downtown or offer consistent patronage to warrant significant retailer development. And for some Claytonians, that reality is actually valued and endorsed for the quality of life reasons listed above.

The city of Clayton has two retail commercial sectors: 1. Clayton Station shopping center; and 2. Clayton Town Center. Frankly, neither are major players in terms of area shopping destination points or retail sales productions. In Fiscal Year 2014-15 it is projected the City of Clayton's sales and use tax revenues (1% from the 8.5% sales tax levy) will generate approximately \$300,000 in annual City tax revenue, total. For comparison, the next smallest city in Contra Costa County (Moraga; 16,348 pop.) produces \$771,740 per year in base sales tax revenue while its Measure K 1¢ sales tax rate increase approved by voters in 2012 brings in an additional \$1.68 million per year. In some circles of community dialogue, the "business" of Clayton is well known to be residential uses.

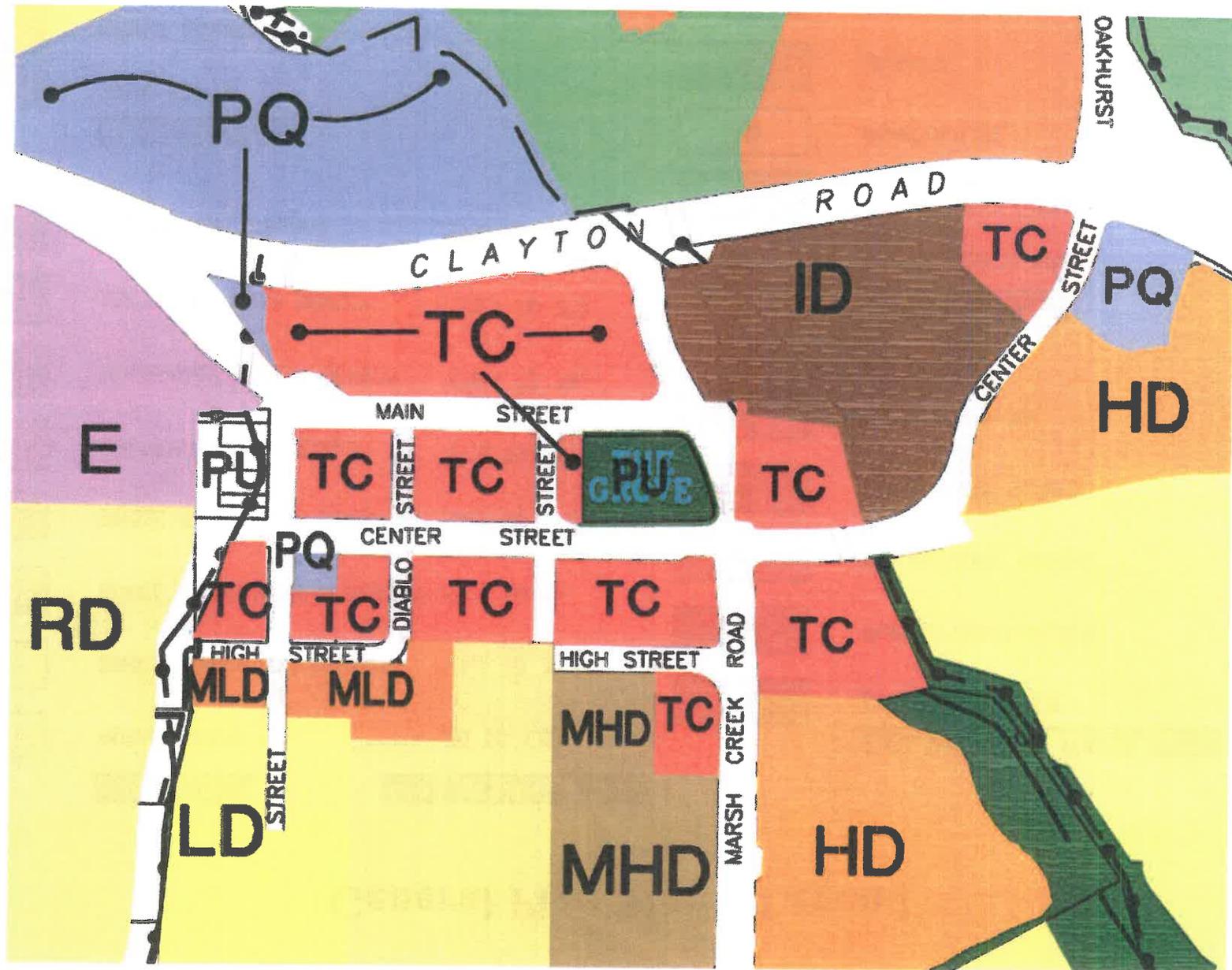
Unsurprisingly then, while Transwestern recently tendered two (2) actual offers by prospective developers to purchase the City's vacant parcel (1.67 gross acres) in the Town Center, neither offer entailed full retail commercial uses on the ground floor and each contained the dominant component of residential units (ground and second stories). For the City and its elected officials, the reality of receiving professional news on what the market will bear for commercial in its Town Center now confronts Clayton's long-desired vision and hope for a prominent retail village in its Downtown.

## **DISCUSSION**

Before the City considers altering the marketing plan of its real properties for sale in any fashion to entertain land uses other than those in compliance with its current General Plan, Zoning Code and Town Center Specific Plan, the City Council wished to initiate public discussion of the current ground floor retail commercial designation and evaluate whether it is an impediment to development of these properties and/or other under-utilized or vacant private properties in the Clayton Town Center. For reference purpose, staff has included the pertinent land use documents of the City governing the Town Center area.

- Exhibits:
1. General Plan Map and Land Use Legend of the Town Center [2 pp.]
  2. List of Allowable Uses in the Town Center area [3 pp.]
  3. Zoning Map of the Town Center [1 pg.]
  4. Applicable Zoning Code Chapters of the Clayton Municipal Code [12 pp.]
  5. Real Property Map of the Town Center [1 pg.]

# General Plan Map of Clayton Town Center



# General Plan Map – Legend

<b><u>RESIDENTIAL</u></b>		<b><u>UNITS/GROSS ACRE</u></b>		
	RURAL ESTATE	(0 TO 1.0)		<b><u>COMMUNITY FACILITIES</u></b> CULTURAL CENTER
	SINGLE FAMILY LOW DENSITY	(1.1 TO 3)		PUBLIC/QUASI-PUBLIC
	SINGLE FAMILY MEDIUM DENSITY	(3.1 TO 5)		INTERMEDIATE SCHOOL
	SINGLE FAMILY HIGH DENSITY	(5.1 TO 7.5)		ELEMENTARY SCHOOL
	MULTIFAMILY LOW DENSITY	(7.6 TO 10)		PRIVATE SCHOOL
	MULTIFAMILY MEDIUM DENSITY	(10.1 TO 15)		
	MULTIFAMILY HIGH DENSITY	(15.1 TO 20)		<b><u>OPEN SPACE</u></b>
	INSTITUTIONAL DENSITY	(7.6 TO 20)		PRIVATE OPEN SPACE
				PUBLIC PARK/OPEN SPACE/ OPEN SPACE AND RECREATIONAL
	<b><u>COMMERCIAL</u></b>			AGRICULTURE
	TOWN CENTER			QUARRY
	KIRKER CORRIDOR			PRIVATE OPEN SPACE (GOLF COURSE)
	CONVENIENCE COMMERCIAL			
				TRAILS

## CLAYTON TOWN CENTER SPECIFIC PLAN

**TOWN CENTER COMMERCIAL (TC)**Permitted Uses

Retail sales, commercial services, and offices, as well as limited residential and visitor accommodation uses, as listed below. Use marked by an asterisk (\*) are limited to upper floor locations, unless a use permit is granted for a ground floor location as noted in the following section.

- Antique shops
- Art galleries and frame shops
- Art and photography studios\*
- Audio/video equipment, including home theater systems
- Bakery goods stores and bakeries
- Banking
- Barber shops, beauty shops, and personal care salons\*
- Books, newsstands, and magazines
- Business, editorial, and professional offices\*
- Camera and photographic equipment
- Candy and ice cream
- Clothing and shoes
- Computer, office, and electronic equipment sales
- Computer, office, and electronic equipment service\*
- Copying and printing
- Dance, music, exercise, and martial arts studios\*
- Drapery and yardage
- Drugstores
- Electric appliances (small appliances only)
- Financial services\*
- Floor coverings
- Flowers and house plants
- Food and groceries
- Hardware and garden supply
- Interior decorating stores
- Jewelry, watches, and clocks
- Lamps and lighting
- Laundry and dry cleaning pick-up stores, excluding any dry-cleaning on-site
- Liquor, wine, and beer (off-sale)
- Locksmiths
- Luggage and leather goods
- Medical and dental offices\*
- Museums (upper floors preferred)
- Music, including recordings, instruments, and sheet music
- Opticians
- Parking spaces and loading areas
- Pets and animal grooming (excluding kennels)

Private mail and packaging services  
 Real estate offices and title companies\*  
 Residential uses (upper floors only)  
 Restaurant (including outdoor dining, on-site service, and take-out service) and associated bars  
 Saddles and equestrian equipment  
 Sporting goods and bicycles  
 Stationery supplies  
 Tailors and dressmakers\*  
 Tobacco shops  
 Toys, hobbies, and crafts  
 Travel agencies\*  
 Variety stores  
 Video rentals  
 Accessory buildings, structures, and uses clearly incidental and appurtenant to a permitted use  
 Temporary and seasonal outdoor uses, subject to Temporary Use Permit provisions (Chapter 17.70) of the Zoning Ordinance  
 Other retail, commercial service, or office uses which are determined by the Planning Commission (or the City Council on appeal) to be of the same general character and will not impair the present or potential use of adjacent properties.

#### Uses Subject to Use Permit

The following uses are allowed only after special review and the granting of a use permit. The primary purpose of the review is to assure an appropriate mixture and balance of uses in the Town Center—a mixture and balance that the uses listed below could jeopardize, for a variety of factors including:

- The location would interfere with the pedestrian and retail orientation of the district; or
- The use or its size, in conjunction with existing uses, would overwhelm the Town Center or interfere with the pedestrian and retail orientation of the district.

Further, some of the uses listed below might require building or storage areas that would be too large or otherwise inappropriate in the Town Center:

Bars which are not part of a full-service dining establishment  
 Bed and breakfast guest facilities  
 Commercial recreation (including billiards/pool and video arcades with more than three machines)  
 Establishments with dancing, live entertainment, or live audio/video entertainment  
 Home appliances, except small electrical appliances  
 Home furnishings, except lamps and lighting  
 Massage therapy, unless part of recognized medical office or clinic  
 Office, commercial service, personal service, or studio uses (listed as Permitted Uses above) in ground floor locations

### **MULTI-FAMILY LOW DENSITY RESIDENTIAL**

Dwelling units at density of 7.6 to 10 units per gross acre. This designation is intended for and allows cluster units such as townhouses, garden units, and other types of planned developments, including single-family detached dwellings on smaller lots, that provide a development with amenities to balance the increased density. This density must be adequately buffered from adjacent single-family developments. Development intensity can reach 100 percent of individual parcel coverage provided that each unit has access to private outdoor space, use of recreational amenities, and provision of useable open space. Second dwelling units are allowed.

### **MULTI-FAMILY MEDIUM DENSITY RESIDENTIAL**

Dwelling units at a density of 10.1 to 15 units per gross acre. Areas so designated on the Land Use Plan are deemed to have adequate site area-and are located with respect to the Towne Center road system-such that the range of density can comfortably be accommodated.

### **MULTI-FAMILY HIGH DENSITY RESIDENTIAL**

Dwelling units at a density of 15.1 to 20 units per gross acre. Areas so designated on the Land Use Plan are deemed to have adequate site areas-and area located with respect to the Town Center road system-such that the range of density can comfortably be accommodated. This designation is intended for and allows the two-story (or higher) apartments or condominiums located where higher densities may be appropriate, such as near major public transportation and commercial centers. Development within this density shall be encouraged to use a PUD concept and standards with incorporation of significant design and amenity in the project. Structural coverage, excluding recreational amenities, shall not exceed 65% of the site area.

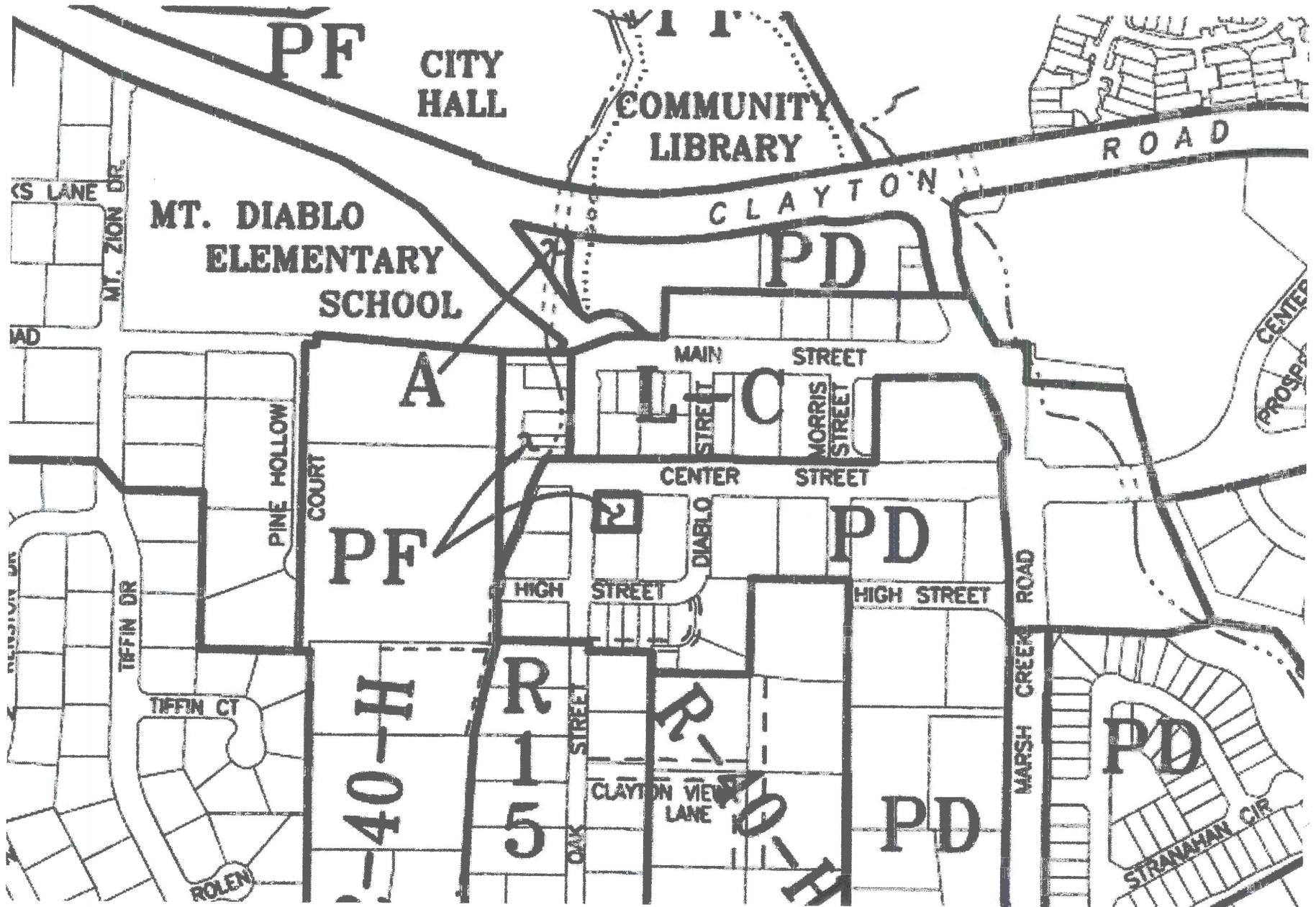
### **INSTITUTIONAL RESIDENTIAL**

Senior housing at a density of 7.6 to 20 units per gross acre. This designation is intended for development of various forms of senior housing under the sponsorship of public or quasi-public agencies. Group dining, limited vehicles, medicine-dispensing services, and other characteristics and amenities make this form of housing unique. Development intensity can reach 100 percent structural coverage for individual parcels. Structural coverage shall not exceed 50 percent of the site areas.

### **PUBLIC FACILITY**

Publicly –owned facilities such as government offices and facilities, community centers, museums, parks and recreational areas, the Community Library, the fire station, the Clayton Corporation yard, and ancillary structures and uses.

# Zoning Map of Clayton Town Center



## Chapter 17.24

LIMITED COMMERCIAL (LC) DISTRICTSections:

- 17.24.010 Permitted uses--Generally.  
 17.24.020 Permitted uses--Principal.  
 17.24.030 Lot area.  
 17.24.040 Building height.  
 17.24.050 Setbacks.  
 17.24.060 Parking and Loading.

**17.24.010 Permitted uses--Generally.** All land within a limited commercial district (map symbol LC) may be used for any of the uses under the regulations in this chapter. (Ord. 52 Ch. II Sec. 5(part), 1968).

**17.24.020 Permitted uses – Principal.** Unless the land is located within the boundary of the Town Center Specific Plan, the principal permitted uses in the Limited Commercial District are as set forth herein. If the land is located within the boundary of the Town Center Specific Plan, the principal permitted uses are the retail sales, commercial service, restaurant, bar, commercial recreation, office, upper-floor residential, and visitor-accommodation uses specifically set forth in the “Town Center Commercial” land use designation of the Town Center Specific Plan.

- A. Retail business or service establishment supplying commodities or performing services for residents of the surrounding community, such as a junior department store, grocery, fruit, or vegetable store, bakery, drugstore, barbershop and beauty shop, clothes cleaning and laundry pickup station, business or professional offices and the like;
- B. Cafes, restaurants, grills, and similar enterprises, provided that such uses are conducted within a completely enclosed building;
- C. Business and technical schools, and schools and studios for photography, art, music and dance;
- D. Medical and dental offices and clinics;
- E. Administrative, executive, and editorial offices;
- F. Professional offices;
- G. Financial offices, including banks, and real estate and other general business offices;
- H. Outdoor sales activities, such as sidewalk cafes, and other similar uses, where the City finds any such use to be in the public interest and compatible with existing development in the general area where such use is proposed, and which use is maintained with sufficient screening or landscaping or both, where the same is or are determined by the City to be necessary to protect surrounding properties;
- I. Accessory uses and structures customarily appurtenant to a permitted use, such as incidental storage facilities;
- J. SRO facilities only with a Conditional Use Permit (See Section 17.60.030.B.6);
- K. Any other retail business, office or service establishment which the Commission finds not to be inconsistent with the purpose of this title and which will not impair the present or potential use of adjacent properties. (Ord. 325, 1996, Ord. 440, 2012)

**17.24.030 Lot Area.** Buildings or parts of buildings hereafter erected or altered for any of the uses described in this chapter shall be situated on a lot at least five thousand square feet in area and fifty feet in average width. (Ord. 325, 1996; Ord. 52 Ch. II Sec. 5(c), 1968).

**17.24.040 Building Height.** The building height in the Limited Commercial District shall not exceed forty (40) feet. (Ord. 403, 2007)

**17.24.050 Setbacks.** The setback in the Limited Commercial District shall be five (5) feet from all lot lines, unless the lot shares a common lot line with a lot in a residential district, in which case the setback shall be ten (10) feet from that portion of the common lot line. The setback may be reduced to zero (0) feet upon approval of a site plan review by the Planning Commission for the subject development in accordance with Chapter 17.44. (Ord. 403)

**17.24.060 Parking and Loading.** Off-street parking and loading shall be provided in accordance with the requirements of Chapter 17.37 (Off-Street Parking and Loading Regulations) (Ord. 408, 2007).

## Chapter 17.28

### PLANNED DEVELOPMENT (PD) DISTRICT

#### Sections

17.28.010	Planned Development District Defined
17.28.020	Purpose
17.28.030	Criteria for Planned Development District Application
17.28.040	Rezoning to Planned Development District
17.28.050	Land Use Permit Required
17.28.060	Permitted Uses
17.28.070	Density
17.28.080	Latitude of Regulations
17.28.090	Development Plan Application Requirements
17.28.100	Open Space
17.28.110	Maintenance of Common Areas
17.28.120	Circulation/Parking
17.28.130	Utilities
17.28.140	Review Procedures/ Development Plan Permit
17.28.150	Conditions of Approval
17.28.160	Standards of Review
17.28.170	Required Findings
17.28.180	Development Plan Modifications
17.28.190	Termination

**17.28.010 Planned Development District Defined.** A Planned Development District (PD) is a zone which allows for an integrated, comprehensively-planned area located on a single tract or contiguous tracts of land under a single or joint ownership which allows flexibility in the land use controls typically required by another zone. The Planned Development District requires a subsequent development level permit. (Ord. 308, 1993)

**17.28.020 Purpose.** The major purposes of the Planned Development District are:

- A. To implement the objectives of the General Plan.
- B. To conserve outstanding natural and archeological features.
- C. To provide more private and public open space.
- D. To encourage building variety and innovative approaches in environmental design. The Planned Development District permits, for example, mixed land uses, varied setbacks and building heights and diverse lot sizes.
- E. To promote economy and efficiency through shared facilities and services. (Ord. 308, 1993)

**17.28.030 Criteria for Planned Development District Application.** Any piece of land one half acre or larger with any General Plan designation or designations may be rezoned to Planned Development District. Mixed use development would require rezoning to Planned Development District prior to seeking development approval. (Ord. 308, 1993)

**17.28.040 Rezoning to Planned Development District.** An application to rezone or prezone an area to Planned Development District shall include all other submittals normally required by the City for a rezoning application pursuant to Chapter 17.56 of this Title. (Ord. 308, 1993)

**17.28.050 Land Use Permit Required.** For all areas zoned Planned Development District, a land use permit is required as follows:

- A. For residential uses of four (4) lots or less and containing four (4) dwelling units or less, a Site Plan Review Permit is required pursuant to Chapter 17.44.
- B. For multiple family development projects located on property designated as Multifamily High Density (MHD) on the General Plan Land Use Map, the development standards for Multiple Family Residential (M-R-H) Districts shall apply pursuant to Chapter 17.20 and the Site Plan Review Permit process shall be used for processing purposes pursuant to Chapter 17.44. Alternatively, applicants may choose to process a Development Plan under the provision of this PD District Chapter if desired. (Ord. 454, 2014)
- C. For residential uses of five (5) lots or more or containing five (5) dwelling units or more, a Development Plan Permit is required as specified below.
- D. For commercial or mixed use development on parcels less than 15,000 square feet in area (subject Subsection E below), a Site Plan Permit and/or a Use Permit is required pursuant to Chapters 17.44 and/or 17.60, respectively.
- E. For commercial or mixed use development on parcels 15,000 square feet or greater in area (subject Subsection E below), a Development Plan Permit is required as specified below.
- F. The applicable parcel areas for Subsections D and E above, are those shown on the Assessor's Maps of the Contra Costa County Assessor's Office as of January 1, 2007 (termed Original Parcels). Development projects located on parcels created by any subsequent division of the Original Parcels must comply with the requirements applicable to the parcel areas of the Original Parcels. (Ord. 402, 2007, Ord. 454, 2014)

**17.28.060 Permitted Uses.** The Planned Development District is designed to effectively control the development of a single use or mixture of uses as defined in the overlying category (or categories) designated in the General Plan. Personal property sales are allowed in residential neighborhoods within Planned Development Districts subject to the following standards:

- A. Personal property sales shall be allowed up to a maximum of six (6) days per calendar year;
- B. Personal property sales shall be limited to the hours between 8:00 a.m. and 5:00 p.m.;
- C. Personal property sales shall not result in adverse impacts related to noise, traffic, safety, congestion, and parking; and
- D. Personal property sales are only allowed in higher-density residential developments if the sales area does not adversely impact common areas or public areas. (Ord. 420, 2009).

**17.28.070 Density.** The maximum permissible density is defined by the overlying category(ies) designated in the General Plan. If the proposed Planned Development District spans more than one General Plan use and/or density category, then such use and/or densities may be mixed in the same proportions in the Planned Development District as designated in the General Plan. Strict adherence to overlying General Plan use/density boundaries may not be necessary if a reasonable mixture of uses/densities can be designed which is compatible with adjacent uses and which is not greater than the maximum permissible density as defined by the General Plan. (Ord. 308, 1993)

**17.28.080 Latitude of Regulations.** The Planning Commission or City Council may adopt as part of a Site Plan or a Development Plan pursuant to the Planned Development District regulations, limitations and restrictions different from those specified elsewhere in City Ordinances, but which are designed to protect, foster and maintain the health, safety, and general welfare of the community, including and relating to but not limited to the following:

- A. Setback and height limitations on structures;
- B. Percent coverage of land by structures;
- C. The location, width, and improvement of vehicular and pedestrian access to various portions of the property;
- D. Planting and maintenance of trees, shrubs, plants and turf in accordance with a landscaping plan;
- E. Construction of fences and walls;
- F. Limitations upon the size, design, number, lighting and location of signs and advertising structures;
- G. Arrangement and spacing of buildings and structures to provide appropriate open spaces around them;
- H. Location and size of off-street parking, loading areas and docks;
- I. Architectural design of buildings and structures; and
- J. Provision for exterior night lighting. (Ord. 308, 1993)

**17.28.090 Development Plan Application Requirements.**

- A. Design Team: Given the complexity of a Planned Development District and its potential long-term impact on the character and quality of development in the City, to qualify for consideration for a Development Plan Permit, the applicant must assemble and utilize a qualified professional design team whose members are licensed, as appropriate, and which should include the following disciplines: land planning, architect, landscape architect and civil engineering.
- B. Application Form/Requirements: The Submittal Package shall include the following( unless otherwise directed by the Community Development Director): (All plans and analyses shall be at scale 1" = 20' for site planning and 1/8" = 1' or greater for elevations and floor plans unless Community Development Director requires another scale.)
  - 1. Site Opportunities/Constraints Analysis (Use more than one map if necessary):
    - a. Environmental: Existing natural land features; type and diameter of trees six (6) inches or larger in diameter at four (4) feet, six (6) inches above natural grade (any such tree proposed to be removed shall be evaluated by a certified arborist in accordance with Chapter 15.70); topography (at two-foot contour intervals); soils; drainage patterns; water bodies and wetlands; flood hazard areas; surface and sub-surface geology plus geological hazards such as earthquake faults; natural features including view sheds and ridge lines; archeological sites; etc. (Ord 381, 2005)
    - b. Existing Improvements: The location and dimensions of all existing structures. Show all existing roads, paths, parking areas and all other improvements (pools, patios, decks, etc.). Identify all improvements to be retained showing location and dimensions.
    - c. Easements: The location, dimension, and purpose of all existing easements on the property.
  - 2. Site/Development Plan: (Smaller scale plans showing an overview of the proposed

development and its relationship to surrounding uses shall also be included.) The plan shall include, at minimum:

- a. Proposed use or uses of all lands within the subject area including all areas within the project proposed for private common areas and those proposed for dedication for public use.
  - b. Relationship of any existing improvements retained with proposed use or uses.
  - c. The anticipated grading for the development.
  - d. Proposed subdivision of land and buildings.
  - e. Proposed on-site and off-site improvements.
  - f. Landscaping, parking areas and proposed building envelopes for each proposed development.
  - g. If the intent is to develop the project in stages, each phase must be identified and shall be designed to be fully functional as a free-standing entity.
3. Architectural Design:
- a. Drawings and elevations, to scale, showing the architectural design of all structures proposed for the site.
  - b. Identify the exterior materials, color and finish of all structures.
  - c. Discuss the harmony of the proposed design with the significant design features or themes of adjacent and community structures.
4. Circulation Plan:
- a. Show all proposed, on-site private vehicular (automobile and bicycle) and pedestrian ways. (Show proposed equestrian trails, if applicable.)
  - b. Show proposed, on-site, public rights-of-way, walkways, paths, trails, etc. Identify pavement width and type.
  - c. Show the relationship of the proposed circulation facilities to the existing facilities (including but not limited to streets, highways, pedestrian walkways, public transit, bicycle paths, hiking and equestrian trails, etc.
5. Landscape Plan: A Landscape Plan shall be submitted which complies with the provision of Chapter 17.80 of this Title.
6. Community Facilities Plan:
- a. The location of significant historical, cultural and archaeological features of the site, including methods proposed to preserve and incorporate such elements into the proposed project.
  - b. The proposed layout, dedication and/or reservation of school sites, library sites, and public open space and usable recreation areas including parks and playgrounds, etc.
7. Open Space Requirements. The method for satisfying the open space requirements of Section 17.28.100.
8. Reports/statements including but not limited to:
- a. Identification of project applicant, proposed project developer, and owner (if different) and the identification of all members of the design team.
  - b. Legal description of the property.
  - c. A soils report for subject area.
  - d. A geotechnical report for the subject area.
  - e. A preliminary report indicating provisions for storm drainage, sewer disposal and public utilities (including cable television).
  - f. A feasibility analysis of all public or quasi-public recreational and educational areas

and facilities proposed to be located within the development. This analysis shall include a statement of anticipated financing, development and long-term maintenance.

- g. A residential density analysis of the subject area and the estimated population both adult and school-age resulting therefrom. The proposed number of school-age children shall be integrated with the analysis of educational needs and proposed facilities.
  - h. A detailed statement indicating how and why the proposed development conforms to the General Plan and Specific Plan, if applicable.
  - i. Any additional information as may be required by the Community Development Director.
- C. Submittal Packet: The number of copies of each of the above, which constitutes an Application Submittal Packet, will be determined by the Community Development Director.
- D. Application Fee: The Development Plan application materials shall be accompanied by a fee in such amount as may be fixed from time to time by resolution of the City Council. (Ord. 308, 1993; Ord. 402, 2007)

FOR ALL PROPOSALS REQUIRING A DEVELOPMENT PLAN PERMIT, THE FOLLOWING SHALL APPLY:

**17.28.100 Open Space.**

A. Open Space. Amount of Open Space. Projects must contain provisions for active and passive open space areas collectively comprising at least twenty (20) percent of the project site, except as follows: 1) commercial or mixed use projects on parcels less than one acre which must provide active open space on at least ten (10) percent of the project site; 2) affording housing projects may be required to provide less than twenty percent of the project site as open space subject to approval by the Planning Commission. These minimum requirements may be increased depending upon the amount and type of active open space improvements provided. (Ord. 440, 2012).

- B. Proportion of Active and Passive Open Space. At least half of the designated open space area should be active open space (except for commercial or mixed use projects on parcels less than one acre). However, the City may consider the following factors for determining the proportion of the open space area which is active open space and passive open space:
- 1. The topography of the project site;
  - 2. The proximity of the project site to other public areas of active open space and passive open space;
  - 3. The nature of any proposed active open space improvements including recreational areas (e.g., athletic facility, swimming pool, park, playgrounds, clubhouse, plaza, courtyard, walking trail) or open space amenities (e.g., public art, infrastructure for community events, landscaping);
  - 4. The extent to which the designated open space in commercial projects is accessible to the public or on-site customers; and
  - 5. The extent to which the provisions for active and passive open space are provided on-site, off-site, or through an in-lieu financial contribution.

- C. Off-Site Open Space and In-Lieu Contributions. Residential projects on sites less than three (3) acres as well as commercial or mixed use projects on sites less than one (1) acre may meet all or a portion of the open space requirements through one or more of the following means:
1. The acquisition of land for public open space and/or the construction of open space improvements on public open space at off-site locations.
  2. In-lieu financial contributions to the City for acquisition and/or maintenance of public open space. In-lieu financial contributions shall be based on the following criteria:
    - a. For the active portion (minimum fifty percent) of the open space requirement, a financial contribution for acquisition and/or maintenance of active recreation areas (e.g., athletic fields, playgrounds) in the City=s park system.
    - b. For the passive portion (maximum fifty percent) of the open space requirement, a financial contribution for maintenance of the City=s trail system.
  3. If the financial contributions are based upon maintenance costs, such contributions shall be based upon reasonable maintenance costs for a ten-year period and shall be proportional to the land area that would be required if the open space area was provided on-site.

- D. **Open Space Standards.** The following standards apply to all open space areas.
1. For purposes of calculating open space requirements, the project site area shall exclude areas to be dedicated for public right-of-way.
  2. Any active open space area shall not have a slope greater than ten (10) percent or any length or width dimension of less than ten (10) feet.
  3. Open space areas shall be owned and maintained as listed below. Alternatively, open space areas may be proposed and accepted for dedication as public open space.
    - a. Residential active open space -- by a property owners association.
    - b. Residential passive open space -- by a property owners association or by one or more individual property owners if the area is subject to development restrictions by a conservation easement.
    - c. Commercial or mixed use open space -- by a property owners association or the project site property owner.
  4. All open space improvements and in-lieu financial contributions are subject to approval by the City. (Ord. 402, 2007)

**17.28.110 Maintenance of Common Areas.**

Legal provision shall be made for the perpetual maintenance of all areas to be dedicated for common use including but not limited to active open space, passive open space, property owners association facilities, parking, and circulation. (Ord. 402, 2007)

**17.28.120 Circulation/Parking.**

- A. Road/street widths are to be determined by the Subdivision Regulations in conjunction with the City Engineer.
- B. Streets shall be dedicated for public use and maintenance or privately-owned and maintained but open for continual public use. (Ord. 308, 1993)
- C. Off-street parking and loading shall be provided in accordance with the requirements of Chapter 17.37 (Off-Street Parking and Loading Regulations). (Ord. 408, 2007)

**17.28.130 Utilities.** The design, location and installation schedule of all utilities are to be determined by the Subdivision Regulations and the City Engineer in consultation with the utility providers. (Ord. 308, 1993)

**17.28.140 Review Procedures/Development Plan Permit.**

- A. Hearing-Recommendation by Planning Commission
  1. After application filing, the Community Development Director shall determine if all submittal requirements have been met and if the application is complete. The Community Development Director shall then schedule the matter before the Planning Commission. The Planning Commission shall then hold a public hearing to review the Development Plan application. Notice of the public hearing shall be given in the manner and for the time required by Section 65091 of the California Government Code.
  2. The Planning Commission shall review the Development Plan Permit request and make a recommendation with conditions, as warranted, to the City Council. The recommendation shall be by affirmative vote of not less than a majority of Commissioners present at a duly constituted meeting of the Planning Commission. A denial of the Development Plan Permit request by the Commission shall cease further

consideration of the request for a period of one year following such denial, except in the following cases:

- a. An appeal is filed pursuant to Chapter 17.68 of this title;
  - b. When a new application, although involving all or a portion of the same property, is filed for a materially different proposal than that previously applied for; or
  - c. When the permit request was denied for the reason that the proposed development would not conform to the General Plan and the General Plan has subsequently been amended in a manner which would allow the proposed development.
3. The City Council shall review the Development Plan Permit request and recommendation from the Planning Commission. After its public hearing and review, the City Council shall approve the request, with conditions, as warranted, or shall deny the request. Action of the City Council shall be by vote of not less than a majority of the Council present at a duly constituted meeting of the City Council. A denial of the Development Plan Permit request shall cease further consideration of the request for a period of one year following such denial, except in the following cases:
- a. When a new application, although involving all or a portion of the same property, is filed for a materially different proposal than that previously applied for; or
  - b. When the permit request was denied for the reason that the proposed development would not conform to the General Plan, and the General Plan has subsequently been amended in a manner which would allow the proposed development. (Ord. 308, 1993)

**17.28.150 Conditions of Approval.**

- A. The Planning Commission and/or City Council reserves the right to require development which is less dense than the maximum permitted in the General Plan as well as to impose conditions to insure that the development meets the purposes of the Planned Development District as hereabove specified.
- B. The Planning Commission and/or City Council may as a condition of approval require a cash bond or surety bond to ensure the completion of all or specified parts of the development determined to be essential to the achievement of the purposes of this Chapter. (Ord. 308, 1993)

**17.28.160 Standards of Review.** In order to make the findings required by Section 17.28.170, the provision of the following amenities shall be thoroughly evaluated:

- A. Natural Open Space: The quantity and quality of open space areas. Whether significant natural areas will be preserved including: prominent land features, watercourses, minimize removal of existing trees, etc;
- B. Open Spaces: Quantity and quality of open space and associated improvements to be provided and whether such areas and improvements will be functional, safe, attractive and adequate (Ord. 402, 2007);
- C. Vehicular Access including parking location, amount and design of pedestrian access including trails and bike paths, and the safe separation of transportation modes including provision for emergency vehicles;
- D. Landscape Design: The degree of compliance with the water conserving guidelines found in Chapter 17.80 of this Title and, where appropriate, the degree of fire resistant landscaping;

- E. Site Design:
  1. Creative integration of visual focal points, views and topographic features;
  2. Sun and wind orientation; and
  3. Building grouping and sensitive siting on the terrain for access and privacy as well as to minimize the necessity for retaining walls.
- F. Design Features:
  1. Maximize the harmonious integration of a variety of architectural features, materials and colors and site layouts to prevent design monotony; and
  2. Provision for the dense landscape screening of vehicular parking areas both public and private.
- G. Ownership/Maintenance of Common Areas: That adequate provision is made for the ownership and maintenance of the common areas of the development for the duration of its economic life; and
- H. Other Features: Provision of such other features as the Planning Commission or City Council determine are appropriate. (Ord. 308, 1993)

**17.28.170 Required Findings.** A Development Plan Permit for a Planned Development District shall not be granted unless the Planning Commission and/or City Council makes the following findings:

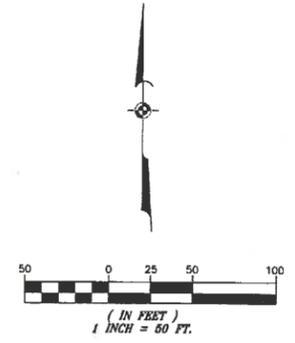
- A. That the application of the Planned Development District, as proposed, will result in a significantly better quality development than would occur with a non-flexible zone and that the factors specified in Section 17.28.160 have been thoroughly evaluated;
- B. That the project complies with the open space requirements of Section 17.28.100 (Ord. 402, 2007);
- C. That the development is consistent with the City's General Plan;
- D. That the development will be compatible with and in harmony and character with the City as a whole and with adjoining areas and uses;
- E. That in the case of non-residential uses such development is needed at the proposed location to provide adequate facilities of the type proposed and such non-residential development will fit harmoniously into and will not have adverse effects upon the adjacent or surrounding areas;
- F. That the development's environmental impacts have been reviewed pursuant to CEQA; and
- G. The applicant intends to start construction within the allotted time as specified in Section 17.28.190. (Ord. 308, 1993)

**17.28.180 Development Plan Modifications.** The Development Plan may be modified by submitting an application amendment following the review procedures specified in Section 17.28.140 of this Chapter provided that the proposal is consistent with the General Plan. (Ord. 308, 1993)

**17.28.190 Termination.** If within 18 months after the approval by the City Council of the Development Plan Permit, construction has not commenced, then the Development Plan Permit shall become null and void.

The Planning Commission or City Council, on appeal, may grant extensions to commence construction for not more than one year at a time upon showing of good cause. (Ord. 308, 1993)

**CITY OF CLAYTON  
TOWN CENTER AREA  
UPDATED APRIL 2015**



MON, APR 27, 2015 07:19 A BJB LAYOUT1 Z:\CITY OF CLAYTON\DWG\DOWN TOWN CLAYTON OWNERS\DOWN TOWN OWNERS V7 APR-2105.DWG

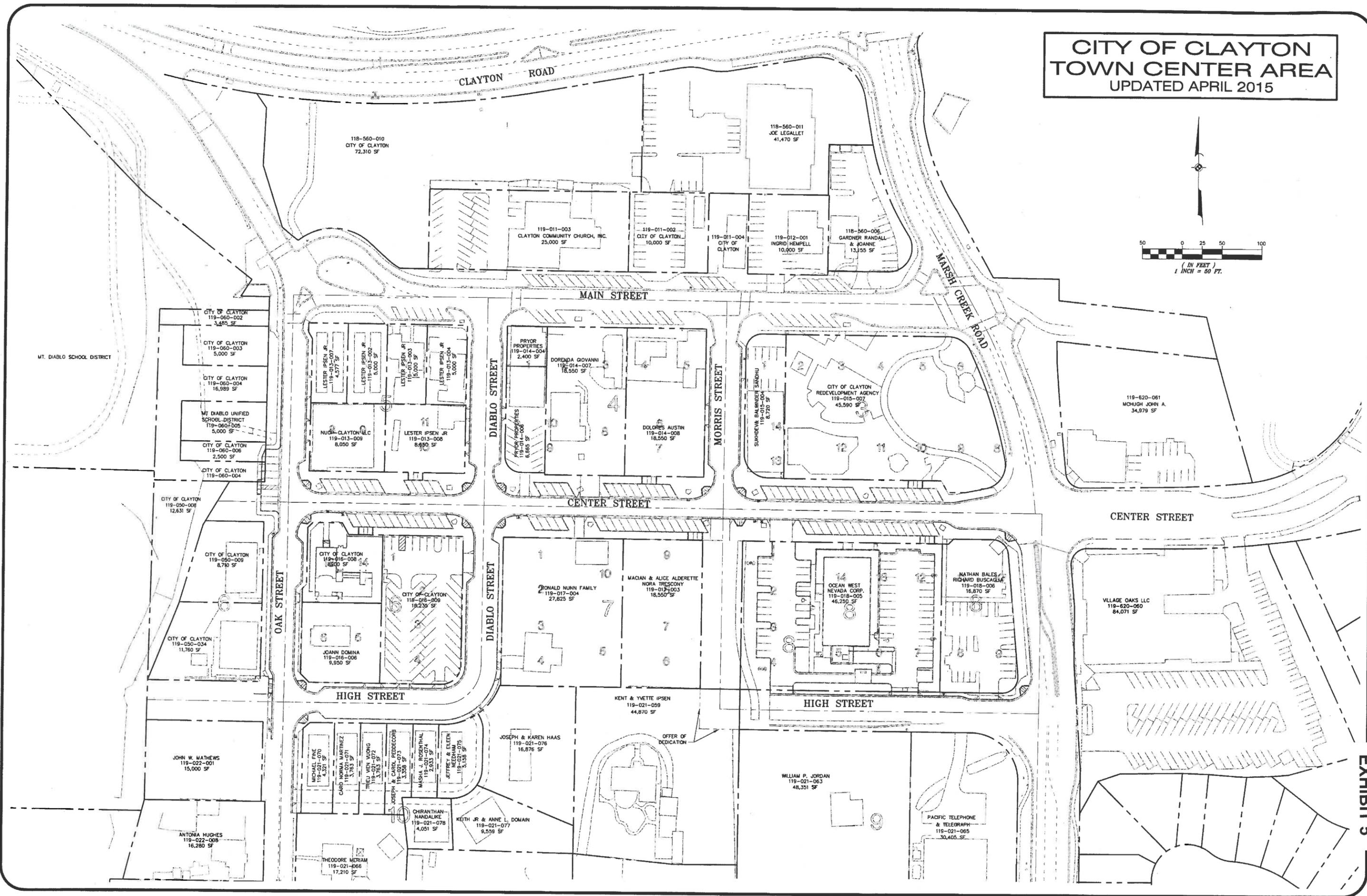


EXHIBIT 5