



# **AGENDA**

## **SPECIAL MEETING**

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## **CLAYTON CITY COUNCIL**

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**THURSDAY, July 30, 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 \***  
**July 30, 2015**

**7:00 P.M.**

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

2. **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.*

3. **Study Session** (No Action can or will be taken)

(a) Review and discussion of the proposed FY 2105-16 real property assessments for the Diablo Estates at Clayton Benefit Assessment District, its budget details and associated expenses, and annual levy legal procedures. ([View Here](#))

4. **ADJOURNMENT**– the next meeting of the City Council is an Adjourned Regular Meeting on August 4, 2015 at 7:00 p.m.

# # #



Agenda Date: 7-30-2015

Agenda Item: 3a

Approved:

  
Gary A. Napper  
City Manager

# STUDY SESSION

**TO: HONORABLE MAYOR AND COUNCILMEMBERS**  
**FROM: CITY MANAGER**  
**DATE: 30 JULY 2015**  
**SUBJECT: DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT**

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## **RECOMMENDATION**

This is a Special Meeting of the City Council for the purpose of reviewing the history and status of the Diablo Estates at Clayton Benefit Assessment District (BAD).

No action by the City Council will be taken at this Study Session.

## **BACKGROUND**

At its 21 July 2015 regular meeting, the City Council opened a noticed Public Hearing to consider the proposed FY 2015-16 real property assessments to be levied for the Benefit Assessment District (BAD) on the Diablo Estates at Clayton residential subdivision consisting of twenty-four (24) lots. At the public hearing various owners appeared and provided comments and questions concerning the proposed levies and the operations of the BAD.

Based on that public input, the Clayton City Council deferred the associated Public Hearing to an adjourned regular meeting to be held on Tuesday, August 4<sup>th</sup> at 7:00 p.m. It further set a Special Meeting to be held on Thursday, July 30<sup>th</sup> at 7:00 p.m. for a Study Session on the BAD.

To facilitate the study session on this BAD, staff assembled the attached documents and materials as outlined on the Table of Content.

Attachments: Table of Content and BAD documents

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## DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT (“BAD”)

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**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

**Memorandum**

**To:** City Council  
**From:** City Attorney  
**Date:** July 27, 2015  
**Re:** Diablo Estates at Clayton Benefit Assessment District - Proceedings to Levy Assessments for the 2015-16 Tax Year

**QUESTION PRESENTED**

The City Council is undertaking proceedings to consider the levy of assessments for the 2015-2106 fiscal year (the “2015-16 Assessments”) for the Diablo Estates at Clayton Benefit Assessment District (“District”). The District was originally formed in 2012 pursuant to the Benefit Assessment Act of 1982 and the Landscaping and Lighting Act of 1972 (the “1972 Act”). As a result of input and questions from the owners of property within the District, we have been asked respond to the following questions:

1. Are the assessments levied within the District, including the 2015-16 Assessments, subject to the provisions of Proposition 218?
2. Was the Notice to Property Owners for Levy of Assessments legally adequate?
3. What are the protest procedures applicable to the 2015-16 Assessments?
4. If there is enough for a majority protest, does the assessment still stand without the CPI increase?
5. Does the City Council have the authority to dissolve the District?
6. If the City Council elects to reduce the assessments, can the City be liable for any damage that may result for any reduction in the level of maintenance of the improvements resulting from the reduction in the assessments?

Responses to each of questions presented are set forth below.



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ATTORNEYS AT LAW

ANSWERS

**Are the assessments levied within the District, including the 2015-16 Assessments, subject to the provisions of Proposition 218?**

The initial proceedings undertaken in 2012 to authorize the levy of assessments within the District was subject to the notice, protest and hearing requirements of Proposition 218.<sup>1 2</sup> We have reviewed the resolutions<sup>3</sup> pertaining to these proceedings, the City of Clayton Diablo Estates at Clayton Benefit Assessment District for Landscaping and Lighting and Benefit Assessment Engineer's Report Fiscal Year 2012-2013 (the "Engineer's Report") prepared by SCI Consulting Group in March 2012 and the form of the Notice to Property Owners Pertaining to Levy of Assessments (the "2012 Notice") and it appears, from our review, that the City did comply with the notice, protest and hearing requirements of Section 4 and the Omnibus Act in authorizing the initial levy of the assessments within the District.

As to the 2015-16 Assessments, if the City has complied with the notice, protest and hearing requirements of Section 4 and the Omnibus Act, then those requirements shall not apply to the levy of assessments in subsequent fiscal years unless the assessment methodology is changed to increase the assessment or the amount of the assessment is proposed to exceed an assessment formula or range of assessments adopted in accordance with such notice, protest and hearing requirements.<sup>4</sup> The Engineer's Report specified that the assessments levied within the District are subject to an annual adjustment tied to the Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Area as of April of each succeeding year, with the maximum annual adjustment not to exceed 4% (the "Assessment Formula"). The 2012 Notice and the assessment ballot specifically provided that the assessments may be increased annually pursuant to the Assessment Formula. As a result, the notice, protest and hearing requirements of Section 4 and the Omnibus Act do not apply to the 2015-16 Assessments unless the increase in such assessments over the assessments levied in fiscal year 2014-15 exceeds the amount authorized pursuant to the Assessment Formula.<sup>5</sup> The Engineer's Report, dated May 19, 2015, prepared by the City Engineer pertaining to the 2015-16 fiscal year assessment specified that the 2015-2016 Assessments will increased by 2.5% over the assessments levied in the 2014-15 fiscal year. The Engineer's Report stated that "The relevant CPI increase for the past year (February 2014 – February 2015) was 2.5%." Since the proposed increase in the 2015-16 Assessments did

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<sup>1</sup> Proposition 218 amended the California Constitution to add Articles XIIC and XIID. Section 2 of Article XIID contains certain applicable definitions including "assessment," "property related service" and "special benefit" pertaining assessments. Section 4 of Article XIID ("Section 4") provides substantive and procedural requirements applicable to the District assessments.

<sup>2</sup> In addition to the requirements of Section 4, the proceedings to authorize the initial of assessments within the District are subject to the provisions of the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Omnibus Act") which was enacted to assist local agencies in the implementation of Proposition 218.

<sup>3</sup> Resolution Nos. 04-2013, 08-2012 and 23-2012.

<sup>4</sup> Government Code Section 53753.5 of the Omnibus Act.

<sup>5</sup> The assessment methodology has not been amended.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

not exceed the Assessment Formula, the notice, protest and hearing procedures of Section 4 and the Omnibus Act did not apply to the proceedings pertaining to the levy of the 2015-16 Assessments.

**Was the Notice to Property Owners for Levy of Assessments legally adequate?**

Although the notice requirements of Section 4 and the Omnibus Act do not apply to the proceedings to authorize the levy of the 2015-16 Assessments, the notice requirements of the 1972 Act do apply to the public hearing pertaining to 2015-16 Assessments. The notice of a public hearing pertaining to the annual levy of assessments pursuant to the 1972 (a “1972 Act Notice”) is merely required to be published one time ten days prior to the public hearing.<sup>6</sup> A 1972 Act Notice is merely required to provide the purpose of the hearing and the date, time and place of such hearing. A 1972 Act Notice is not required to provide the level of detail, i.e., total District assessment, proposed assessment per parcel, duration of the assessment included in the Notice to Property Owners for Levy of Assessment (the “2015-2016 Assessment Notice”) that was mailed to the individual property owners within the District pertaining to the 2015-16 Assessments. As a result of the fact that the 2015-2016 Assessment Notice was mailed to each property owner and contained more detail than required for a 1972 Act Notice, we conclude that the 2015-16 Assessment Notice was legally adequate.

**What are the protest procedures applicable to the 2015-16 Assessments?**

The protest and hearing requirements of Section 4 and the Omnibus Act do not apply to the protest and hearing for the authorization to establish and levy the 2015-16 Assessments. As a result property owners are not entitled to receive and submit an assessment ballot in support of or in opposition to the increase reflected in the 2015-16 Assessments. The protest right of property owners is provided for in the 1972 Act which provides that “any interested person may, prior to the public hearing on the authorization to establish and levy the 2015-16 Assessments, file a written protest with the City Clerk.”<sup>7</sup> The 1972 Act does provide that if there is a majority protest against the levy of an annual assessment that is increased from any previous year, the proposed increase in the assessment shall be abandoned.<sup>8</sup> However, an “increased assessment” does not include an assessment that does not exceed the assessment formula or range of assessments that was previously approved by an assessment ballot proceeding in the area where the assessment is imposed.<sup>9</sup> As a result the 2015-16 Assessment is not considered to be an “increased assessment” and is not, therefore, subject to abandonment in the event of a majority protest.

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<sup>6</sup> Streets & Highways Code Sections 22552, 22553 and 22626.

<sup>7</sup> Streets & Highways Code Section 22628.

<sup>8</sup> Streets & Highways Code Section 22630.5.

<sup>9</sup> Streets & Highways Code Section 22630.5 and Government Code Section 54954.6.



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**If there is enough for a majority protest, does the assessment still stand without the CPI increase?**

Although the answer to this question is mooted by the answer to the preceding question, in a 1972 Act hearing where there is a majority protest against the levy of an annual assessment that is increased from any previous year where the increase was not established pursuant to a previously approved assessment formula, the majority protest will result in the abandonment of the proposed increase but the assessment may be levied at the level established for the previous year.

**Does the City Council have the authority to dissolve the District?**

A district established pursuant to the 1972 Act may be dissolved pursuant to the provisions of such act.<sup>10</sup> The City Council may initiate proceedings to dissolve the District by adoption of a resolution of intention and accordingly address dispersing the assets of the District. The City Council may dispense with preparation of an Engineer's Report pertaining to the dissolution and with posted and mailed notice of the public hearing. The only notice of the public hearing that is required is publication one time at least 10 days prior to the date of the public hearing. While any interested person may protest the dissolution of the District, there is no majority protest provided for in dissolution proceedings.

**If the City Council elects to reduce the assessments, can the City be liable for any damage that may result for any reduction in the level of maintenance of the improvements resulting from the reduction in the assessments?**

It is unlikely that the City would be liable for any such damage. A City employee, including members of the City Council, is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.<sup>11</sup> In addition, except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity when the employee is immune from liability.<sup>12</sup> The action of the City Council to approve, deny or reduce the annual assessment is an exercise of the legislative discretion of the City Council and such an action protect the City from liability.

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<sup>10</sup> Streets & Highways Code Section 22605 and following.

<sup>11</sup> Government Code Section 820.2

<sup>12</sup> Government Code Section 815.2(b)

**EXHIBIT B**

City of Clayton  
 Diablo Estates Benefit A. D. Fund 231  
 Adopted Budget 2015-16

Account Number	Account Name	2013-14 Actual	2014-15 Adopted Budget	2014-15 Projected	2015-16 Adopted Budget
7335	Gas & Electric Serv.	321	840	840	400
7338	Water Service	724	4,130	4,000	3,500
7381	Property Tax Admin Cost	270	3	270	270
7419	Other Prof. Services	50,590	64,610	58,000	53,040
7420	Administrative Costs	456	-	456	456
8113	Transfer to Stormwater Fund	-	456	-	-
<b>Total Expenditures</b>		<b>52,361</b>	<b>70,039</b>	<b>63,566</b>	<b>57,666</b>
5601	Interest Income	358	370	390	390
5606	Unrealized Investment Gain/Loss GASB31	(13)	-	-	-
4611	Fiduciary Fund Assessment	74,406	76,475	75,888	77,336
<b>Total Revenue</b>		<b>74,751</b>	<b>76,845</b>	<b>76,278</b>	<b>77,726</b>
<b>Increase (Decrease) in Fund Balance</b>		<b>22,390</b>	<b>6,806</b>	<b>12,712</b>	<b>20,060</b>
<b>Beginning Fund Balance</b>		<b>23,999</b>	<b>46,389</b>	<b>46,389</b>	<b>59,101</b>
<b>Ending Fund Balance</b>		<b>46,389</b>	<b>53,195</b>	<b>59,101</b>	<b>79,161</b>

For financial reporting purposes, the Diablo Estates Benefits Assessment District Fund (No. 231) meets the definition of and is reported as an *Agency Fund*. In accordance with GASB Statement No. 34, no fund balance is reported for Agency Funds. For budgeting purposes, however, this fund is reported on a modified accrual basis to better reflect the cash position of the fund as well as debt service transactions which would otherwise be excluded from expenditures following GASB 34.

7419	<i>Other Professional Services</i>				
	Pinnacle Construction Services, Inc.	49,506	50,500	50,500	51,000
	Permco	1,084	2,040	2,500	2,040
	Facility Reserve	-	12,070	5,000	-
		<b>50,590</b>	<b>64,610</b>	<b>58,000</b>	<b>53,040</b>

ineligible for Agency funds to address a public health and safety blight by installation of a municipal sewer line to eliminate their private septic tank systems. The project was completed in 2003 with bonds issued by the City for repayment over a thirty (30) year life maturing in 2032. Parcel assessments are projected to produce approximately \$17,800 in FY 2015-16. Principal and interest payments for FY 2015-16 total \$15,400 or 83% of the District's annual expenses and the principal balance of the bonds will be \$173,325 as of June 30, 2015. The Fund manages the retirement of this private debt obligation shouldered by the assessed real property owners, which reveals a positive Fund Balance of **\$85,431** expected on June 30, 2016 (equity retained for any late or defaulted payments).

D. Oak Street Sewer Assessment District – Fund No. 223

This neighborhood sewer project was completed in 2004. The former Clayton Redevelopment Agency paid for a portion of the project (50%) under its mission to eliminate public health and safety concerns, and the adjacent real property owners agreed to annual parcel assessments for the balance of the capital expense. Annual parcel assessments are projected to produce \$12,005 in District revenue in FY 2015-16. Principal and interest payments for FY 2015-16 total \$10,246 or 85% of the Fund's budgeted expenses. This Fund manages the retirement of the private debt over twenty-five (25) years, to be paid off in 2029. The Fund is projected to carry a positive equity cash balance of **\$3,578** as of June 30, 2016.

E. Diablo Estates Benefit Assessment District – Fund No. 231

This is the third fiscal year for the establishment and inclusion of a new fund to manage the assessment district for the newly-inhabited Diablo Estates at Clayton subdivision on the former Seminary Hill off Regency Drive. This 25 lot residential subdivision levies itself through the City for monies to oversee the private infrastructures, landscape and open grassy areas in the subdivision. The fund functions essentially as a depository account from which the City contracts with and pays for a property management company to actually perform and execute the subdivision maintenance and infrastructure repairs.

In FY 2015-16 the assessment revenue is projected to be approximately \$77,336. The primary FY 2015-16 expense of the district pertains to a property management firm (\$51,000). The Fund is projected to have a positive equity position at the end of this FY 2015-16 of approximately **\$79,161**, primarily retained for future infrastructure replacements serving the residential subdivision.

F. Clayton Financing Authority – Fund No. 405

On December 4, 1990, the City Council of Clayton, California adopted Resolution No. 120-90, which created the Clayton Financing Authority (CFA) through a joint exercise of powers agreement. This Financing Authority was initially established to allow redevelopment tax allocation bonds to be sold at a more favorable negotiation basis

**Diablo Estates Benefit Assessment District (Fund #231)  
General Ledger Records FY 2012 – FY 2015  
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2.	Revenue and Expenditure General Ledger Detail Fiscal Year Ending 6/30/12	2
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7.	Trial Balance Fiscal Year Ending 6/30/15	11
8.	Revenue and Expenditure General Ledger Detail Fiscal Year Ending 6/30/15	12-14

## City of Clayton Trial Balance Report

Account Number	Description	Beginning Balance	7/1/2011 to 6/30/2012		Ending Balance
			Total Debits	Total Credits	
231-1199-00	Equity in Pooled Cash	\$0.00			
231-1203-00	Allowance for GASB31 Gain/Loss	\$0.00	\$25,114.27	\$4.03	\$25,110.24
231-2101-00	Accounts Payable	\$0.00	\$270.82	\$0.00	\$270.82
231-2740-00	Formation Cost Deposit	\$0.00	\$0.00	\$122.00	(\$122.00)
231-3201-00	Unreserved/Designated Fund Bal	\$25,000.00	\$0.00	\$25,000.00	\$0.00
231-5601-00	Interest	(\$25,000.00)	\$0.00	\$0.00	(\$25,000.00)
231-5606-00	Unrealized Inv. Gain/Loss	\$0.00	\$4.03	\$114.27	(\$110.24)
231-7419-00	Other Professional Services	\$0.00	\$0.00	\$270.82	(\$270.82)
	<b>GRAND TOTALS:</b>	\$0.00	\$122.00	\$0.00	\$122.00
		\$0.00	\$25,511.12	\$25,511.12	\$0.00

## City of Clayton General Ledger Report FYE 6/30/12

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>231-5601-00</b>						
Account: 231-5601-00 (Interest)						
7/1/2011						
6/30/2012	2187-12	General Journal				
6/30/2012	2755-31	Journal Entry	JEJun26-Reallocate Interest received 5/27-6/30/12 revise Jan-June earnings allocation			
				<i>Account Beginning Balance</i>		
					\$114.27	\$0.00
				\$4.03		
				<i>Account Subtotals</i>		
				\$4.03	\$114.27	
6/30/2012						
6/30/2012						
				<i>Account Net Change</i>		
						(\$110.24)
				<i>Account Ending Balance</i>		
						(\$110.24)
<b>231-5606-00</b>						
Account: 231-5606-00 (Unrealized Inv. Gain/Loss)						
7/1/2011						
6/30/2012	2724-32	Journal Entry	adjust GASB 31 6/30/12			
				<i>Account Beginning Balance</i>		
					\$270.82	\$0.00
6/30/2012						
6/30/2012						
				<i>Account Subtotals</i>		
				\$0.00	\$270.82	
				<i>Account Net Change</i>		
						(\$270.82)
				<i>Account Ending Balance</i>		
						(\$270.82)
<b>231-7419-00</b>						
Account: 231-7419-00 (Other Professional Services)						
7/1/2011						
6/30/2012	2102-47	Accounts Payable	PERMCO, Inc.-9784-Diablo Estates BAD			
				<i>Account Beginning Balance</i>		
					\$122.00	\$0.00
6/30/2012						
6/30/2012						
				<i>Account Subtotals</i>		
				\$122.00	\$0.00	
				<i>Account Net Change</i>		
						\$122.00
				<i>Account Ending Balance</i>		
						\$122.00

## City of Clayton Trial Balance Report

Account Number	Description	Beginning Balance	7/1/2012 to 6/30/2013		Ending Balance
			Total Debits	Total Credits	
231-1199-00	Equity in Pooled Cash				
231-1203-00	Allowance for GASB31 Gain/Loss	\$25,110.24	\$73,616.88	\$74,448.37	\$24,278.75
231-2101-00	Accounts Payable	\$270.82	\$0.00	\$100.25	\$170.57
231-2129-00	Reserve for Facility	(\$122.00)	\$72,608.00	\$72,936.00	(\$450.00)
231-2740-00	Formation Cost Deposit	\$0.00	\$0.00	\$11,550.00	(\$11,550.00)
231-3201-00	Unreserved/Designated Fund Bal	\$0.00	\$25,000.00	\$25,000.00	\$0.00
231-4611-00	Fiduciary Fund Assessment	(\$25,259.06)	\$11,550.00	\$0.00	(\$13,709.06)
231-5601-00	Interest	\$0.00	\$0.00	\$72,662.88	(\$72,662.88)
231-5606-00	Unrealized Inv. Gain/Loss	\$0.00	\$616.13	\$954.00	(\$337.87)
231-7381-00	Property Tax Admin. Costs	\$0.00	\$100.25	\$0.00	\$100.25
231-7411-00	Professional Services Retainer	\$0.00	\$268.24	\$0.00	\$268.24
231-7419-00	Other Professional Services	\$0.00	\$500.00	\$0.00	\$500.00
231-7611-00	Principal	\$0.00	\$47,936.00	\$0.00	\$47,936.00
231-8113-00	Transfer to Stormwater Fund	\$0.00	\$25,000.00	\$0.00	\$25,000.00
		\$0.00	\$456.00	\$0.00	\$456.00
<b>GRAND TOTALS:</b>		\$0.00	\$257,651.50	\$257,651.50	\$0.00

## City of Clayton General Ledger Report FYE 6/30/13

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>231-4611-00</b>						
Account: 231-4611-00 (Fiduciary Fund Assessment)						
7/1/2012						
12/19/2012	2365-25	General Journal				
4/17/2013	2582-29	General Journal				
6/28/2013	2717-21	General Journal				
				<i>Account Beginning Balance</i>		
						\$0.00
					\$39,964.58	
					\$29,065.16	
					\$3,633.14	
				<i>Account Subtotals</i>		
6/30/2013				\$0.00	\$72,662.88	
6/30/2013						
				<i>Account Net Change</i>		
						(\$72,662.88)
						(\$72,662.88)
<b>231-5601-00</b>						
Account: 231-5601-00 (Interest)						
7/1/2012						
9/30/2012	2403-11	General Journal				
12/31/2012	2405-12	General Journal				
5/22/2013	2628-13	General Journal				
6/3/2013	2666-12	General Journal				
6/20/2013	2706-13	General Journal				
6/30/2013	2911-24	Journal Entry				
6/30/2013	2912-28	Journal Entry				
				<i>Account Beginning Balance</i>		
						\$0.00
					\$78.61	
					\$338.96	
					\$344.07	
					\$67.13	
					\$103.40	
					\$21.83	
				<i>Account Subtotals</i>		
6/30/2013				\$616.13	\$954.00	
6/30/2013						
				<i>Account Net Change</i>		
						(\$337.87)
						(\$337.87)
<b>231-5606-00</b>						
Account: 231-5606-00 (Unrealized Inv. Gain/Loss)						
7/1/2012						
6/30/2013	2939-28	Journal Entry	adjust GASB 31 6/30/13			
				<i>Account Beginning Balance</i>		
						\$0.00
					\$100.25	
				<i>Account Subtotals</i>		
6/30/2013				\$100.25	\$0.00	
6/30/2013						
				<i>Account Net Change</i>		
						\$100.25
						\$100.25
<b>231-7381-00</b>						
Account: 231-7381-00 (Property Tax Admin. Costs)						
7/1/2012						
				<i>Account Beginning Balance</i>		
						\$0.00

7/22/2015 1:20:56PM

### City of Clayton General Ledger Report FYE 6/30/13

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>Account: 231-7381-00 (Property Tax Admin. Costs)</b>						
12/19/2012	2365-24	General Journal	Property Tax Settlement 55% 1st Installment	\$147.53		
4/17/2013	2582-28	General Journal	Contra Costa County Property Tax Settlement 2nd Inst. - 40%	\$107.30		
6/28/2013	2717-20	General Journal	Contra Costa County Property Tax Settlement, Final 12/13	\$13.41		
			<i>Account Subtotals</i>	<u>\$268.24</u>	<u>\$0.00</u>	
6/30/2013						
6/30/2013						
			<i>Account Net Change</i>			\$268.24
			<i>Account Ending Balance</i>			<u>\$268.24</u>
<b>231-7411-00</b>						
<b>Account: 231-7411-00 (Professional Services Retainer)</b>						
7/1/2012						
6/30/2013	2772-3	General Journal	Best Best & Kreiger Legal Fees FY 12/13	\$500.00		\$0.00
			<i>Account Subtotals</i>	<u>\$500.00</u>	<u>\$0.00</u>	
6/30/2013						
6/30/2013						
			<i>Account Net Change</i>			\$500.00
			<i>Account Ending Balance</i>			<u>\$500.00</u>
<b>231-7419-00</b>						
<b>Account: 231-7419-00 (Other Professional Services)</b>						
7/1/2012						
			<i>Account Beginning Balance</i>			\$0.00
7/31/2012	2130-161	Accounts Payable	PERMCO, Inc.-9796-Diablo Estates BAD Admin	\$1,220.00		
8/17/2012	2172-310	Accounts Payable	PERMCO, Inc.-9812-Diablo Estates BAD Admin	\$2,625.00		
9/14/2012	2191-188	Accounts Payable	PERMCO, Inc.-9832-Diablo Estates BAD Admin	\$975.00		
9/21/2012	2206-133	Accounts Payable	PERMCO, Inc.-9841-Diablo Estates BAD Admin	\$2,175.00		
10/10/2012	2242-106	Accounts Payable	PERMCO, Inc.-9852-Diablo Estates BAD - Admin	\$450.00		
10/29/2012	2281-313	Accounts Payable	PERMCO, Inc.-9859-Diablo Estates BAD - Admin	\$825.00		
10/31/2012	2281-331	Accounts Payable	Pinnacle Residential-October 2012-Management services for Diablo Es	\$4,099.00		
11/14/2012	2309-43	Accounts Payable	Pinnacle Residential-1576-Diablo Estates BAD	\$4,099.00		
12/5/2012	2338-49	Accounts Payable	Pinnacle Residential-1590-Mgmt svcs for Diablo Estates BAD De	\$4,099.00		
1/28/2013	2426-128	Accounts Payable	Pinnacle Residential-1614-Management svcs for Diablo Estates B	\$4,099.00		
2/8/2013	2439-82	Accounts Payable	Pinnacle Residential-1615-Management Svcs Diablo Estates BAD	\$4,099.00		
3/11/2013	2520-56	Accounts Payable	Pinnacle Residential-1637-Management Services March 2013	\$4,099.00		
3/13/2013	2520-158	Accounts Payable	PERMCO, Inc.-9940-Diablo Estates BAD Admin	\$450.00		
4/19/2013	2598-503	Accounts Payable	Pinnacle Constructio-1649-Management Services for Diablo Pointe B/	\$4,099.00		
5/1/2013	2598-636	Accounts Payable	Pinnacle Constructio-1669-Management Diablo Estates BAD May 201	\$4,099.00		
6/12/2013	2698-89	Accounts Payable	PERMCO, Inc.-10003-Diablo Estates BAD - Admin	\$375.00		
6/19/2013	2719-15	Accounts Payable	Pinnacle Constructio-1685-Mgmt Services for Diablo Estates BAD Ju	\$4,099.00		
6/26/2013	2719-91	Accounts Payable	PERMCO, Inc.-10012-Diablo Estates BAD - Admin	\$1,500.00		
6/30/2013	2780-126	Accounts Payable	PERMCO, Inc.-10027-Diablo Estates BAD - Admin	\$450.00		

### City of Clayton General Ledger Report FYE 6/30/13

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>Account: 231-7419-00 (Other Professional Services)</b>						
				<i>Account Subtotals</i>		
6/30/2013				\$47,936.00	\$0.00	
6/30/2013						
<b>231-7611-00</b>						
<b>Account: 231-7611-00 (Principal)</b>						
7/1/2012						
6/30/2013	2904-73	Journal Entry	reclassify loan payment to Toll Brothers			
						<i>Account Beginning Balance</i>
				\$25,000.00		\$0.00
6/30/2013						
6/30/2013						
<b>231-8113-00</b>						
<b>Account: 231-8113-00 (Transfer to Stormwater Fund)</b>						
7/1/2012						
1/25/2013	2406-1	General Journal	JEJan3 Bk annual filing fee from Diablo Estates to Stormwater Fund			
						<i>Account Beginning Balance</i>
				\$456.00		\$0.00
6/30/2013						
6/30/2013						
						<i>Account Subtotals</i>
				\$456.00	\$0.00	
						<i>Account Net Change</i>
						<i>Account Ending Balance</i>
						\$456.00
						\$456.00

## City of Clayton Trial Balance Report

Account Number	Description	Beginning Balance	7/1/2013 to 6/30/2014		Ending Balance
			Total Debits	Total Credits	
231-1199-00	Equity in Pooled Cash				
231-1203-00	Allowance for GASB31 Gain/Loss	\$24,278.75	\$74,494.16	\$52,540.02	\$46,232.89
231-2101-00	Accounts Payable	\$170.57	\$0.00	\$12.92	\$157.65
231-2129-00	Reserve for Facility	(\$450.00)	\$52,084.02	\$51,635.34	(\$1.32)
231-3201-00	Unreserved/Designated Fund Bal	(\$11,550.00)	\$0.00	\$0.00	(\$11,550.00)
231-4611-00	Fiduciary Fund Assessment	(\$12,449.32)	\$0.00	\$0.00	(\$12,449.32)
231-5601-00	Interest	\$0.00	\$0.00	\$74,406.24	(\$74,406.24)
231-5606-00	Unrealized Inv. Gain/Loss	\$0.00	\$0.00	\$358.32	(\$358.32)
231-7335-00	Gas & Electricity	\$0.00	\$12.92	\$0.00	\$12.92
231-7338-00	Water Services	\$0.00	\$320.55	\$0.00	\$320.55
231-7381-00	Property Tax Admin. Costs	\$0.00	\$724.38	\$0.00	\$724.38
231-7419-00	Other Professional Services	\$0.00	\$270.40	\$0.00	\$270.40
231-7420-00	Administrative Costs	\$0.00	\$50,590.41	\$0.00	\$50,590.41
231-8113-00	Transfer to Stormwater Fund	\$0.00	\$456.00	\$0.00	\$456.00
		\$0.00	\$456.00	\$456.00	\$0.00
<b>GRAND TOTALS:</b>		\$0.00	\$179,408.84	\$179,408.84	\$0.00

## City of Clayton General Ledger Report FYE 6/30/14

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>231-4611-00</b>						
Account: 231-4611-00 (Fiduciary Fund Assessment)						
7/1/2013						
12/17/2013	2994-14	General Journal				
4/17/2014	Summarized	Cash Receipts	JEDec4-Book Property Taxes Current Secured 2013-14			
6/25/2014	Summarized	Cash Receipts				
				<i>Account Beginning Balance</i>		
					\$40,923.43	\$0.00
					\$29,762.50	
					\$3,720.31	
				<i>Account Subtotals</i>		
6/30/2014				\$0.00	\$74,406.24	
6/30/2014						
				<i>Account Net Change</i>		
						(\$74,406.24)
						<u>(\$74,406.24)</u>
<b>231-5601-00</b>						
Account: 231-5601-00 (Interest)						
7/1/2013						
12/31/2013	3017-24	Journal Entry				
3/26/2014	3128-28	Journal Entry	July-December investment earnings			
6/30/2014	3218-30	Journal Entry	3rd Quarter FY 2014 interest apportionment		\$180.00	\$0.00
					\$97.99	
					\$80.33	
				<i>Account Subtotals</i>		
6/30/2014				\$0.00	\$358.32	
6/30/2014						
				<i>Account Net Change</i>		
						(\$358.32)
						<u>(\$358.32)</u>
<b>231-5606-00</b>						
Account: 231-5606-00 (Unrealized Inv. Gain/Loss)						
7/1/2013						
6/30/2014	3249-31	Journal Entry				
				<i>Account Beginning Balance</i>		
					\$12.92	\$0.00
6/30/2014			GASB 31 FY 2014			
				<i>Account Subtotals</i>		
6/30/2014				\$12.92	\$0.00	
				<i>Account Net Change</i>		
						\$12.92
						<u>\$12.92</u>
<b>231-7335-00</b>						
Account: 231-7335-00 (Gas & Electricity)						
7/1/2013						
10/9/2013	2924-3	Accounts Payable				
11/20/2013	2984-40	Accounts Payable	PG&E-9/20/13-Service 8/21/13-9/19/13			
11/25/2013	2974-43	Accounts Payable	PG&E-2131151100-4 -electricity service	\$11.36		\$0.00
12/20/2013	3021-29	Accounts Payable	PG&E-2113151931-Service for October 2013	\$11.32		
					\$12.07	
					\$11.13	
				<i>Account Beginning Balance</i>		

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## City of Clayton General Ledger Report FYE 6/30/14

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>Account: 231-7335-00 (Gas &amp; Electricity)</b>						
1/14/2014	3049-21	Accounts Payable	CCWD-G223670-water for Diablo Estates BAD	\$205.03		
1/22/2014	3049-60	Accounts Payable	PG&E-toll bros-service for Diablo Estates BAD	\$12.21		
3/1/2014	3105-33	Accounts Payable	PG&E-2113151100-4 -electric service 1/22/14-2/20/14	\$11.13		
4/11/2014	3139-142	Accounts Payable	PG&E-03/24/14-diablo pointe service	\$22.64		
5/14/2014	3170-84	Accounts Payable	PG&E-Diablo Estate-service 3/24/14-4/22/14	\$11.15		
5/30/2014	3171-121	Accounts Payable	PG&E-5/22/14-service 4/23/14-5/21/14	\$11.19		
6/30/2014	3232-762	Accounts Payable	PG&E-6/23-service	\$1.32		
			<i>Account Subtotals</i>	\$320.55	\$0.00	
6/30/2014						
6/30/2014			<i>Account Net Change</i>			\$320.55
			<i>Account Ending Balance</i>			\$320.55
<b>231-7338-00</b>						
<b>Account: 231-7338-00 (Water Services)</b>						
7/1/2013						<i>Account Beginning Balance</i>
						\$0.00
11/25/2013	2974-11	Accounts Payable	CCWD-E160558-Water service 9/20-11/6/13	\$516.39		
3/12/2014	3123-337	Accounts Payable	CCWD-I286116-water 1/10/14-3/10/14	\$101.37		
5/14/2014	3170-34	Accounts Payable	CCWD-K348193-water 3/11/14-5/7/14	\$106.62		
			<i>Account Subtotals</i>	\$724.38	\$0.00	
6/30/2014						
6/30/2014			<i>Account Net Change</i>			\$724.38
			<i>Account Ending Balance</i>			\$724.38
<b>231-7381-00</b>						
<b>Account: 231-7381-00 (Property Tax Admin. Costs)</b>						
7/1/2013						<i>Account Beginning Balance</i>
						\$0.00
4/17/2014	3143-62	Cash Receipts	Contra Costa County -812-5791	\$256.88		
6/25/2014	3201-395	Cash Receipts	Contra Costa County-868-6234	\$13.52		
			<i>Account Subtotals</i>	\$270.40	\$0.00	
6/30/2014						
6/30/2014			<i>Account Net Change</i>			\$270.40
			<i>Account Ending Balance</i>			\$270.40
<b>231-7419-00</b>						
<b>Account: 231-7419-00 (Other Professional Services)</b>						
7/1/2013						<i>Account Beginning Balance</i>
						\$0.00
7/10/2013	2780-1	Accounts Payable	Pinnacle Constructio-1720-Management for Diablo Estates BAD July ,	\$4,099.00		
7/12/2013	2780-127	Accounts Payable	PERMCO, Inc.-10027-Diablo Estates BAD - Admin	\$450.00		

## City of Clayton General Ledger Report FYE 6/30/14

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>Account: 231-7419-00 (Other Professional Services)</b>						
7/31/2013	2846-35	Accounts Payable	Pinnacle Constructio-1735-management for Diablo Estates for August			
9/6/2013	2913-5	Accounts Payable	Pinnacle Constructio-1768-Diablo Estates Management September 20	\$4,099.00		
10/18/2013	2928-19	Accounts Payable	Pinnacle Constructio-1782-Diablo Estates Management October 2013	\$4,099.00		
10/25/2013	2983-3	Accounts Payable	Pinnacle Constructio-1801-Management for Diablo Estates November	\$4,099.00		
12/3/2013	2985-64	Accounts Payable	Pinnacle Constructio-1831-management for Diablo Estates December	\$4,099.00		
1/15/2014	3049-62	Accounts Payable	Pinnacle Constructio-1863-Management fees for January 2014	\$4,152.00		
1/30/2014	3059-137	Accounts Payable	Pinnacle Constructio-1865-management fees for February 2014 Diabl	\$4,152.00		
3/1/2014	3105-35	Accounts Payable	Pinnacle Constructio-1878-management fees for March 2014 Diablo E	\$4,152.00		
3/24/2014	3123-123	Accounts Payable	PERMCO, Inc.-10174-Diablo Estates BAD Admin	\$34.41		
4/10/2014	3139-35	Accounts Payable	Pinnacle Constructio-1900-April 2014 Diablo Estates mgt fee-Invoice :	\$4,152.00		
5/14/2014	3170-251	Accounts Payable	PERMCO, Inc.-10198-Diablo Estates BAD 2014-15 budget	\$600.00		
6/11/2014	3195-107	Accounts Payable	Pinnacle Constructio-1934-Diablo Estates Mgmt Fee June 2014	\$4,152.00		
6/11/2014	3195-109	Accounts Payable	Pinnacle Constructio-1912-Diablo Estates Mgmt Fee for May 2014	\$4,152.00		
			<i>Account Subtotals</i>	\$50,590.41	\$0.00	
6/30/2014			<i>Account Net Change</i>			\$50,590.41
6/30/2014			<i>Account Ending Balance</i>			\$50,590.41
<b>231-7420-00</b>						
<b>Account: 231-7420-00 (Administrative Costs)</b>						
7/1/2013			<i>Account Beginning Balance</i>			\$0.00
6/30/2014	3266-33	Journal Entry	Reclass share of s/w filing fees admin charge from fund 216 to 231	\$456.00		
			<i>Account Subtotals</i>	\$456.00	\$0.00	
6/30/2014			<i>Account Net Change</i>			\$456.00
6/30/2014			<i>Account Ending Balance</i>			\$456.00
<b>231-8113-00</b>						
<b>Account: 231-8113-00 (Transfer to Stormwater Fund)</b>						
7/1/2013			<i>Account Beginning Balance</i>			\$0.00
8/28/2013	2830-1	Journal Entry	Permco Annual SW filing fees (Diablo Estates B.A.D.)	\$456.00		
6/30/2014	3266-34	Journal Entry	Reclass share of s/w filing fees admin charge from fund 216 to 231		\$456.00	
			<i>Account Subtotals</i>	\$456.00	\$456.00	
6/30/2014			<i>Account Net Change</i>			\$0.00
6/30/2014			<i>Account Ending Balance</i>			\$0.00

## City of Clayton Trial Balance Report

Account Number	Description	Beginning Balance	7/1/2014 to 6/30/2015		Ending Balance
			Total Debits	Total Credits	
231-1199-00	Equity in Pooled Cash	\$46,232.89	\$81,152.77	\$55,705.24	\$71,680.42
231-1203-00	Allowance for GASB31 Gain/Loss	\$157.65	\$0.00	\$0.00	\$157.65
231-2101-00	Accounts Payable	(\$1.32)	\$54,978.84	\$59,253.34	(\$4,275.82)
231-2129-00	Reserve for Facility	(\$11,550.00)	\$0.00	\$0.00	(\$11,550.00)
231-3201-00	Unreserved/Designated Fund Bal	(\$34,839.22)	\$0.00	\$0.00	(\$34,839.22)
231-4611-00	Fiduciary Fund Assessment	\$0.00	\$0.00	\$75,888.00	(\$75,888.00)
231-5601-00	Interest	\$0.00	\$0.00	\$464.77	(\$464.77)
231-7335-00	Gas & Electricity	\$0.00	\$170.19	\$0.00	\$170.19
231-7338-00	Water Services	\$0.00	\$1,836.55	\$0.00	\$1,836.55
231-7381-00	Property Tax Admin. Costs	\$0.00	\$270.40	\$0.00	\$270.40
231-7419-00	Other Professional Services	\$0.00	\$57,246.60	\$4,800.00	\$52,446.60
231-7420-00	Administrative Costs	\$0.00	\$456.00	\$0.00	\$456.00
<b>GRAND TOTALS:</b>		<b>\$0.00</b>	<b>\$196,111.35</b>	<b>\$196,111.35</b>	<b>\$0.00</b>

## City of Clayton General Ledger Report FYE 6/30/15 (Pre Year-end Close)

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>231-4611-00</b>						
Account: 231-4611-00 (Fiduciary Fund Assessment)						
7/1/2014						
12/17/2014	3349-58	Cash Receipts	Contra Costa County-1013-7174			
4/22/2015	3423-196	Cash Receipts	Contra Costa County-1108-7570			
6/26/2015	3459-141	Cash Receipts	Contra Costa County-1168-8042			
				<i>Account Beginning Balance</i>		
					\$41,738.40	\$0.00
					\$30,355.20	
					\$3,794.40	
				<i>Account Subtotals</i>		
6/30/2015				\$0.00	\$75,888.00	
6/30/2015						
				<i>Account Net Change</i>		
						(\$75,888.00)
				<i>Account Ending Balance</i>		
						(\$75,888.00)
<b>231-5601-00</b>						
Account: 231-5601-00 (Interest)						
7/1/2014						
9/30/2014	3290-33	Journal Entry	Quarterly interest apportionment			
12/31/2014	3359-35	Journal Entry	Quarterly interest apportionment		\$88.78	\$0.00
3/31/2015	3414-35	Journal Entry	Quarterly interest apportionment		\$84.86	
6/30/2015	3470-37	Journal Entry	Quarterly interest apportionment		\$119.44	
				<i>Account Beginning Balance</i>		
					\$171.69	
				<i>Account Subtotals</i>		
6/30/2015				\$0.00	\$464.77	
6/30/2015						
				<i>Account Net Change</i>		
						(\$464.77)
				<i>Account Ending Balance</i>		
						(\$464.77)
<b>231-7335-00</b>						
Account: 231-7335-00 (Gas & Electricity)						
7/1/2014						
7/23/2014	3253-129	Accounts Payable	PG&E-7/23/14-Diablo Estates BAD 6/23/14 - 7/22/14			
9/5/2014	3271-224	Accounts Payable	PG&E-8/22/14-stmt date 8/22/14	\$11.68		\$0.00
10/15/2014	3299-63	Accounts Payable	PG&E-2113151100-4-statement date 9/23/14	\$11.62		
11/10/2014	3327-515	Accounts Payable	PG&E-10/22/14-electric service	\$12.19		
12/8/2014	3345-53	Accounts Payable	PG&E-11/21/14-service to 11/20/14	\$11.17		
1/14/2015	3364-94	Accounts Payable	PG&E-12/22/14-service 11/21/14-12/21/14	\$22.44		
2/11/2015	3382-79	Accounts Payable	PG&E-1/22/15-service 12/22/14-1/21/15	\$11.44		
3/11/2015	3403-33	Accounts Payable	PG&E-2/23/15-service thru 2/22/15	\$11.44		
4/1/2015	3417-228	Accounts Payable	PG&E-3/24/15-service 2/23/15-3/23/15	\$11.63		
5/11/2015	3431-293	Accounts Payable	PG&E-21131511004-Diablo Pointe 3/24/15-4/22/15	\$10.47		
5/27/2015	3443-236	Accounts Payable	PG&E-5/22/15-service 4/23/15-5/21/15	\$33.67		
6/30/2015	3467-129	Accounts Payable	PG&E-6/23/15-service 5/22/15-6/22/15	\$10.72		
				<i>Account Beginning Balance</i>		
					\$11.72	

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### City of Clayton General Ledger Report FYE 6/30/15 (Pre Year-end Close)

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>Account: 231-7335-00 (Gas &amp; Electricity)</b>						
				<i>Account Subtotals</i>	\$170.19	\$0.00
6/30/2015				<i>Account Net Change</i>		\$170.19
6/30/2015				<i>Account Ending Balance</i>		\$170.19
<b>231-7338-00</b>						
<b>Account: 231-7338-00 (Water Services)</b>						
7/1/2014				<i>Account Beginning Balance</i>		\$0.00
7/18/2014	3253-544	Accounts Payable	CCWD-A411524-Water - Diablo Estates	\$142.95		
9/12/2014	3271-304	Accounts Payable	CCWD-C473227-irrigation - Regency drive	\$588.24		
1/14/2015	3364-26	Accounts Payable	CCWD-E536683-irrigation 9/6/14-11/7/14	\$834.89		
4/15/2015	3424-52	Accounts Payable	CCWD-3/30/15-water: stmt 3/30/15	\$270.47		
				<i>Account Subtotals</i>	\$1,836.55	\$0.00
6/30/2015				<i>Account Net Change</i>		\$1,836.55
6/30/2015				<i>Account Ending Balance</i>		\$1,836.55
<b>231-7381-00</b>						
<b>Account: 231-7381-00 (Property Tax Admn. Costs)</b>						
7/1/2014				<i>Account Beginning Balance</i>		\$0.00
4/22/2015	3423-97	Cash Receipts	Deposit 1108 - Summarized Cash Receipts Receipt	\$256.88		
6/26/2015	3459-71	Cash Receipts	Deposit 1168 - Summarized Cash Receipts Receipt	\$13.52		
				<i>Account Subtotals</i>	\$270.40	\$0.00
6/30/2015				<i>Account Net Change</i>		\$270.40
6/30/2015				<i>Account Ending Balance</i>		\$270.40
<b>231-7419-00</b>						
<b>Account: 231-7419-00 (Other Professional Services)</b>						
7/1/2014				<i>Account Beginning Balance</i>		\$0.00
7/9/2014	3232-766	Accounts Payable	Pinnacle Constructio-1954-mgmt services July 2014	\$4,152.00		
7/30/2014	3253-737	Accounts Payable	PERMCO, Inc.-10230-prepare budget, staff report, resolutions	\$225.00		
9/10/2014	3271-290	Accounts Payable	Pinnacle Constructio-1995-management services for September 2014	\$4,152.00		
9/10/2014	3271-292	Accounts Payable	Pinnacle Constructio-1975-management services for August 2014	\$4,152.00		
9/29/2014	3288-178	Accounts Payable	Pinnacle Constructio-2004-management services for October 2014	\$4,152.00		
10/1/2014	3288-222	Accounts Payable	PERMCO, Inc.-10259-Disablo Estates BAD - SW Inspections, notices	\$1,350.00		
12/8/2014	3345-55	Accounts Payable	Pinnacle Constructio-2041-services for December 2014	\$4,152.00		
12/8/2014	3345-57	Accounts Payable	Pinnacle Constructio-2040-services for November 2014	\$4,152.00		

## City of Clayton General Ledger Report FYE 6/30/15 (Pre Year-end Close)

Date	Trans.	Journal	Reference	Debit Amount	Credit Amount	Balance
<b>Account: 231-7419-00 (Other Professional Services)</b>						
1/14/2015	3364-96	Accounts Payable	Pinnacle Constructio-2059-Management Services for January 2015	\$4,205.98		
2/11/2015	3382-93	Accounts Payable	Stevens, Ferrone & B-555-2.2-lump sum for monitoring/report 1/13/1	\$4,800.00		
2/25/2015	3391-59	Accounts Payable	Pinnacle Constructio-2074-Management Services for February 2015	\$4,205.98		
3/11/2015	Summarized	Accounts Payable		\$4,380.34		
4/27/2015	3431-446	Accounts Payable	Pinnacle Constructio-2116-services for April 2015	\$4,264.10		
5/27/2015	3443-220	Accounts Payable	PERMCO, Inc.-10383-Diablo Estates BAD - Engineer's report for FY	\$375.00		
5/31/2015	3409-45	Journal Entry	Reclass Stevens, Ferrone invoice from fund 231 to 212 per City Engine		\$4,800.00	
6/8/2015	3453-279	Accounts Payable	Pinnacle Constructio-2117-Management services for May 2015	\$4,264.10		
6/30/2015	0-211	Accounts Payable	Unposted Accounts Payable Invoice	\$4,264.10		
			<i>Account Subtotals</i>	<u>\$57,246.60</u>	<u>\$4,800.00</u>	
6/30/2015			<i>Account Net Change</i>			\$52,446.60
6/30/2015			<i>Account Ending Balance</i>			<u>\$52,446.60</u>
<b>231-7420-00</b>						
<b>Account: 231-7420-00 (Administrative Costs)</b>						
7/1/2014			<i>Account Beginning Balance</i>			\$0.00
11/5/2014	3310-3	Journal Entry	Annual Stormwater Fees 2014 Diablo Estates	\$456.00		
			<i>Account Subtotals</i>	<u>\$456.00</u>	<u>\$0.00</u>	
6/30/2015			<i>Account Net Change</i>			\$456.00
6/30/2015			<i>Account Ending Balance</i>			<u>\$456.00</u>

**Diablo Estates at Clayton Benefit Assessment District****NOTICE TO PROPERTY OWNERS FOR LEVY OF ASSESSMENT****Reason for Assessment**

At the request of the original project developer, Toll Bros., Inc., the City of Clayton City Council (“Council”) approved Resolution No. 04-2012 on February 7, 2012, forming the Diablo Estates at Clayton Benefit Assessment District (“District”) to fund and to pay for the oversight and maintenance of certain facilities solely benefiting the District such as the stormwater treatment facilities, storm drain collection system, common area landscape and irrigation, private street lighting and weed abatement of natural slope areas, all as described in the original Engineer’s Report approved by the Council on March 20, 2012.

**Notice**

This notice informs you, as a real property owner within the Diablo Estates at Clayton Benefit Assessment District that on May 19, 2015, the Clayton City Council adopted Resolution No. XX-2015 approving an Engineer’s Report for FY 2015-16, declaring its intent to levy assessments for fiscal year 2015-16 and setting a public hearing on the issue of the proposed assessments:

**PUBLIC HEARING:**  
**Hoyer Hall (Library Meeting Room)**

**7:00 p.m. July 21, 2015**  
**6125 Clayton Road**

**Assessment Information**

1. Total District Assessment for the fiscal year beginning on July 1, 2015 and ending June 30, 2016: \$77,791.
2. Proposed assessment per parcel: The assessment for each parcel is proposed to be \$3,241.00 which includes a 2.5% increase in the existing assessment of \$3,162.00 per year in accordance with the annual increase in the applicable Consumer Price Index (Feb. 2014-Feb. 2015; San Francisco-Oakland- San Jose, CA MSA – All Urban Consumers), as allowed by property owner balloting in 2012.
3. Duration of assessment: The assessment will be levied annually at the above proposed rate and collected via one’s real property tax bill in fiscal year 2015-16. The assessment may only be increased (other than the authorized allowable annual CPI-U increase described above) in the future by approval of a majority of the property owners.

**Questions**

If any questions arise regarding the proposed real property assessments for fiscal year 2015-16, please contact the City Engineer Rick Angrisani: he may be reached at 925.363-7433.

**CITY OF CLAYTON**

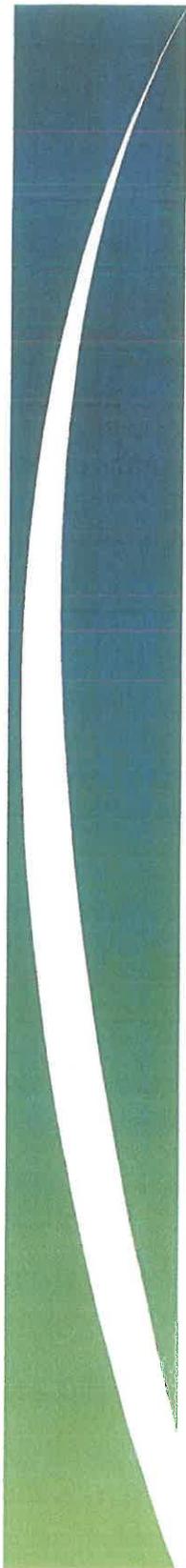
**DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT  
DISTRICT  
FOR LANDSCAPE AND LIGHTING AND BENEFIT ASSESSMENT**

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

MARCH 2012

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

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



**CITY OF CLAYTON**

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**MAYOR**

Howard Geller

**CITY COUNCIL**

Joseph A. Medrano

Julie K. Pierce

David T. Shuey

Hank Stratford

**CITY MANAGER**

Gary Napper

**CITY ENGINEER**

Rick Angrisani

**CITY ATTORNEY**

Malathy Subramanian

**CITY CLERK**

Laci Jackson

**ENGINEER OF WORK**

SCI Consulting Group

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## INTRODUCTION

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### BACKGROUND

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

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

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

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

## LEGISLATIVE ANALYSIS

### PROPOSITION 218

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

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

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

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

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

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

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

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

#### DAHMS V. DOWNTOWN POMONA PROPERTY

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

#### BONANDER V. TOWN OF TIBURON

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

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

#### BEUTZ V. COUNTY OF RIVERSIDE

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

#### COMPLIANCE WITH CURRENT LAW

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

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

## PLANS & SPECIFICATIONS

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

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

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

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

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

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

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

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

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

CITY OF CLAYTON Diablo Estates at Clayton Benefit Assessment District Estimate of Maintenance, Replacement, and Administrative Costs					
Item	Units	Unit Cost	Service Life (years)	Annual Cost	Annual Cost per Lot
<b>Common Landscaping</b>					
Landscape Maintenance	24,600 SF	\$0.30		\$7,380.00	
Landscape Replacement	24,600 SF	\$0.05		\$1,230.00	
Tree Maintenance	33 EA	\$95.00		\$3,135.00	
Tree Replacement - Materials	33 EA	\$285.00	40	\$235.13	
Water Usage	1,476 100CF	\$2.86		\$4,221.36	
Meter Charges	12 Mo	\$51.00		\$612.00	
Irrigation Maintenance & Repair	24,600 SF	\$0.03		\$738.00	
Fence Maintenance & Repair	1,870 LF	\$0.65		\$1,215.50	
Entry Monument Maintenance	1 EA	\$500.00		\$500.00	
Entry Monument Repair	1 LF	\$4,000.00	25	\$160.00	
				\$19,426.99	\$809.46
<b>Weed Abatement (On-lot)</b>					
Weed Abatement	397,000 SF	\$0.03		\$11,910.00	
				\$11,910.00	\$496.25
<b>Storm Drain System</b>					
Ditch - debris removal & maint	1 LS	\$1,000.00		\$1,000.00	
Ditch Repair	2,038 LF	\$50.00	25	\$4,076.00	
Vorsentry Maintenance	1 LS	\$1,500.00		\$1,500.00	
Vorsentry Replacement	1 LS	\$100,000.00	100	\$1,000.00	
Bio-Retention Basin Maintenance*	48 EA	\$ -		\$0.00	
Bio-Retention Basin Replacement	48 EA	\$2,000.00	10	\$9,600.00	
Stormwater Reporting Fee	1 LS	\$5,000.00		\$5,000.00	
Annual City Report Fee	1 LS	\$2,000.00		\$2,000.00	
Catch Basin/Manhole Cleaning	15 EA	\$200.00		\$3,000.00	
CBMH/pipe repair	1 LS	\$79,000.00	100	\$790.00	
				\$27,966.00	\$1,165.25
<b>Street Lighting</b>					
Maintenance and Repair	1 LS	\$500.00		\$500.00	
Electricity	4 EA	\$240.00		\$960.00	
				\$1,460.00	\$60.83
<b>Annual Administration</b>					
Property Manager	12 Mo	\$600.00		\$7,200.00	
Annual City Engineer Services	1 LS	\$2,500.00		\$2,500.00	
Legal Notice/Mailing	1 LS	\$100.00		\$100.00	
County Collection	1 LS	\$100.00		\$100.00	
General Reserve	1 LS	\$2,000.00		\$2,000.00	
				\$11,900.00	\$495.83
<b>Total</b>				\$72,662.99	\$3,027.62
	Number of Lots:			24	
	Cost per Lot:			\$3,027.62	
* homeowner responsibility					
**assumes covenant with Toll Brothers, Inc for 5 year maintenance period					
Unit costs per direction of City of Clayton City Engineer					

## METHOD OF APPORTIONMENT

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### METHOD OF APPORTIONMENT

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

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

### DISCUSSION OF BENEFIT

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

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

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

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

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

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

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

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

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

## GENERAL VERSUS SPECIAL BENEFIT

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

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

## METHOD OF ASSESSMENT

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

## ASSESSMENT APPORTIONMENT

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

## APPEALS AND INTERPRETATION

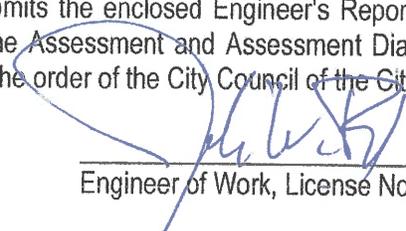
Any property owner who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the City of Clayton City Engineer or his or her designee. Any such appeal is limited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

**CERTIFICATES**

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**DIABLO ESTATES AT CLAYTON BENEFIT ASSESSMENT DISTRICT**

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

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

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

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

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

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

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

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

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

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

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

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

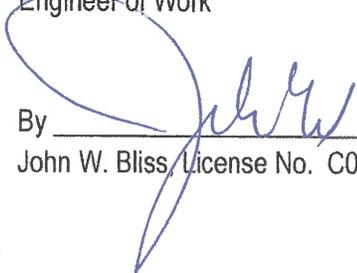
The assessments are subject to an annual adjustment tied to the Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area as of April of each succeeding year, with the maximum annual adjustment not to exceed 4%. In the event that the annual change in the CPI exceeds 4%, any percentage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

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

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

Dated: March 6, 2012

Engineer of Work

By 

John W. Bliss, License No. C052091



## ASSESSMENT

---

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

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

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

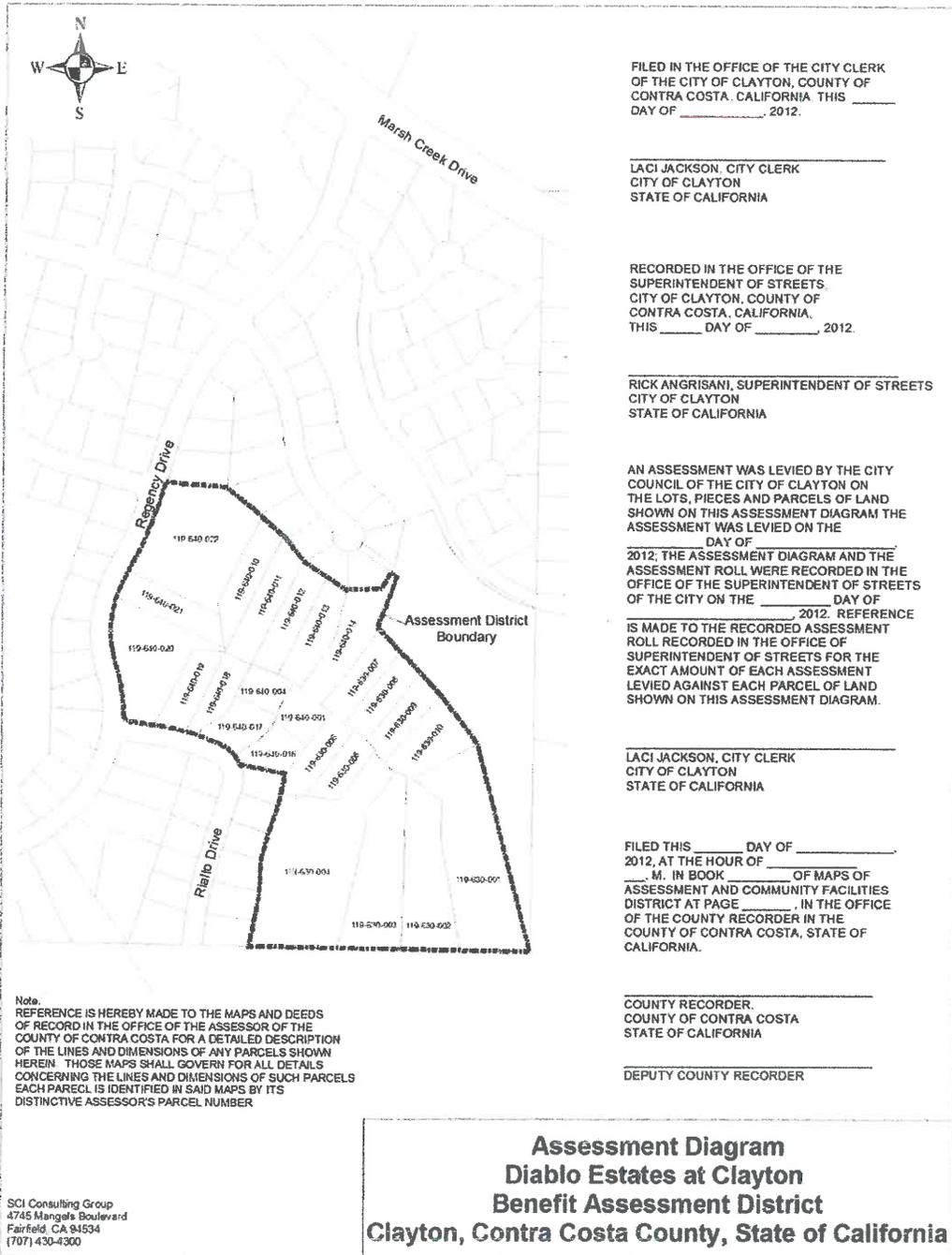
**FIGURE 3 – SUMMARY COST ESTIMATES – FISCAL YEAR 2012-13**

CITY OF CLAYTON Diablo Estates at Clayton Benefit Assessment District Summary Cost Estimate FY 2012-13	
Installation, Maintenance & Servicing Costs	\$60,763
Incidental Costs	\$11,900
<b>Total Budget</b>	<b>\$72,663</b>
<hr/>	
<b>Budget to Assessment</b>	
Total Budget	\$72,663
Total SFE Units	24
Rate per SFE Unit	\$3,027.62

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

**ASSESSMENT DIAGRAM**

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



## APPENDICES

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

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

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

FIGURE 4 – ASSESSMENT ROLL

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

## DIABLO ESTATES - SUBD. 8719 INITIAL BAD COST ESTIMATE

Item	Quantity	Unit	Unit Cost	Service Life (yrs)	Annual Cost	Subtotal	Annual per Lot	O&M	Reserves	Comments
<b>1) Common Landscaping (along Regency and Rialto Drives)</b>										
Landscape Maintenance	24,600	SF	\$ 0.30		\$ 7,380.00			\$ 7,380.00		
Landscape Replacement (reserve)	24,600	SF	\$ 0.05		\$ 1,230.00				\$ 1,230.00	
Tree Maintenance	33	EA	\$ 95.00		\$ 3,135.00			\$ 3,135.00		
Tree Replacement	33	EA	\$ 285.00	40	\$ 235.13				\$ 235.13	
Water Usage	1,476	100 cf	\$ 2.86		\$ 4,221.36			\$ 4,221.36		6 ac.-ft. per acre
Meter Charges	12	Month	\$ 51.00		\$ 612.00			\$ 612.00		
Irrigation Maintenance & Repair	24,600	SF	\$ 0.03		\$ 738.00			\$ 738.00		
Fence Maintenance & Repair	1,870	LF	\$ 0.65		\$ 1,215.50			\$ 1,215.50		
Entry Monument Maintenance	1	LS	\$ 500.00		\$ 500.00			\$ 500.00		
Entry Monument Repair	1	LS	\$ 4,000.00	25	\$ 160.00				\$ 160.00	
<b>Subtotals</b>						\$19,426.99	\$ 809.46	\$ 17,801.86	\$ 1,625.13	
<b>2) Weed Abatement (On-lot)</b>										
Weed Abatement	397,000	SF	\$ 0.03		\$ 11,910.00			\$ 11,910.00		
<b>Subtotals</b>						\$11,910.00	\$ 496.25	\$ 11,910.00	\$ -	
<b>3) Storm Drain Collection/Stormwater Treatment Systems</b>										
Ditch Debris removal & maintenance	1	LS	\$ 1,000.00		\$ 1,000.00			\$ 1,000.00		
Ditch Repairs	2,038	LF	\$ 50.00	25	\$ 4,076.00				\$ 4,076.00	
VortSentry/Storage Maintenance	1	LS	\$ 1,500.00		\$ 1,500.00			\$ 1,500.00		
VortSentry/Storage Replacement	1	LS	\$100,000.00	100	\$ 1,000.00				\$ 1,000.00	
Catch Basin/Manhole Cleaning	15	EA	\$ 200.00		\$ 3,000.00			\$ 3,000.00		
CB/MH/Pipe Repair	1	LS	\$ 79,000.00	100	\$ 790.00				\$ 790.00	
Bio-retention Basin Maintenance	48	EA	\$ -		\$ -					Homeowner responsibility
Bio-retention Basin Replacement	48	EA	\$ 2,000.00	10	\$ 9,600.00				\$ 9,600.00	Filter materials, replant
<b>Subtotals</b>						\$20,966.00	\$ 873.58	\$ 5,500.00	\$15,466.00	
<b>4) Street Lighting</b>										
Electricity	4	EA	\$ 240.00		\$ 960.00			\$ 960.00		
Maintenance and Repair	1	LS	\$ 500.00		\$ 500.00				\$ 500.00	
<b>Subtotals</b>						\$ 1,460.00	\$ 60.83	\$ 960.00	\$ 500.00	\$17/mo./pole PG&E flat rate
<b>5) Lot 25 Oak Tree Woodland</b>										
Inspect each tree (3 times per year)	1	LS	\$ -		\$ -					
Clear weeds (3 times per year)	1	LF	\$ -		\$ -					
Inspect/repair erosion or other damage	1	LS	\$ -		\$ -					
Replace failed trees	1	LS	\$ -		\$ -					Assumes Toll Bros. for 5 year maintenance period
<b>Subtotals</b>						\$ -	\$ -	\$ -	\$ -	
<b>6) Administrative</b>										
Property Manager	12	Month	\$ 600.00		\$ 7,200.00			\$ 7,200.00		
Annual City Engineer Services	1	LS	\$ 2,500.00		\$ 2,500.00			\$ 2,500.00		
Legal Notice/Mailings	1	LS	\$ 100.00		\$ 100.00			\$ 100.00		
County Collection	1	LS	\$ 100.00		\$ 100.00			\$ 100.00		
Stormwater Annual Inspection/Report	1	LS	\$ 5,000.00		\$ 5,000.00			\$ 5,000.00		
Annual City Reporting Fees	1	LS	\$ 2,000.00		\$ 2,000.00			\$ 2,000.00		
General Reserve	1	LS	\$ 2,000.00		\$ 2,000.00				\$ 2,000.00	
<b>Subtotals</b>						\$18,900.00	\$ 787.50	\$ 16,900.00	\$ 2,000.00	
<b>Grand Totals (w/o Lot 25)</b>						\$72,662.99	\$ 3,027.62	\$ 53,071.86	\$19,591.13	

## CITY OF CLAYTON

## PROFESSIONAL CONSULTANT SERVICES AGREEMENT

## 1. PARTIES AND DATE.

This Agreement is made and entered into this 15<sup>th</sup> day of OCTOBER, 2012, by and between the City of Clayton, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 6000 Heritage Trail, Clayton, California 94517 ("City") and Pinnacle Residential Services, a Sole Proprietorship, with its principal place of business at 4861 Sunrise Drive, Suite 104, Martinez, CA 94553 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

## 2. RECITALS.

## 2.1 Consultant.

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

## 2.2 Project.

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

## 3. TERMS.

## 3.1 Scope of Services and Term.

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

3.1.2 Term. The term of this Agreement shall be from the date of execution of this Agreement to December 31, 2015, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than five (5) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### 3.2 Responsibilities of Consultant.

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

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

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

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

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

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

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

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

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

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

3.2.9 Laws and Regulations. Consultant and its contractors shall keep themselves fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable

for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its elected officials, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

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

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

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

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

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

(d) *Professional Liability:* Professional liability insurance, in a form and with insurance companies acceptable to the City with a limit of not less than \$1,000,000 per claim and aggregate.

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

(A) The policy or policies of insurance required by Section 3.2.10.2(a) Commercial General Liability, and Section

3.2.10.2(b) Automobile Liability, shall be endorsed to provide the following:

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

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

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

- (B) The policy or policies of insurance required by Section 3.2.10.2(d) Professional Liability, shall be endorsed to provide the following:

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

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

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

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

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

3.2.10.5 Waiver of Subrogation. Required insurance coverage shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive

all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

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

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

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

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

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

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

lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation paid through December 31, 2013 shall not exceed Forty-nine Thousand One Hundred and Eighty-eight Dollars (\$49,188.00) without written approval of the City Council, City Manager or City Engineer as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice for 1/12<sup>th</sup> of the total annual fee along with a report of inspection findings, maintenance accomplished and maintenance anticipated for the following month. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

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

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

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

3.3.6 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth in Exhibit "C" may be adjusted each year at the time of renewal in accordance with the annual change in Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area as of April each year, with a maximum increase in any single year limited 4%, as set forth in Exhibit "C."

### 3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant: Pinnacle Residential Services  
4861 Sunrise Drive, Ste. 104  
Martinez, CA 94553  
ATTN: Edward Szaky

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

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

3.5.3 Ownership of Materials and Confidentiality: N/A.

3.5.4 Harassment Policy. N/A

3.5.5 Fraud Policy. N/A

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

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

3.5.8 Indemnification.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5.20 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, disability, ancestry,

sex, sexual orientation or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination

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

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

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

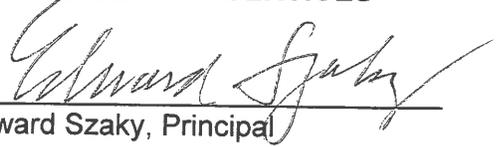
3.6 Subcontracting.

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

**CITY OF CLAYTON**

By:   
Gary Napper, City Manager

**PINNACLE RESIDENTIAL SERVICES**

By:   
Edward Szaky, Principal

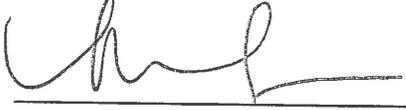
[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

Attest:

By:   
Laci Jackson  
City Clerk

By: \_\_\_\_\_  
[INSERT NAME AND TITLE]

Approved as to Form:

By:   
Best Best & Krieger LLP  
City Attorney

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**PROPERTY MANAGEMENT SERVICES**

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

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

**COMMON LANDSCAPING (ALONG REGENCY AND RIALTO DRIVES)**

**DESCRIPTION AND DETAILED SCOPE OF WORK**

Description

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

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

Detailed Scope of Work – City's Responsibility

Maintenance of the Common Landscaping shall occur twice a month by a maintenance crew comprised of at least 3 men for a period of at least 4 hours on each visit.

*Trees*

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

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

- Pruning shall promote structural strength and accentuate the plants natural forms and features within the limitation of space.
- Trees stakes and guides will be checked regularly and removed or replaced as necessary.
- Minor pesticide application.
- Tree pruning over the 12 foot height.
- Insect and disease control including pest control spraying.
- Deep root feeding on an annual basis.
- Replacement of dead trees.

#### *Shrubs and Groundcover*

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

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

#### *Irrigation*

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

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

## **WEED ABATEMENT**

### DESCRIPTION AND DETAILED SCOPE OF WORK

#### Description

The City has placed significant restrictions on the use of the large sloped areas within each of the lots. These areas are intended to remain unimproved and covered with "native" vegetation installed by the Developer. Such vegetation tends to become a fire hazard during the summer months if left unchecked.

The Contra Costa Fire District requires that all vegetation be maintained at a height of no more than 3 inches. Weeds and grasses must be mowed with the material raked, bagged, and removed from the

property. This work must be accomplished by the end of June, at the very latest. Re-growth could necessitate additional abatement during the fire season.

#### Detailed Scope of Work – City's Responsibility

The scope of weed abatement work shall include, but not be limited to, the following:

- Each spring, prior to the date established by the Contra Costa Fire District, all sloped areas between the open wire fences at the rear of each building pad and the lot property line, shall be mowed by hand to a height of less than 3 inches. The excess materials generated by the mowing shall be raked, placed in bags, and legally disposed of offsite.
- When needed due to re-growth of the vegetation, the process as specified shall be repeated.

### **STORM DRAINAGE FACILITIES**

#### DESCRIPTION AND DETAILED SCOPE OF WORK

##### Description

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

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

#### Detailed Scope of Work – City's Responsibility

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

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

## STORMWATER TREATMENT FACILITIES

### DESCRIPTION AND DETAILED SCOPE OF WORK

#### Description

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

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

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

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

#### Detailed Scope of Work – Homeowners' Responsibility

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

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

shrubs or trees. Replace dead plants and remove invasive vegetation. Confirm that the irrigation is adequate and not excessive.

#### Detailed Scope of Work – City's Responsibility

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

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

### **STREET LIGHTING FACILITIES**

#### DESCRIPTION AND DETAILED SCOPE OF WORK

##### Description

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

#### Detailed Scope of Work – City's Responsibility

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

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

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

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

**EXHIBIT "C"**  
**COMPENSATION**

Compensation for the period through December 31, 2013 shall be as follows:

	Item	Annual Cost
1	Property Management Service	\$7,188.00
2	Common Landscaping Maintenance, Weed Abatement, Tree Maintenance, Irrigation Maintenance, V Ditch Cleaning, etc.	25,800.00
3	Filtration Planter System Testing & reporting	1,800.00
4	Storm Drain System Maintenance	13,200.00
5	Street Light Maintenance	1,200.00
Total Annual Cost:		\$49,188.00
Monthly Cost:		\$4,099.00

As of January 1, 2014, annual costs shall be increased in an amount not to exceed the annual increase in the Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco Bay Area as of April of each year, subject to a maximum increase of 4% in any single year.



## REQUEST FOR PROPOSALS

**For Property Management and Maintenance Services  
For the Diablo Estates at Clayton Subdivision**



**PROPOSALS DUE NO LATER THAN:  
2:00 PM ON FRIDAY AUGUST 31, 2012**

**SUBMIT PROPOSALS TO:  
CITY OF CLAYTON  
CITY CLERK  
6000 HERITAGE TRAIL  
CLAYTON, CA 94517**

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PROPOSAL SPECIFICATIONS.....	3

### **RFP EXHIBITS**

RFP EXHIBIT 1	SCOPE OF WORK (2 PP.)
RFP EXHIBIT 2	DESCRIPTION AND DETAILED SCOPE OF WORK OF REQUIRED MAINTENANCE SERVICES (17 PP.)
RFP EXHIBIT 3	SAMPLE COST PROPOSAL FORM (1 PG.)
RFP EXHIBIT 4	PROPOSED SERVICES CONTRACT (14 PP.)
RFP EXHIBIT 5	CONSTRUCTION PLANS (1 PG)

**REQUEST FOR PROPOSALS**  
**For Property Management and Maintenance Services**  
**For the Diablo Estates at Clayton Subdivision**

**SUMMARY**

- A. The CITY OF CLAYTON ("City") hereby requests proposals for Property Management and Maintenance Services for the Diablo Estates at Clayton development (Subd. 8719), and will receive proposals in the office of the City Clerk at City Hall located at 6000 Heritage Trail, Clayton, CA, 94517 up to the hour of 2:00 p.m., on the 31<sup>st</sup> day of August, 2012.
- B. SCOPE OF SERVICES: The City has prepared an outline of services which is attached as RFP Exhibit "A" to the Request for Proposals ("RFP") and generally includes overseeing and maintaining landscaping, fencing, drainage facilities, weed abatement, and street lighting. The work will also include the inspection and maintenance of stormwater treatment facilities as well as the preparation and filing of periodic reports.
- C. REQUESTS FOR CLARIFICATION: If any proposer has any questions regarding the meaning of any part of this RFP, or finds discrepancies in or omissions from this RFP, the proposer shall submit a written request to the City Engineer for an interpretation or clarification at least five (5) days prior to the time for opening of the proposals. Three (3) days prior to the opening of the proposals, responses to all written requests shall be distributed to all known proposers.
- D. SUBMITTAL OF PROPOSALS: The instructions for the submittal of proposals are set forth throughout this RFP. Generally, each proposal shall be submitted with a cover letter and four exhibits, including: (a) Scope of Services, (b) Billing Rates, (c) Statement of Qualifications for the Proposer and his proposed maintenance personnel or contractors and (d) Terms of Service Agreement. Proposals shall be submitted in a sealed envelope clearly marked on the outside: "SEALED PROPOSAL FOR PROPERTY MANAGEMENT AND MAINTENANCE SERVICES FOR THE DIABLO ESTATES AT CLAYTON DEVELOPMENT- DO NOT OPEN WITH REGULAR MAIL".
- E. CITY'S REVIEW OF PROPOSALS: All responsive proposals shall be reviewed and evaluated by the City in order to determine which proposer best meets the City's needs for this work. The criteria by which the City shall evaluate the proposals are set forth in this RFP. The City reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process. The City reserves the right to negotiate the terms of the Agreement for this work with one or more proposers.
- F. AWARD OF AGREEMENT: The City currently anticipates awarding an agreement for this work by or near the beginning of October, 2012. No proposal or agreement for this work shall be binding upon the City until the Agreement is signed by the Proposer and the City.

# COLLUSION CERTIFICATE

(Submit signed certificate form with proposal)

This is to certify that the undersigned proposer has neither directly nor indirectly entered into an agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal submitted this date to the City of Clayton.

All terms and conditions of this Request for Proposals have been thoroughly examined and are understood.

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

Name of Proposer:

\_\_\_\_\_

Authorized Representative:

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone:

\_\_\_\_\_

E-mail:

\_\_\_\_\_

**REQUEST FOR PROPOSALS**  
**For Property Management and Maintenance Services**  
**For the Diablo Estates at Clayton Subdivision**  
**PROPOSAL SPECIFICATIONS**

1. **TIME AND PLACE OF DELIVERY OF PROPOSALS:** It is the Proposer's sole responsibility to ensure that the proposal is received by the City Clerk at the place and no later than the time identified on the cover of the Request For Proposals ("RFP").
2. **FORMAT OF ENVELOPE FOR PROPOSAL:** The Proposer shall submit the proposal in a sealed envelope clearly marked on the outside: "SEALED PROPOSAL FOR PROPERTY MANAGEMENT AND MAINTENANCE SERVICES FOR THE DIABLO ESTATES AT CLAYTON DEVELOPMENT- DO NOT OPEN WITH REGULAR MAIL".
3. **FORMAT AND QUALITY OF PROPOSALS:** All proposals shall be prepared in a clear and concise manner. Unnecessarily elaborate or glossy proposals are neither expected nor desired. The emphasis of the proposal shall be on responding to the requirements set forth in this RFP.
4. **PROPOSER'S SIGNATURE:** An authorized representative of the Proposer shall sign the proposal on a cover letter which: (1) identifies this work by name, (2) identifies the full legal name of the Proposer, along with the name of the contact person, address, phone number, fax number and e-mail address, and (3) indicates Proposer's willingness to comply with the procedures identified in this RFP, including an incorporation by reference of the four exhibits identified below.
5. **CONTENTS OF PROPOSAL:** The Proposer shall include in its proposal, at a minimum, the information outlined in this Section 5 in a manner which demonstrates the Proposer's competence and qualifications for the satisfactory performance of the services identified in this RFP. The proposer shall attach four separate exhibits to the cover letter proposal, including: (A) Scope of Services, (B) Fees and Billing Rates, (C) Statement of Qualifications, and (D) Terms of Service Agreement.
  - 5(A). **Scope of Services:** The City has set forth on RFP Exhibit 1, attached hereto and incorporated herein by reference, an outline of services which the City expects the successful proposer to perform. The outline of services set forth in RFP Exhibit 1 is presented for the primary purpose of allowing the City to compare proposals. The precise scope of services to be incorporated into the Services Agreement will be based upon RFP Exhibit 1, as well as Proposal Exhibit A to be prepared by the Proposer as a part of his proposal, and may be subject to negotiations between the City and the successful proposer.

- 5(A)(1) Based upon the City's outline of services set forth in RFP Exhibit 1, the Proposer shall prepare a complete description of the scope of services (to be labeled: Proposal Exhibit "A") which the Proposer intends to perform in order to achieve the stated work objectives. The Proposer may identify services in Proposal Exhibit "A" which differ from the outline of services in RFP Exhibit 1 if the Proposer believes the changes will assist the City in more efficiently and effectively achieving the City's stated work objectives.
- 5(A)(2) The Proposer's scope of services shall include, at a minimum, a description of the major components of services, a description of specific work tasks, and the expected schedule for the performance of each of the work tasks.
- 5(B). Fees and Billing Rates: The Proposer shall present lump sum fees for each item of work (to be labeled: Proposal Exhibit "B"). The Proposer shall also prepare a schedule of billing rates which identifies:
- 5(B)(1) A sample Cost proposal form has been provided in RFP Exhibit 3. The intent of the format is to allow the City to more easily evaluate and compare the cost portion of each proposal. The form presented is a suggestion only and should be revised as the Proposer feels necessary to accurately represent their scope of work and their proposed costs.
- 5(B)(2) A proposed rate and method of payment for all services to be performed by the Proposer and his personnel or contractors, including individual hourly rates, and a description of any reimbursable charges.
- 5(B)(3) An estimated monthly cost breakdown for each major component of service, with a cross reference to each component of service identified in Proposal Exhibit "A".
- 5(C). Statement of Qualifications: The Proposer shall prepare a statement of qualifications (to be labeled: Proposal Exhibit "C") which identifies:
- 5(C)(1) A description of the size, stability, and capacity of Proposer's organization, including that of any contractors Proposer intends to employ in the performance of the work, and including, at a minimum, identification of (1) total number of years in operation, (2) total current number of employees, (3) number of office locations (including the location of each office), and (4) the number of employees in the office location which is intended to provide the services described in Proposal Exhibit "A".
- 5(C)(2) A description of the Proposer's, and that of any contractor Proposer intends to employ in the performance of the work, experience performing services for projects of similar size, scope and complexity, including a description of: (1) the number of years Proposer, and his contractors, has been providing similar services, and (2) the most recent projects for the Proposer, and his proposed contractors, on which it has provided similar services. The list of recent projects

shall include the name, contact person, address, and phone number of each party for whom the service was provided, as well as a description of the services, the dollar amount of the contract, and the date of performance.

5(C)(3) A list of the Proposer's principals, employees, and agents which the Proposer intends to assign to this work. This list shall include a summary of the qualifications (including education, training, licenses, and experience) of each individual; the approximate number of hours each will devote to the work, and the type of work to be performed by each individual. The City will retain under its agreement with the successful Proposer, the right of approval of all persons and contractors performing under the Agreement.

5(D). Terms of Proposed Service Agreement: The Service Agreement shall be effective immediately upon award and shall be effective, assuming satisfactory performance by the Proposer, for three full calendar years (2013 through 2015 plus the remaining months of 2012). The contract may be renewed annually by the City up to five times. The lump sum fees and billing rates presented in response to this RFP shall be effective from the date of award through the end of 2013. Each year thereafter, the lump sum fees and billing rates will be increased by the annual increase in the Consumer Price Index (All Urban Consumers (CPI-U) for the San Francisco Bay Area as of November each year, with a maximum increase in any single year limited to 4%). Proposer shall prepare a document identifying the terms of the proposed Services Agreement (attached to this RFP as RFP Exhibit 2) which the Proposer desires to amend (either by addition, deletion, or modification).

5(D)(1) Specifically identify any portions of the City's Services agreement which the Proposer desires to amend.

5(D)(2) Disclose any past, ongoing or potential conflicts of interest which the Proposer, and/or his contractors, may have as a result of performing the work.

5(D)(3) Identify Proposer's ability to comply with the City's insurance requirements (see Exhibit 3, "Proposed Services Contract"). A copy of an insurance certificate or a letter of intent to provide insurance from the issuing company including a description of types of coverage and dollar amount limits) may be favorably considered.

6. CITY'S REVIEW OF PROPOSALS: After proposals are received and opened by the City, the City shall review and evaluate all proposals for responsiveness to the RFP in order to determine whether the Proposer, and his intended contractors, possesses the qualifications necessary for the satisfactory performance of the services required. The City may also investigate qualifications of all Proposers to whom the award is contemplated, and the City may request clarifications of proposals directly from one or more Proposers. In reviewing the proposals, the City may consider the following:

- 6(A) The qualifications (including education, training, licenses, experience, and past performance) of the Proposer, and its contractors, in completing work of a similar type, size and complexity. The City may consider Proposer's timely and accurate completion of similar work within budget.
  - 6(B) The feasibility of the proposal based upon the methodology of the proposed scope of services, and the reasonableness of the schedule of billing rates.
  - 6(C) Proposer's understanding of the work to be completed based upon the clarity of the proposal and responsiveness to this RFP.
  - 6(D) Proposer's proposed amendments to the Services Agreement.
7. AWARD OF AGREEMENT: Upon completion of the review period, the City shall notify those Proposers who will be considered for further evaluation and negotiation, All Proposers so notified shall make presentations and negotiate in good faith in accordance with direction from the City. Any delay caused by Proposer's failure to respond to direction from the City may lead to rejection of the Proposal.
- 7(A) If the City determines, after further evaluation and negotiation, to award the Agreement, a Service Agreement shall be sent to the successful Proposer for the Proposer's signature. No proposal shall be binding upon the City until after the Agreement is signed by duly authorized representatives of both the Proposer and the City.
  - 7(B) The City reserves the right to reject any or all proposals, and to waive any irregularity. The award of the Agreement, if made by the City, will be based upon a total review and analysis of each proposal and projected costs.
8. PROPOSALS ARE PUBLIC RECORDS: Each proposer is hereby informed that, upon submittal of its proposal to the City in accordance with this RFP, the proposal is the property of the City.
- 8(A). Unless otherwise compelled by a court order, the City will not disclose any proposal while the City conducts its deliberation process in accordance with the procedures identified in this RFP. However, after the City either awards an agreement to a successful proposer, or the City rejects all proposals, the City shall consider each proposal subject to the public disclosure requirements of the California Public Records Act (Government Code Sections 6250, et seq.), unless there is a legal exception to public disclosure.
  - 8(B). If a proposer believes any portion of its proposal is subject to a legal exception to public disclosure, the Proposer shall: (1) clearly mark the relevant portions of its proposal "Confidential", and (2) upon request from the City, identify the legal basis for exception from disclosure under the Public Records Act, and (3) the Proposer shall defend, indemnify, and hold harmless the City regarding any claim by any third party for the public disclosure of the "Confidential" portion of the proposal.

**RFP Exhibit 1**

**Scope of Work**

## 1.0 BACKGROUND

In 2004, the City of Clayton approved the Diablo Pointe project, Subdivision No. 8719, a 25 lot, single family development on the southeast side of Regency Drive at Rialto Drive. The City required the construction of “common” improvements, such as landscaping along Regency and Rialto Drives, as well as, drainage and stormwater treatment facilities. In addition, the conditions of approval required that Lot 25 remain undeveloped and to be offered to the State and/of a non-profit third party (this Lot will soon, if not already completed, be transferred to Save Mt. Diablo for preservation and maintenance. The developer did not want to form a Homeowners Association, so the City agreed to form a benefit assessment district (the Clayton Estates at Clayton Benefit Assessment District, hereinafter referred to as “BAD”) to provide funding for the care and maintenance of the “common” improvements.

The developer proceeded with the grading and the construction of the subdivision improvements. After the improvements were essentially complete, but prior to start of any house construction, the construction lender foreclosed on the property. After sitting idle for several years, the project was sold to Toll Bros. in 2011. Toll Bros. developed different house than those proposed by the original developer and underwent the City’s Design Review process. This change in product caused the house construction to be subject to the latest stormwater treatment requirements which resulted in the addition to two stormwater biofiltration planters on each lot along with a collection system to convey the treated flows to the storm drain system. An additional condition of approval imposed by the City was the prohibition of any grading, landscaping or the construction of any improvements or structures on the steep slopes within each lot. The only work that may be performed on these slope areas is weed abatement as required by the Fire District.

In order to ensure that all of the “common” improvements and the additional improvements installed to satisfy the conditions of the design review approval are properly maintained, the City and Toll Bros. agreed to an expansion of the duties to be funded by the BAD. The extent of these duties were spelled out in a maintenance document that is shown in the following Exhibit 2, “Description and Detailed Scope of Work Of Required Maintenance Services”, and which is incorporated into and made a part of this Request for Proposals.

## 2.0 PROPERTY MANAGEMENT SERVICES

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

- a) Contracting with, overseeing and being responsible for, various State-licensed contractors as needed to complete the maintenance services specified in the maintenance document. Proposer shall provide copies of all executed contracts (including detailed scopes of work, and work, manpower and payment schedules) and contractor insurance certificates;
- b) Periodic inspections of the property and improvements to verify current conditions and to ensure satisfactory performance of the various contractors hired by the Proposer to complete the maintenance duties specified in the maintenance document;

- c) Periodic inspections of the property and improvements to ensure satisfactory performance of the homeowners in providing those maintenance services specified in RFP Exhibit 2, "Description and Detailed Scope of Work Of Required Maintenance Services", as being the homeowners' responsibility.;
- d) Preparation and submittal of a monthly report to the City Engineer describing the findings of the periodic inspections, the maintenance work completed that month and anticipated for the following month;
- e) Satisfaction of Regional Water Quality Control Board requirements relating to the operation and maintenance of stormwater treatment facilities, including the preparation and submittal of annual reports.

### 3.0 MAINTENANCE SERVICES

Proposer shall provide those maintenance services specified in RFP Exhibit 2, "Description and Detailed Scope of Work Of Required Maintenance Services", as being the City's responsibility.

### 4.0 PROPOSED FEES

Proposer's attention is directed to Sections 5(A) and 5(D) of the Proposal Specifications. The Proposer shall present lump sum fees for each item of work. The lump sum prices shall be effective from the contract award until the end of 2013. Thereafter the fees may be increased by the annual change in the Consumer Price Index with an annual maximum increase of 4%.

**RFP Exhibit 2**

**Description and Detailed Scope of Work**

**Of Required Maintenance Services**

## **Common Landscaping (along Regency and Rialto Drives):**

### **Description and Detailed Scope of Work**

#### **Description**

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

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

#### **Detailed Scope of Work – City's Responsibility**

Maintenance of the Common Landscaping shall occur twice a month by a maintenance crew comprised of at least 3 men for a period of at least 4 hours on each visit.

#### ***Trees***

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

- Pruning will be performed under the direction of a qualified maintenance supervisor using appropriate tools and equipment in general accordance with industry standards.
- Pruning shall promote structural strength and accentuate the plants natural forms and features within the limitation of space.
- Trees stakes and guides will be checked regularly and removed or replaced as necessary.
- Minor pesticide application.
- Tree pruning over the 12 foot height.
- Insect and disease control including pest control spraying.
- Deep root feeding on an annual basis.

#### ***Shrubs and Groundcover***

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

- On a continual basis, shrubs shall be checked for appropriate pruning and thinning, shearing or hedging. Hard pruning or cutting back will be done in winter to allow new growth or flushing out during the oncoming spring season.

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

### ***Irrigation***

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

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

## **Weed Abatement**

### **Description and Detailed Scope of Work**

#### **Description**

The City has placed significant restrictions on the use of the large sloped areas within each of the lots. These areas are intended to remain unimproved and covered with "native" vegetation installed by the Developer. Such vegetation tends to become a fire hazard during the summer months if left unchecked.

The Contra Costa Fire District requires that all vegetation be maintained at a height of no more than 3 inches. Weeds and grasses must be mowed with the material raked, bagged, and removed from the property. This work must be accomplished by the end of June, at the very latest. Re-growth could necessitate additional abatement during the fire season.

#### **Detailed Scope of Work – City's Responsibility**

The scope of weed abatement work shall include, but not be limited to, the following:

- Each spring, prior to the date established by the Contra Costa Fire District, all sloped areas between the open wire fences at the rear of each building pad and the lot property line, shall be mowed by hand to a height of less than 3 inches. The excess materials generated by the mowing shall be raked, placed in bags, and legally disposed of offsite.
- When needed due to re-growth of the vegetation, the process as specified shall be repeated.

## **Storm Drainage Facilities**

### **Description and Detailed Scope of Work**

#### **Description**

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

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

#### **Detailed Scope of Work – City’s Responsibility**

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

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

## Stormwater Treatment Facilities

### Description and Detailed Scope of Work

#### Description

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

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

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

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

### Detailed Scope of Work – Homeowners' Responsibility

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

- Inspect the trench drain, its entrances (grates) and exits. Look for obstructions, vegetation, debris, litter, sediment, etc., blocking the entrances and exits of the trench drain. If necessary, clear trench drain, exits and entrances by hand and with hand tools. Ensure that water flows freely into and out of the trench drain.
- Inspect for large vegetation growing within 4" of the trench drain entrance or exit. Remove any invasive plants, weeds, shrubs, or any plant with a woody stem within 4" of trench drain entrance or exit.
- Inspect the outlets of the collection system in each of the planters for plugging caused by debris. Look for evidence of erosion in the planter surface. Inspect side soils and/or rocks placed around the edges of the planters. Repair and/or replace any erosion or missing rocks. Clear outlets as necessary.
- Examine vegetation to ensure it is healthy and dense enough to provide filtering and to protect soils from erosion, Replenish mulch as necessary, remove fallen leaves and debris, prune large shrubs or trees. Replace dead plants and remove invasive vegetation. Confirm that the irrigation is adequate and not excessive.

### Detailed Scope of Work – City's Responsibility

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

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

## Street Lighting Facilities

### Description and Detailed Scope of Work

#### Description

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

#### Detailed Scope of Work – City's Responsibility

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

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

**RFP Exhibit 3**

**Sample Cost Proposal Form**

**SAMPLE ONLY**

**Cost Proposal for  
Property Management and Maintenance Services  
For the Diablo Estates at Clayton Subdivision**

The following monthly costs presented below shall be effective from award of contract through and including December, 2013. Thereafter, the monthly costs may be adjusted annually in accordance with the terms specified in the Request for Proposals.

The proposed costs shall be all-inclusive for each of the items described in Proposal Exhibit A, Scope of Services.

<b>#</b>	<b><u>Description</u></b>	<b><u>Monthly Cost</u> <u>(\$)</u></b>	<b><u>Annual Cost</u> <u>(12 mos.)</u> <u>(\$)</u></b>
1	Property Management Services		
2	Common Landscaping Maintenance		
3	Weed Abatement		
4	Storm Drainage Facilities Maintenance		
5	Stormwater Treatment Facility Maintenance		
6	Street Lighting Facility Maintenance		
	<b>Totals</b>		

**RFP Exhibit 4**

**Proposed Services Contract**

## CITY OF CLAYTON

### PROFESSIONAL CONSULTANT SERVICES AGREEMENT

#### 1. PARTIES AND DATE.

This Agreement 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, with its principal place of business at 6000 Heritage Trail, Clayton, California 94517 ("City") and **[INSERT NAME OF COMPANY]**, a **[INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.]**, with its principal place of business at **[INSERT ADDRESS]** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

#### 2. RECITALS.

##### 2.1 Consultant.

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

##### 2.2 Project.

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

#### 3. TERMS.

##### 3.1 Scope of Services and Term.

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

hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from XXXX XX, 2012 to December 31, 2015, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than five (5) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### 3.2 Responsibilities of Consultant.

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

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

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

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

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and

Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, or contractors, who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property, shall be promptly removed from the work by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **[INSERT NAME AND TITLE]**.

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

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

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

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

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

3.2.10 Insurance. [

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

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

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

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

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

(d) *Professional Liability:* N/A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. As further described in Exhibits A and C, certain subcontractors and/or subconsultants, and the value of their sub-contracts shall be subject to the review and approval of the City. All such sub-contracts shall be identified by Consultant in its invoices as specifically authorized reimbursables as described further in Exhibit A. The total compensation shall not exceed **[INSERT AMOUNT WRITTEN OUT] (\$[INSERT NUMBER])** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

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

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

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

3.3.6 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth in Exhibit "C" may be adjusted each year at the time of renewal in accordance with the annual change in Consumer Price Index for Urban Consumers (CPI-U)

for the San Francisco Bay Area as of April each year, with a maximum increase in any single year limited 4%, as set forth in Exhibit "C."

3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant:                   **[INSERT BUSINESS NAME]  
[INSERT STREET ADDRESS]  
[INSERT CITY STATE ZIP]  
ATTN: [INSERT NAME AND TITLE]**

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

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

3.5.3 Ownership of Materials and Confidentiality: N/A.

3.5.4 Harassment Policy. N/A

3.5.5 Fraud Policy. N/A

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

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

3.5.8 Indemnification.

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

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

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

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

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

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

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

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

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

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

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

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

3.5.19 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For

breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no elected official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

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

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

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

3.6 Subcontracting.

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

**CITY OF CLAYTON**

**[INSERT NAME]**

By: \_\_\_\_\_  
[Mayor or City Manager]

By: \_\_\_\_\_  
[INSERT NAME AND TITLE]

Attest:

By: \_\_\_\_\_  
[INSERT NAME AND TITLE]

By: \_\_\_\_\_  
[INSERT NAME]  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

SAMPLE

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

SAMPLE

**EXHIBIT "C"**  
**COMPENSATION**

**[INSERT THE FOLLOWING PROVISION IF THE AGREEMENT WILL AUTOMATICALLY RENEW:** In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above shall be adjusted each year at the time of renewal described in accordance with the Consumer Price Index, All Urban Consumers, San Francisco Bay Area.

**RFP Exhibit 5**

**Maps and Construction Plans**

## Maps and Construction Plans

The following maps and construction plans for Diablo Pointe (aka Diablo Estates at Clayton) may be downloaded in a PDF format from our FTP site (please follow instructions carefully):

- a) Final Map for Subdivision 8719
- b) Grading Plans
- c) Street, Sewer and Storm Drainage Construction Plans
- d) Common Landscaping and Irrigation Plans
- e) Typical Individual Lot Plot Plan w/Stormwater Treatment Planters

To access the files, please copy and paste the following link into the Address Bar of Windows Explorer (which is accessible by double-clicking on either the "My Computer" or "My Documents" icons on your PC):

[ftp://deb\\_01@permcoftp.com](ftp://deb_01@permcoftp.com)

**Please note that simply clicking the above link in your email program will open Internet Explorer (IE) by default; we do not recommend using IE because it does not always provide access as intended.**

Once you paste the above link into your Address Bar and hit Enter, you will be prompted for a User Name/Password combination. Please use the following to login:

User Name: deb\_01  
Password: CWD4aPTM

Please note that both the User Name and Password are case-sensitive. The "0" character is the digit zero, not a capitalized letter "O."

Once you have logged in, you may copy and paste or drag and drop the directory labeled "Diablo Estates BAD" to your PC or double-click on it to access the individual PDFs directly. We recommend clicking the "Folders" button above the Address Bar in Windows Explorer so that you can see your own hard drive simultaneously. Highlight the folder in our FTP directory, drag and drop it onto your PC and you're done.



**Revel Environmental Manufacturing Inc.**

sales@remfilters.com (888) 526-4736 Lic. No. 857410

Northern California 960-B Detroit Avenue Concord, California 94518 P: (925) 676-4736 F: (925) 676-8676	Southern California 2110 South Grand Avenue Santa Ana, California 92705 P: (714) 557-2676 F: (714) 557-2679
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**PLEASE KEEP FOR  
YOUR RECORDS**

Customer Name & Address
<b>Matrix Association Management</b>
2085 N. Broadway Ste 400
Walnut Creek CA 94596

Site Location
<b>Diablo Estates</b>
Seminary Ridge Place
Clayton, CA

Contact Information	
Ed Szaky	925-951-6240
<a href="mailto:ed.szacky@usematrix.com">ed.szacky@usematrix.com</a>	Fax: 925-951-6242

**Personnel: Chris A & Keith**

System Type	Corresponding Map #
Flow Meter Pipe	3

Date of Inspection	Date of Maintenance
6/10/2015	

System Observations		Comments
Inlet Line	Passed	No structural damage or blockage
Outlet Flow Control	Passed	No structural damage or blockage
Sediment Level	1" Avg.	Measured / Recorded, no action needed
Floatables in Chamber	No	No action needed
Depth of Water in Line	.5"	Measured / Recorded, no action needed, water is flowing
Sediment Removal Needed?	No	No action needed
Amount of Sediment Removed	N/A	N/A

**Summary Notes:**

There are no open action items at this time
System has been fully inspected.
System is operating per mfg specification







Common Areas	Acceptable	Description of Concern
<b><u>Grounds</u></b>		
Landscaping	<u>  x  </u>	<u>SEE NOTES BELOW</u>
Irrigation System	<u>  x  </u>	<u>SEE NOTES BELOW</u>
Drainage System	<u>  x  </u>	
Retaining Walls	<u>  x  </u>	<u>(around entry monument)</u>
Trees	<u>  x  </u>	
Concrete "V" Ditches		

**Exterior Components**

Exterior Lighting	<u>  x  </u>	<u>Light out -26 Seminary Ridge-sent owner an email, sent work order to make repairs. Depending on problem, and if parts are needed, the repair will be completed after the holidays.</u>
Hillside maintenance	<u>  x  </u>	
Vortec 3000	<u>  x  </u>	
Streets	<u>  x  </u>	

NOTES.

On 12/16/14, per regular maintenance, we hand pulled the weeds coming up through the ground cover along Regency.

Sprinkler Replacement

On 12/18/13, while on site, we found and replaced (1) 6" and (1) 12" sprinklers

Common Areas	Acceptable	Description of Concern
<b>Grounds</b>		
Landscaping	<u>  x  </u>	<u>SEE NOTES BELOW</u>
Irrigation System	<u>  x  </u>	<u>SEE NOTES BELOW</u>
Drainage System	<u>  x  </u>	
Retaining Walls	<u>  x  </u>	<u>(around entry monument)</u>
Trees	<u>  x  </u>	
Concrete "V" Ditches	<u>      </u>	

**Exterior Components**

Exterior Lighting	<u>  x  </u>	<u>Light out -20 Seminary Ridge has been repaired-replaced faulty photo cell on light</u>
Hillside maintenance	<u>  x  </u>	
Vortec 3000	<u>  x  </u>	
Streets	<u>  x  </u>	

NOTES.

Tue 11/18/2014  
 Locate & Repair Leak  
 On 11/18/14, we located & repaired (2) 3/4" line breaks to stop the leaking.

Common Areas	Acceptable	Description of Concern
<b><u>Grounds</u></b>		
Landscaping	<u>  x  </u>	<u>SEE NOTES BELOW</u>
Irrigation System	<u>  x  </u>	
Drainage System	<u>  x  </u>	
Retaining Walls	<u>  x  </u>	<u>(around entry monument)</u>
Trees	<u>  x  </u>	
Concrete "V" Ditches		<u>Cleaning to be completed in October</u>

**Exterior Components**

Exterior Lighting	<u>  x  </u>	<u>Have received notice of light out-will have it repaired</u>
Hillside maintenance	<u>  x  </u>	
Vortec 3000	<u>  x  </u>	<u>To be inspected on 10-30-14 (see below)</u>
Streets	<u>  x  </u>	

NOTES.

10/13/14- Hydro flushed and vacuumed drains in street to remove debris per recommendation  
 10-15-14-per regular maintenance, cut the flax plants in decline to the ground, and trimmed the Xylosma next to fence along Regency.

10/22/14, per regular maintenance, we edged all ground cover along Regency and around the corner.

10-30-24-REM Service Team will be at site to inspect the storm water Vortsentry Interceptor Unit

We have sent out the inspection reports on the lots from Rick. We have received a number of responses. The owners have until 10-31-14 to do work. The lots will be reinspected after that date for compliance.

Common Areas	Acceptable	Description of Concern
<b><u>Grounds</u></b>		
Landscaping	<u>  x  </u>	_____
Irrigation System	<u>  x  </u>	<u>(See below)</u> _____
Drainage System	<u>  x  </u>	_____
Retaining Walls	<u>  x  </u>	<u>(around entry monument)</u> _____
Trees	<u>  x  </u>	_____
Concrete "V" Ditches	_____	<u>(See below)</u> _____

**Exterior Components**

Exterior Lighting	<u>  x  </u>	_____
Hillside maintenance	<u>  x  </u>	_____
Vortec 3000	<u>  x  </u>	<u>Done (June -2015-Report Provided Separately)</u> _____
Streets	<u>  x  </u>	_____
Bioswale Inspection	<u>  x  </u>	<u>Due for inspection in September</u> _____
Street Drain Cleaning	<u>  x  </u>	<u>Due for cleaning in September</u> _____

**NOTES:**

Irrigation Inspection

On 6/08/2015, landscape contractor performed a complete irrigation inspection. Per this inspection, repaired (1) 12" sprinkler and (5) nozzles.

Common Areas	Acceptable	Description of Concern
<b><u>Grounds</u></b>		
Landscaping	<u>  x  </u>	_____
Irrigation System	<u>  x  </u>	_____
Drainage System	<u>  x  </u>	_____
Retaining Walls	<u>  x  </u>	(around entry monument) _____
Trees	<u>  x  </u>	_____
Concrete "V" Ditches	_____	(see below) _____

**Exterior Components**

Exterior Lighting	<u>  x  </u>	_____
Hillside maintenance	<u>  x  </u>	_____
Vortec 3000	<u>  x  </u>	Due for Maintenance in July _____
Streets	<u>  x  </u>	_____
Bioswale Inspection	<u>  x  </u>	Due for inspection in September _____
Street Drain Cleaning	<u>  x  </u>	Due for cleaning in September _____

**NOTES:**

Weed abatement for the entire project was completed this month.  
 "V" Ditch cleaning has also been completed.  
 Contacted PMT Pest Control regarding reports of gopher activity by landscaper

## DIABLO ESTATES AT CLAYTON OWNERS LIST FY 2015-2016

APN	OWNER	HOUSE #	STREET NAME	STR	ZIP
119-630-003	GERALD & MARY HENDERSON	22	SEMINARY RIDGE	PL	94517
119-630-004	IRENE MASON	18	SEMINARY RIDGE	PL	94517
119-630-005	CHRISTOPHER COVIN	14	SEMINARY RIDGE	PL	94517
119-630-006	KUEN ALFRED & EMMA HO KWOK	10	SEMINARY RIDGE	PL	94517
119-630-008	MARK & ANTOINETTE BLACKSHERE	15	SEMINARY RIDGE	PL	94517
119-630-009	LAURA TINDALL	19	SEMINARY RIDGE	PL	94517
119-630-010	LAZARO & KIMBERLY GARCIA	23	SEMINARY RIDGE	PL	94517
119-630-012	BRIAN & ERIN BENNETT	27	SEMINARY RIDGE	PL	94517
119-630-013	COLIN ROBERT & SANDRA JACOBS	26	SEMINARY RIDGE	PL	94517
119-630-014	CORY & SHANNON AYRES	9	SEMINARY RIDGE	PL	94517
119-640-001	GAUTAM & SATISH JOSHI	6	SEMINARY RIDGE	PL	94517
119-640-004	JOE & DIANE SBRANTI	7	PROMONTORY	PL	94517
119-640-010	JAMES & SEONG KIT MOORE	16	PROMONTORY	PL	94517
119-640-011	STEVEN & FRANCES ONG	12	PROMONTORY	DR	94517
119-640-012	EDWARD & PATRICIA MCLAUGHLIN	8	PROMONTORY	PL	94517
119-640-013	ROBERT & PATRICA FINK	4	PROMONTORY	PL	94517
119-640-016	HECTOR & FABIOLA GOMEZ	2	SEMINARY RIDGE	PL	94517
119-640-017	GARY & LEALA DUNCAN	3	SEMINARY RIDGE	PL	94517
119-640-018	THOMAS & KATHLEEN ARTZ	11	PROMONTORY	PL	94517
119-640-019	NEERAJ TIWARI	17	PROMONTORY	PL	94517
119-640-020	JEFFREY RUSSO	21	PROMONTORY	PL	94517
119-640-021	PATRICK & SANDRA PENNER	24	PROMONTORY	PL	94517
119-640-022	ROBERT & KAREN VALLIERE	20	PROMONTORY	PL	94517
119-640-023	THOMAS & KARA BRAND	5	SEMINARY RIDGE	PL	94517

## BENEFIT ASSESSMENT DISTRICTS

The use of benefit assessments involves the establishment of an area or district which encompasses all parcels of land that will be expressly benefited by the accomplishment of some public purpose. Each parcel so benefited is assessed for a portion of the costs and expenses involved, and in an amount proportional to the parcel's relative benefit as compared to the other parcels in the district. An assessment district is not a public entity, but it is a defined area established to accomplish the administrative function of collecting the assessments.

The benefit assessment concept dates back at least to the year 1250 in England where the costs of repairs to seawalls were assessed to local residents in proportion to the acreage benefited. Its first use in the United States appears to be by New York City in 1691 where the cost of construction of a drainage system and street paving was assessed to "all houses within the City in proportion to the benefit they shall receive thereby".

Although assessment districts have been most commonly used to finance the construction of public capital improvements such as streets, drainage facilities, sanitary sewers, water systems and off-street parking facilities, they have also been used to acquire existing improvements, and where authorized, to pay the annual operation and maintenance costs of certain public facilities.

There have been several assessment acts approved in California for use as authority for levying special assessments. All of the assessment acts have specific authority for either the construction or maintenance (or both) of certain specified improvements. The Diablo Estates at Clayton Benefit Assessment District was formed under the auspices of the Benefit Assessment Act of 1982 and the Landscaping and Lighting Act of 1972. The allowable uses under these two acts are shown in the table below.

Allowable Uses of Assessment Laws							
C = Capital Improvements M = Operation & Maintenance X = C + M	Sidewalks	Storm Drainage	Street Lighting	Flood Control	Landscapin g	Parks	Recreation
Benefit Assessment Act of 1982		X	M	X			
Landscaping and Lighting Act of 1972	X		X		X	X	X

There is no set term for an assessment district; and after its formation, the governing body (City Council) may annually thereafter determine the cost of the services and determine and levy the assessments. In this assessment district, the original vote which set the initial assessments also provided for an annual increase in the assessment in accordance with the consumer price index with a maximum increase of 4% in any one year. The only other limitation to an increase in the assessments is State Proposition 218 which requires a vote in favor of the proposed increase by a majority of the property owners in the district.

## HOMEOWNERS ASSOCIATIONS

### 1. What is a Homeowners Association?

A Homeowners Association or an HOA is an organization with a housing subdivision or a planned community that makes and enforces rules for properties within the jurisdiction. The HOA is also responsible for collecting dues to pay for the upkeep of common amenities, which can include, but are not limited to: private streets, utilities, parks, swimming pools, stormwater facilities, among others. Further, the HOA also has the ability to levy special assessments on homeowners when the association lacks sufficient reserves to pay for unexpected repairs; however this is expected to be mitigated by conducting a reserve study and establishing appropriate association dues.

### 2. How are the Fees/Dues/Assessments Established?

The fees are usually proportionate to the ownership interest (either by unit or square footage). The expenses rise from the operation and maintenance of common property, which can vary dramatically depending on the amenities that are under the purview of the association.

The amount of the fees are based off of a reserve study, which is a long-term capital budget planning tool, which identifies the current status of the reserve fund and establishes a funding plan to offset ongoing maintenance and deterioration over time. The reserve study is an in-depth evaluation of the physical components of a subdivision, which details the anticipated replacement or repair that will be required over the next 30 years and the expenditure that will be required for said replacement or repair.

### 3. How are HOAs Established?

Typically, HOAs are established by a real estate developer for the purposes of marketing, managing, and selling of the homes and lots within a subdivision. The HOA grants the developer privileged voting rights in the governing association, while also allowing the developer to exit the financial and legal responsibility of the organization, typically by transferring ownership through the sale of the homes and lots.

One of the primary drivers in the proliferation of HOAs is the Clean Water Act of 1977, which requires all new development to retain and detain stormwater. The byproduct of the Clean Water Act was the establishment of stormwater facilities to manage and treat the water flows, which may serve numerous parcels, and are required to be maintained. Due to the lack of funds from local jurisdictions, HOAs were established to cover the maintenance of these facilities.

Further, the City can require, through the conditions of approval, developers to establish an HOA as well as what needs to be included at a minimum in regards to repair and maintenance as long as there is a legal nexus. For example the City can require the internal private streets, stormwater facilities, and the associated landscaping to be maintained by the HOA, but the City could not require the maintenance of an existing street on the opposite side of town that is not impacted by the development.

#### 4. Where do HOAs Derive their Powers?

HOAs are governed by Covenants, Conditions, and Restrictions, which are limitations and rules placed on a group of homes by a builder, developer, or neighborhood association. The CC&Rs also dictates the operation of the association. The CC&Rs can be limiting and restrict the color you can paint your house, pets, use of barbeques, and other conduct to protect the quiet enjoyment of the neighborhood. The association provides services, regulates activities, levy assessments, and may, if authorized, impose fines.

#### 5. What are the Benefits of HOAs?

A benefit to the City is that HOAs lessen the need for local government oversight of housing conditions. Most municipalities are not equipped, i.e. do not have the manpower – to monitor housing. It also reduces the financial liabilities of the City due to the reduction of maintenance costs associated with streets, landscaping, stormwater facilities, and other common amenities.

While, HOAs are typically formed to facilitate self-governance and dispute resolution, the City is not required, but does have the ability to enforce the CC&Rs if the HOA is not fulfilling its role and an issue becomes a public nuisance or a health and safety matter.

Other benefits of HOAs include:

- Preservation of the nature of the community and protect property values by delivering services and providing a safe, well-maintained living environment.
- Regulations are another layer of protection against neighborhood degradation, and an effective means to maintain community standards and protect property values.
- HOAs promote a higher level of civic involvement than municipalities, in terms of voting, meeting attendance and volunteerism.

- Homeowners in HOAs have a vested interest in reporting and correcting problems from architectural and building code violations to illegal parking and landscaping issues.
- HOA leaders live in their communities and better understand the needs of the community, from the delivery of core services, such as waste collection, to amenities and decisions affecting the future of the community.

## 6. What are the Criticisms of HOAs?

**Overly Restrictive:** HOAs have been criticized for having excessively restrictive rules and regulations on how homeowners conduct themselves and use their property. Some maintain that homeowner's association leaders could put their own personal agenda before the good of the greater community and also have no incentive to avoid indulging in rigid or arbitrary behavior; unless people begin to leave in droves, it will have little effect on the value of the board member's home. Also boards could be financially irresponsible resulting in increased dues or special assessments.

The developer has an incentive to set up a government structure in such a way to maximize profits and thus increasing the sale price; while not having the homeowners' best interest in mind. Decisions based merely on profit could result in suboptimal conditions for the homeowner.

**Foreclosure:** HOAs do have the ability to foreclose on homes if monthly dues are not paid. This is not a common occurrence, but they do have the right to proceed with foreclosure, if warranted.