CITY COUNCIL REGULAR MEETING

Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA
Thursday, October 20, 2022
Regular Meeting 6:00 PM

The City Council meetings are viewable in person in the Council Chambers, via livestreaming on the City's YouTube Channel (https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA) or "Lake County PEG TV Live Stream" at https://www.youtube.com/user/LakeCountyPegTV/featured and the public may participate through Zoom at the link listed below. The public can submit comments and questions in writing for City Council consideration by sending them to the Administrative Services Director/City Clerk at mswanson@clearlake.ca.us. To give the City Council adequate time to review your questions and comments, please submit your written comments prior to 4:00 p.m. on the day of the meeting.

AGENDA

MEETING PROCEDURES: *All items on agenda will be open for public comments before final action is taken. Citizens wishing to introduce written material into the record at the public meeting on any item are requested to provide a copy of the written material to the Administrative Services Director/City Clerk prior to the meeting date so that the material may be distributed to the City Council prior to the meeting. Speakers must restrict comments to the item as it appears on the agenda and stay within a three minutes time limit. The Mayor has the discretion of limiting the total discussion time for an item.*

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability related modification, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, Administrative Services Director/City Clerk at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

AGENDA REPORTS

Staff reports for each agenda item are available for review at www.clearlake.ca.us. Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection on the City's website at www.clearlake.ca.us.

Zoom Link: https://clearlakeca.zoom.us/j/84817490440

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. INVOCATION/MOMENT OF SILENCE: *The City Council invites members of the clergy, as well as interested members of the public in the City of Clearlake, to voluntarily offer an invocation before the beginning of its meetings for the benefit and blessing of the City Council. This opportunity is*

voluntary and invocations are to be less than three minutes, offered in a solemn and respectful tone, and directed at the City Council. Invocational speakers who do not abide by these simple rules of respect and brevity shall be given a warning and/or not invited back to provide a subsequent invocation for a reasonable period of time, as determined appropriate by the City. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faith represented and practiced among the citizens of Clearlake. If a scheduled invocational speaker does not appear at the scheduled meeting, the Mayor will ask that the City Council observe a moment of silence in lieu of the invocation. More information about the City's invocation policy is available upon request by contacting the Administrative Services Director/City Clerk at (707) 994-8201x106 or via email at mswanson@clearlake.ca.us.

D. ADOPTION OF THE AGENDA *(This is the time for agenda modifications.)*

E. PRESENTATIONS

1. Presentation of October's Adoptable Dogs

2. Presentation by the Health and Social Policy Institute on Second and Third-Hand Smoke and Aerosol Exposure and their Health Effects on Community Members

3. Presentation by Scotts Valley Energy Corporation on Bioenergy and Wildfire Mitigation

F. PUBLIC COMMENT: *This is the time for any member of the public to address the City Council on any matter not on the agenda that is within the subject matter jurisdiction of the City.* ***The Brown Act, with limited exceptions, does not allow the Council or staff to discuss issues brought forth under Public Comment.*** *The Council cannot take action on non-agenda items. Concerns may be referred to staff or placed on the next available agenda. Please note that comments from the public will also be taken on each agenda item. Comments shall be limited to three (3) minutes per person.*

G. CONSENT AGENDA: *All items listed under the Consent Agenda are considered to be routine in nature and will be approved by one motion. There will be no separate discussion of these items unless a member of the Council requests otherwise, or if staff has requested a change under Adoption of the Agenda, in which case the item will be removed for separate consideration. Any item so removed will be taken up following the motion to approve the Consent Agenda.*

4. Consideration of Acceptance of the Property Located at 16331 6th Avenue.
   Recommendation: Authorize the City Manager to sign the Certificate of Acceptance.

5. Warrants
   Recommended Action: Receive and file

6. Authorization of the Subrecipient Agreement with Lake County Rural Arts Initiative to Receive $474,700 of the Clean CA Grant
   Recommended Action: Approve the Subrecipient Agreement with Lake County Rural Arts Initiative

7. Minutes of the August and September Meetings
Recommended Action: Receive and file

8. Award of Bid for Roofing Repairs at 6805 Airport Road
Recommended Action: Award bid and authorize the City Manager to approve change orders up to 10% of the contract amount

9. Authorization of the Main Street Project Agreement with Lake County Rural Arts Initiative (LCRAI) for an art project development
Recommended Action: Approve agreement

H. BUSINESS

10. Discussion and Consideration of Amendments to the City of Clearlake's Environmental Guidelines to Include Internal Guidance for Management of Tribal Cultural Resources and Consultation
Recommended Action: Adopt Policy

11. Authorization fo a Joint Use Agreement with Konocti Unified School District (KUSD) for the Use of the Clearlake Youth Center for Youth- and Recreation-Oriented Activities
Recommended Action: Approve a Joint Use Agreement with Konocti Unified School District (KUSD) for the use of the Clearlake Youth Center located at 4750 Golf Avenue, Clearlake for youth- and recreation-oriented activities, and authorize the City Manager to negotiate the final agreement with KUSD

12. Consideration of Waiving the Live Scan Rolling Fee for Volunteers of Youth Services Organizations;
Recommended Action: Adopt Resolution # 2022-60

I. CITY MANAGER AND COUNCILMEMBER REPORTS

J. FUTURE AGENDA ITEMS

K. CLOSED SESSION

(13) Conference with Legal Counsel- Existing Litigation: Pursuant to Government Code Section 54956.9: Case No. CV-421149; Name of Case: City of Clearlake v. County of Lake, a political subdivision of the State of California; Board of Supervisors of the County of Lake, a public body of the County of Lake; Barbara C. Ringen, in her official capacity as the Treasurer-Tax Collector of the County of Lake; and Does 1 through 30, inclusive

(14) Liability Claims: Claimant: Jorden/Smith/Williams; Agency Claimed Against: City of Clearlake

L. ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

M. ADJOURNMENT

POSTED: October 14, 2022

BY:

Melissa Swanson, Administrative Services Director/City Clerk

Electronic Smoking Devices and Secondhand Aerosol

Electronic smoking devices (or ESDs), which are often called **e-cigarettes**, heat and vaporize a solution that typically contains nicotine. The devices are metal or plastic tubes that contain a cartridge filled with a liquid that is vaporized by a battery-powered heating element. The aerosol is inhaled by the user when they draw on the device, as they would a regular tobacco cigarette, and the user exhales the aerosol into the environment.

"If you are around somebody who is using e-cigarettes, you are breathing an aerosol of exhaled nicotine, ultra-fine particles, volatile organic compounds, and other toxins." Dr. Stanton Glantz, Director for the Center for Tobacco Control Research and Education at the University of California, San Francisco.

Current Legislative Landscape

- As of April 1, 2021, 981 municipalities, 20 states, and three territories include electronic smoking devices as products that are prohibited from use in 100% smokefree environments.

Constituents of Secondhand Aerosol

Electronic smoking devices (ESDs) do not just emit "harmless water vapor." **Secondhand aerosol (incorrectly called vapor by the industry) from ESDs contains nicotine, ultrafine particles and low levels of toxins** that are known to cause cancer.

- ESD aerosol is made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.[1]
- Exposure to fine and ultrafine particles may exacerbate respiratory ailments like asthma, and constrict arteries which could trigger a heart attack.[2]
- ESD aerosol particles are smaller than 1000 nanometers, which is a similar size to tobacco smoke and diesel engine smoke, and bystanders can be exposed to this aerosol. "The exact size distribution depends on the chemical composition of the electronic cigarette liquid, the e-cigarette device operation, and user vaping preferences."[3]
- At least 10 chemicals identified in ESD aerosol are on California's Proposition 65 list of carcinogens and reproductive toxins, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986. The compounds that have already been identified in mainstream (MS) or secondhand (SS) ESD aerosol include: **Acetaldehyde (MS), Benzene (SS), Cadmium (MS), Formaldehyde (MS,SS), Isoprene (SS), Lead (MS), Nickel (MS), Nicotine (MS, SS), N-Nitrosonornicotine (MS, SS), Toluene (MS, SS).**[4,5]
- **ESDs contain and emit propylene glycol**, a chemical that is used as a base in ESD solution and is one of the primary components in the aerosol emitted by ESDs.
    - Short term exposure causes eye, throat, and airway irritation.[6]
    - Long term inhalation exposure can result in children developing asthma.[7]
- Even though propylene glycol is FDA approved for use in some products, the inhalation of vaporized nicotine in propylene glycol is not. Some studies show that heating propylene glycol

changes its chemical composition, producing small amounts of propylene oxide, a known carcinogen.[8]

- There are **metals in ESD aerosol, including chromium, nickel, and tin nanoparticles**.[9]
- FDA scientists found detectable levels of carcinogenic tobacco-specific nitrosamines in ESD aerosol.[10]
- People exposed to ESD aerosol absorb nicotine (measured as cotinine), with one study showing levels comparable to passive smokers.[11]
- **Diethylene Glycol**, a poisonous organic compound, was also detected in ESD aerosol.[12]
- **Exhaled ESD aerosol contained propylene glycol, glycerol, flavorings, and nicotine, along with acetone, formaldehyde, acetaldehyde, propanal, diacetin, and triacitine.[13]**
- Many of the elements identified in the aerosol are known to **cause respiratory distress and disease.** The aerosol contained particles >1 µm comprised of tin, silver, iron, nickel, aluminum, and silicate and nanoparticles (<100 nm) of tin, chromium and nickel. The concentrations of nine of eleven elements in ESD aerosol were higher than or equal to the corresponding concentrations in conventional cigarette smoke.[14]
- ESDs cause exposure to different chemicals than found in conventional cigarettes and there is a need for risk evaluation for both primary and passive exposure to the aerosol in smokers and nonsmokers.[15]
- Short term use of ESD has been shown to increase respiratory resistance and impair lung function, which may result in difficulty breathing.[16]
- The first study to look at exposure to aerosol from ESDs in real-use conditions found that non-smokers who were exposed to conventional cigarette smoke and ESD aerosol absorbed similar levels of nicotine.[17]
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) has concluded that ESDs emit harmful chemicals into the air and need to be regulated in the same manner as tobacco smoking. The "E-cigarettes do not produce a vapor (gas), but rather a dense visible aerosol of liquid sub-micron droplets consisting of glycols, nicotine, and other chemicals, some of which are carcinogenic (e.g., formaldehyde, metals like cadmium, lead, & nickel, and nitrosamines)."[18]
- ESD aerosol is a source of high doses of particles being deposited in the human respiratory system.[19]
- ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings—especially cinnamon—are show increased oxidative stress and inflammatory responses.[20]
- Concentrations of formaldehyde are higher than concentrations of nicotine in some samples of ESD aerosol. Formaldehyde is created when propylene glycol and glycerol are heated to temperatures reached by commercially available ESDs operating at high voltage.[21]
- Flavorings are a largely unrecognized potential hazard of ESDs. Diacetyl and acetyl propionyl are present in many sweet-flavored ESDs, and are approved by the FDA for food use (ingestion), but are not evaluated and approved for heating and inhalation, and are associated with respiratory disease when inhaled.[22] High doses of diacetyl, used to flavor buttered popcorn, have been shown to cause acute-onset bronchiolitis obliterans, a severe and irreversible obstructive

lung disease when inhaled by workers exposed to particulate aerosolized flavorings containing diacetyl.[23] Therefore, these chemicals cannot be deemed "generally recognized as safe" for inhalation.

- Nanoparticles in ESD aerosol are much smaller than the particles in tobacco smoke and are present in much higher concentrations. Toxic chemicals attached to nanoparticles may have greater adverse health effects than when these toxins are attached to larger tobacco smoke particles.[24] Nanoparticles are more easily and deeply breathed into the lungs of the user and bystander.

- ESD aerosols contain carbonyls at levels which can have cardiovascular toxicity. While ESD aerosol has lower levels of toxins than tobacco smoke, toxins from the aerosol may still have a significant cardiovascular impact because cardiovascular disease has a nonlinear dose-response, which means that high risk is possible with relatively low exposure.[25]

- Human lung cells exposed to ESD aerosol and copper nanoparticles show signs of inflammatory stress and DNA fragmentation.[26]

- ESD use alters the physical appearance of airways and may impact the development of chronic lung disease. The airways of people who use ESDs appear redder than the airways of both people who smoke and nonsmokers.[27]

- ESDs that operate using a single-coil heating element produce much higher levels of toxins than double-coil devices across different e-liquids. Double-coil devices produce aerosol at lower temperatures while single-coil devices produce aerosol at higher temperatures.[28]

- Daily ESD users have double the risk of heart attack, and the dual use of ESDs and conventional cigarettes—which is the most common use pattern among ESD users—is more dangerous than using either product alone.[29]

- There is a risk of thirdhand exposure to nicotine released from ESD aerosol that deposits on indoor surfaces.[30]

- Chemicals from ESDs can drift through multi-unit buildings and deposit on surfaces in spaces where ESDs are not being used.[31]Overall, ESDs are a new source of **Volatile Organic Compounds (VOCs) and ultrafine/fine particles in the indoor environment,** thus resulting in "passive vaping."[32]

- The World Health Organization (WHO) recommends that ESDs not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.[33]

- The National Institute for Occupational Safety and Health (NIOSH) recommends that employers "establish and maintain smoke-free workplaces that protect those in workplaces from involuntary, secondhand exposures to tobacco smoke and airborne emissions from e-cigarettes and other electronic nicotine delivery systems."[34]

- The American Industrial Hygiene Association (AIHA) also recommends that ESDs be included in smokefree laws: "**Because e-cigarettes are a potential source of pollutants (such as airborne nicotine, flavorings, and thermal degradation products), their use in the indoor environment should be restricted,** consistent with current smoking bans, until and unless research documents that they will not significantly increase the risk of adverse health effects to room occupants."[35]

- The American Public Health Association adopted a resolution, "Supporting Regulation of Electronic Cigarettes," that outlines seven action steps including, "States and municipalities

[should] enact and enforce laws…prohibiting the use of e-cigarettes in all enclosed areas of public access and places of employment. These standards should be incorporated into existing clean indoor air laws."[36]

- The American Association for Cancer Research and the American Society of Clinical Oncology supports prohibiting the use of ESDs in smokefree spaces until the safety of second- and thirdhand aerosol exposure is established.[37]

ESD aerosol is a new source of pollution and toxins being emitted into the environment. We do not know the long-term health effects of ESD use and although the industry marketing of the product implies that these products are harmless, the aerosol that ESD emit is not purely water vapor.

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2020-08 [FS-39]

Tobacco and Marijuana Secondhand Smoke

What's the Concern?

Understanding Tobacco and Marijuana Secondhand Smoke (SHS)

- Tobacco SHS can cause lung cancer, heart disease, serious respiratory illnesses such as bronchitis and asthma, low birth weight, and sudden infant death syndrome.[1]
- Despite differences in the chemicals found in tobacco and marijuana secondhand smoke, they share similarities. [2]

Tobacco SHS	Marijuana SHS
Tobacco SHS contains more than 7,000 chemicals, including 70 that are known to cause cancer.[1]	Marijuana SHS contains thousands of chemicals including 33 that are known to cause cancer.[3]
Tobacco SHS contains chemicals including tar, hydrogen cyanide, cadmium, lead, ammonia, and carbon monoxide.[1]	Marijuana SHS contains 2 times as much tar and ammonia and 8 times as much hydrogen cyanide as tobacco smoke.[3]

How is "smoking" defined in California smokefree laws?

California law defines "smoking" as inhaling, exhaling, burning or carrying any lighted or heated tobacco **or plant product** intended for inhalation, whether natural or synthetic, in any manner or in any form. This includes the use of an electronic smoking device. [4]

How does California law restrict marijuana use and possession?

California law[5] prohibits[1]:

- Smoking marijuana in any location where smoking tobacco is prohibited.
- Smoking, vaping or consuming marijuana (includes all parts of the plant) or using marijuana products (this includes concentrates, edibles and topicals) in a public place.
- Smoking marijuana within 1,000 feet of a school, day care center, or youth center when children are present.
- Possessing or using marijuana or marijuana products on the grounds of a school, day care center, or youth center while children are present.
- Smoking or consuming marijuana or possessing an open container of marijuana while driving or riding as a passenger in a motor vehicle, boat, aircraft, or other vehicle used for transportation.
- Smoking, vaping or consuming marijuana in personal vehicles when a minor under 18 years of age is present in the vehicle whether in motion or at rest [6]
- Smoking or vaping marijuana on certain residential properties, including rental homes, if a property owner or landlord has prohibited smoking on the property.[7]

[1] Some exemptions apply. See California Health and Safety Code Section 11362.3 (a) and Business and Professions Code Section 26200 for local authority for the full policy.



Public Locations Where Smoking Tobacco and Marijuana are Prohibited by California Law

Indoor Workspaces

Smoking is prohibited in most enclosed places of employment [8] including:

- Public and private offices and office buildings
- Government buildings, inside and within 20 feet of an entrance, exit, or window
- Restaurants, bars, gaming clubs, bingo halls, and pool halls
- Malls, movie theaters, and gyms
- Hotel and motel lobbies, common areas, employee-only areas, meeting or banquet rooms, and at least 80% of guest rooms within a hotel must be smokefree
- Social organizations such as Elks Lodges or Veteran's Clubs
- Covered parking lots, public transportation systems, state-owned vehicles, taxi cabs, and cabs of motor trucks and tractor trailers if nonsmokers are present
- Owner-operated businesses with no other employees

Outdoor Spaces

Smoking is prohibited in many outdoor spaces, including:

- Certified farmers' markets [9]
- Within state parks and state coastal beaches [10]
- Within 25 feet of playgrounds, tot lots, or recreational areas specifically designated for use by children [11]

Youth-Sensitive Areas

Smoking is prohibited in youth-sensitive areas such as:

- Licensed day care centers, including private residences licensed as family day care homes[12]
- K-12 public schools (including charter schools) and school vehicles [13, 14]
- Licensed children's residential facilities, foster family homes, or resource family homes [15]
- Youth buses [16]
- Within 250 feet of youth sporting events [11]

California allows local governments the legal authority to pass zoning and licensing ordinances that prevent marijuana retailers and dispensaries from operating in their communities. It also gives local governments the authority to control whether or not they will allow temporary events in their jurisdictions. [17]

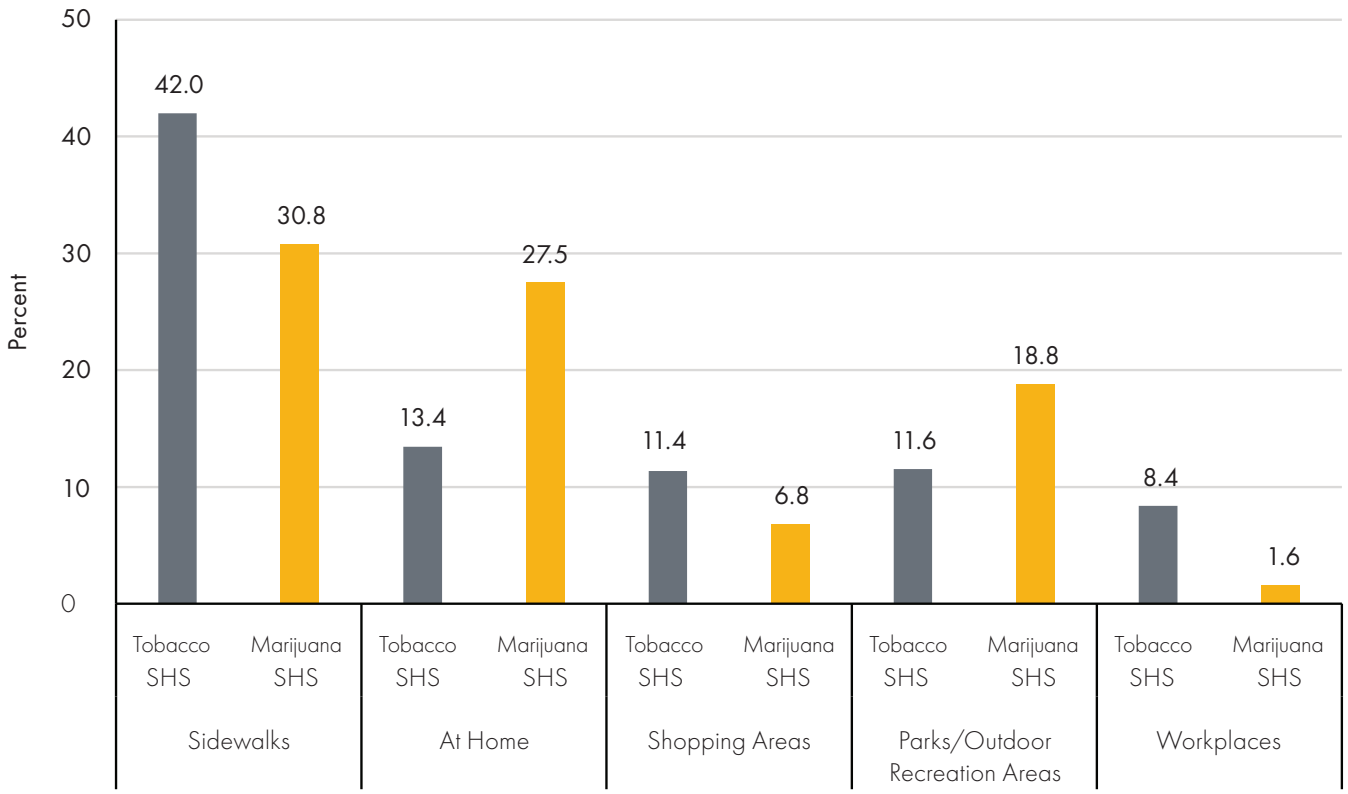
Tobacco and Marijuana Secondhand Smoke Exposure in California

- 60% of California adults report being exposed to tobacco SHS in the past two weeks. [18]
- 50% of California adults report being exposed to marijuana SHS in the past two weeks. [18]

SHS Exposure by Location

The most common location of recent exposure to marijuana SHS is on sidewalks, [18] followed by in the home, [18] and at parks and outdoor recreation areas [18] (Fig. 1). More people report recent exposure to marijuana SHS than tobacco SHS in the home, [18] at parks, [18] and other outdoor or recreation areas [18].

Figure 1. Percentage of adults aged 18-64 exposed to tobacco SHS or marijuana SHS by location of most recent exposure (among those individuals who report recent exposure).



Data: 2019 Online California Adult Tobacco Survey, Wave 1 and 2.

The U.S. Surgeon General continues to warn the public that there is no safe level of exposure to secondhand smoke. Comprehensive smokefree ordinances can protect the public's health and provide everyone the right to breathe smokefree air.

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ANRF AMERICAN NONSMOKERS' RIGHTS FOUNDATION

U.S. Laws for 100% Smokefree Multi-Unit Housing

October 1, 2022

This list represents communities with laws that regulate smoking in **private units** of multi-unit housing.

As of October 1, **76 municipalities** have enacted a law at the city or county level that prohibits smoking in **100% of private units** of rental multi-unit housing properties. Of these municipalities, **69** have laws that prohibits smoking in **100% of private units** of both rental **and** owner-occupied multi-unit housing properties. The vast majority of the laws—65 municipalities—apply to properties with 2 or more units.

For public housing policies, see U.S. Public Housing Authority Policies Restricting or Prohibiting Smoking.

See Definitions and Explanatory Notes starting on page 4.

Visit our smokefree multi-unit housing page at no-smoke.org/at-risk-places/homes/ for more information.

Municipalities with Laws for 100% Smokefree Multi-Unit Housing:

This table represents communities that have **municipal laws** at the city or county level that prohibit smoking in **100% of private units** of all specified types of multi-unit housing. These laws apply to both privately-owned and publicly-owned multi-unit residences, as well as all existing and future buildings, and do not permit current residents to continue smoking in the building (i.e. no "grandfather" clause). Most, but not all, municipal laws include condominiums and other owner-occupied properties.

Municipalities marked with # require multi-unit buildings to be 100% smokefree when the law is in full effect as of the listed Final Effective Date. Municipalities marked **Some** under "% of Units Currently Smokefree" will be 100% when the law is in full effect.

Municipality	State	% of Units Currently Smokefree	Final Effective Date	Minimum Number of Units	Includes Patio/ Balcony	Includes Condos
1. Alameda	CA	100%	1/1/2013	2	Yes	Yes
2. Albany	CA	100%	3/24/2018	2	Yes	Yes
3. Bell Gardens	CA	100%	6/1/2021	3	Yes	Yes
4. Belmont	CA	100%	1/8/2009	2	Yes	Yes
5. Belvedere	CA	100%	11/9/2017	2	Yes	Yes
6. Benicia	CA	100%	9/2/2020	2	Yes	Yes
7. Berkeley	CA	100%	5/1/2014	2	Yes	Yes
8. Beverley Hills	CA	100%	1/1/2019	2	Yes	Yes
9. Brisbane	CA	100%	6/3/2017	2	Yes	Yes
10. Burlingame	CA	100%	2/13/2016	2	Yes	Yes
11. Clayton	CA	100%	5/1/2019	2	Yes	Yes
12. Compton	CA	100%	1/1/2013	3	Yes	Yes
13. Concord	CA	100%	1/1/2021	2	Yes	Yes
14. Contra Costa County	CA	100%	7/1/2019	2	Yes	Yes
15. Corte Madera	CA	100%	6/17/2022	2	Yes	Yes
16. Cotati	CA	100%	1/1/2017	2	Yes	Yes
17. Crescent City	CA	100%	1/1/2022	2	Yes	Yes

2530 San Pablo Avenue, Suite J, Berkeley, CA 94702 | 510.841.3032 | 510.841.3071 Fax | no-smoke.org | info@no-smoke.org
ANRF is a 501c3 nonprofit organization and donations are tax deductible | Tax ID #94-2922136

Municipality	State	% of Units Currently Smokefree	Final Effective Date	Minimum Number of Units	Includes Patio/ Balcony	Includes Condos
18. Cudahy	CA	100%	1/3/2020	2	Yes	Yes
19. Culver City	CA	100%	5/26/2016	2	Yes	Yes
20. Cupertino	CA	100%	10/1/2021	2	Yes	Yes
21. Daly City	CA	100%	1/21/2014	2	Yes	No
22. Danville	CA	100%	5/1/2016	3	Yes	Yes
23. El Cerrito	CA	100%	10/1/2015	2	Yes	Yes
24. El Monte	CA	100%	8/19/2017	3	Yes	Yes
25. Emeryville	CA	100%	7/1/2019	2	N/S	Yes
26. Firebaugh	CA	100%	7/1/2019	2	Yes	Yes
27. Foster City	CA	100%	11/5/2015	N/S	Yes	Yes
28. Fresno	CA	100%	1/1/2022	2	No	No
29. Guadalupe	CA	100%	8/27/2020	2	Yes	Yes
30. Half Moon Bay	CA	100%	1/15/2020	2	Yes	Yes
31. Healdsburg	CA	100%	5/6/2020	2	N/S	Yes
32. Hercules	CA	100%	6/13/2020	10	Yes	Yes
33. Huntington Park	CA	100%	7/1/2013	2	Yes	Yes
34. Larkspur	CA	100%	9/17/2022	2	Yes	Yes
35. Los Gatos	CA	100%	6/25/2017	2	Yes	No
36. Manhattan Beach	CA	100%	5/5/2017	3	Yes	Yes
37. Marin County	CA	100%	10/14/2021	2	Yes	Yes
38. Mill Valley	CA	100%	11/18/2016	2	Yes	Yes
39. Millbrae	CA	100%	1/1/2020	2	Yes	Yes
40. Milpitas	CA	100%	1/1/2022	2	Yes	Yes
41. Monte Sereno	CA	100%	10/1/2020	2	Yes	Yes
42. Moorpark	CA	100%	2/1/2019	2	Yes	No
43. Morro Bay	CA	100%	8/1/2020	2	Yes	Yes
44. Mountain View	CA	100%	1/1/2022	3	Yes	Yes
45. Novato	CA	100%	1/1/2018	2	Yes	Yes
46. Pacific Grove	CA	100%	10/1/2021	2	Yes	Yes
47. Pacifica	CA	100%	10/9/2020	2	Yes	Yes
48. Palo Alto	CA	100%	1/1/2018	2	Yes	Yes
49. Pasadena	CA	100%	1/1/2013	2	Yes	Yes
50. Petaluma	CA	100%	1/1/2014	2	Yes	Yes
51. Pleasanton	CA	100%	10/4/2018	2	Yes	No
52. Rancho Cordova	CA	100%	11/4/2021	2	N/S	Yes
53. Redwood City	CA	100%	1/1/2019	2	Yes	Yes
54. Richmond	CA	100%	1/1/2011	2	Yes	Yes
55. Rohnert Park	CA	100%	4/23/2018	2	Yes	Yes
56. Ross	CA	100%	2/9/2020	2	Yes	Yes
57. San Anselmo	CA	100%	1/8/2016	2	Yes	Yes
58. San Bruno	CA	100%	2/22/2018	2	Yes	Yes
59. San Carlos	CA	100%	7/8/2020	2	Yes	Yes
60. San Mateo	CA	100%	11/14/2015	2	Yes	Yes
61. San Mateo County	CA	100%	2/4/2016	2	Yes	Yes
62. San Pablo	CA	100%	7/1/2021	2	Yes	No
63. San Rafael	CA	100%	11/14/2013	3	Yes	Yes
64. Santa Clara	CA	100%	8/1/2019	2	Yes	Yes
65. Santa Clara County	CA	100%	2/9/2012	2	Yes	Yes

Municipality	State	% of Units Currently Smokefree	Final Effective Date	Minimum Number of Units	Includes Patio/ Balcony	Includes Condos
66. Santa Rosa	CA	100%	8/7/2016	2	Yes	Yes
67. Saratoga	CA	100%	9/16/2016	4	Yes	Yes
68. Sebastopol	CA	100%	11/2/2011	2	Yes	Yes
69. Sonoma	CA	100%	12/12/2016	2	Yes	Yes
70. Sonoma County	CA	100%	1/12/2013	2	Yes	Yes
71. South San Francisco	CA	100%	11/9/2017	2	N/S	Yes
72. Sunnyvale	CA	100%	9/23/2016	2	Yes	Yes
73. Tiburon	CA	100%	10/16/2018	4	Yes	Yes
74. Union City	CA	100%	2/23/2012	2	Yes	No
75. Walnut Creek	CA	100%	1/30/2014	2	Yes	Yes
76. Windsor	CA	100%	8/15/2017	2	Yes	Yes

= Law requires multi-unit buildings to be 100% smokefree, but the law is not yet fully in effect.

Municipalities with Laws that Partially Restrict Smoking in Multi-Unit Housing:

This table represents communities that have **municipal laws** at the city or county level that **restrict smoking in some private units** of multi-unit housing, but do not require multi-unit buildings to be 100% smokefree.

The trend is now for communities to adopt laws that require multi-unit properties to be 100% smokefree, as listed in the chart above. It is not recommended that communities adopt the types of partial laws represented in the chart below.

Municipalities marked **Some** under "All Units Currently Smokefree?" have some buildings that are required to be 100% smokefree. Often, these laws prohibit smoking in all newly occupied buildings or newly leased units, but either do not address smoking in existing buildings or only apply to a certain percent of units in existing buildings.

Municipalities marked **No** under "All Units Currently Smokefree?" have no buildings required to be 100% smokefree now or in the future. These laws may apply to only a certain percent of units in existing and future buildings, or permit current residents to continue smoking in the building indefinitely (a "grandfather" clause).

Additionally, communities not represented on this list may have local laws that do not address smoking in private units, but restrict smoking in multi-unit housing to a lesser extent, such as by prohibiting smoking in indoor common areas or only on patios and balconies.

Municipality	State	All Units Currently Smokefree?	Min. % of Units Currently Smokefree	Initial Effective Date	Final Effective Date	Min. # of Units	Includes Condos
1. Baldwin Park	CA	Some	80%	6/21/2012	Not Specified	2	Yes
2. Burbank	CA	No	N/S		5/1/2011	N/S	Yes
3. Calabasas	CA	No	N/S		Not Specified	2	No
4. Dublin	CA	No	75%		1/1/2013	16	N/S
5. Fairfax	CA	No	75%		9/1/2012	4	N/S
6. Fremont	CA	Some	N/S	2/1/2017	Not Specified	2	Yes
7. Glendale	CA	Some	N/S	6/27/2013	Not Specified	2	Yes
8. Jurupa Valley	CA	Some	N/S		Not Specified	3	No

Municipality	State	All Units Currently Smokefree?	Min. % of Units Currently Smokefree	Initial Effective Date	Final Effective Date	Min. # of Units	Includes Condos
9. Lafayette	CA	Some	N/S	2/10/2014	Not Specified	3	Yes
10. Loma Linda	CA	No	N/S		Not Specified	2	No
11. Oakley	CA	No	N/S	4/1/2014	4/1/2014	2	Yes
12. Pinole	CA	Some	N/S	5/20/2010	Not Specified	2	Yes
13. Pleasant Hill	CA	Some	N/S	5/5/2010	Not Specified	4	No
14. Santa Monica	CA	Some	N/S	11/22/2012	Not Specified	N/S	Yes
15. Sausalito	CA	Some	80%	2/27/2014	Not Specified	2	Yes
16. South Pasadena	CA	Some	80%	3/3/2011	Not Specified	2	Yes
17. Temecula	CA	No	25%		6/7/2012	10	N/S
18. West Hollywood	CA	Some	N/S	5/19/2021	7/15/2021	3	Yes

Definitions and Explanatory Notes:

Communities on the two charts of municipal laws adopted a municipal ordinance to regulate smoking in all (first chart) or some (second chart) types of multi-unit housing.

= Law will require all multi-unit buildings to be 100% smokefree as of a future date, but currently the law provides partial coverage.

Minimum Percent of Units Currently Smokefree:

The percent of specified multi-unit housing that is currently required to be smokefree:

100%: All units in specified multi-unit housing must be smokefree.

Another stated %: The stated percent of units in specified multi-unit housing must be smokefree.

N/S = Not Specified: The law does not specify the percent of units currently required to be smokefree or the percent of units currently required to be smokefree cannot determined by how the law is written, such as: applying only to new multi-unit buildings but not to existing multi-unit buildings or designating at certain percentage of units as nonsmoking or limiting smoking to certain buildings or permitting current residents to continue to smoke indefinitely.

Initial Effective Date:

The date when some multi-unit housing must be 100% smokefree. For example, Baldwin Park, CA (marked as Some for *All Units Currently Smokefree*) requires that all newly occupied buildings must be 100% smokefree as of 6/21/2012, which is the Initial Effective Date. Baldwin Park also requires that at least 80% of units in all existing buildings be smokefree. Because existing buildings may never be fully smokefree, the Final Effective Date is “Not Specified.”

Final Effective Date:

For communities marked as Yes or Some for All Units Currently Smokefree, the Final Effective Date is when all buildings must be 100% smokefree. For communities marked as No for All Units Currently Smokefree, the Final Effective Date is when the strongest provisions of the law goes into effect.

Not Specified:

The law does not specify when all multi-unit buildings must be completely smokefree, due to provisions such as: law permits current residents to continue smoking indefinitely ***or*** law applies only to newly constructed buildings ***or*** law applies only to a certain percent of existing units.

ANR Foundation is actively collecting additional laws. **If you know of local laws that you think should be included on the list,** or want to inquire about additional information on particular laws, please contact the ANR Foundation at info@no-smoke.org or 510-841-3032.

[LS-41]

YOUR HOME, YOUR RIGHT TO KNOW ABOUT THIRDHAND SMOKE

A survey of 1,800 California residents from 47 different counties found that 96% of respondents want to know that there may be thirdhand smoke present in their homes.

"I SHOULD BE TOLD IF THERE IS TOXIC TOBACCO SMOKE RESIDUE IN A HOME I AM BUYING OR RENTING."

OVER 90% OF CALIFORNIANS FROM EVERY REGION AGREE

- **97%** OF PEOPLE WHO DON'T SMOKE **AGREE**
- **92%** OF PEOPLE WHO SMOKE **AGREE**
- **95%** OF PEOPLE WHO VAPE **AGREE**
- **87%** OF PEOPLE WHO SMOKE & VAPE **AGREE**

CALIFORNIANS AGREE REGARDLESS OF FIRST LANGUAGE, AGE, OR EMPLOYMENT

96% ENGLISH
98% SPANISH
100% CHINESE
SPEAKERS AGREE

97% PEOPLE <40
90% PEOPLE 40+
YEARS OLD AGREE

96% EMPLOYED
96% NOT EMPLOYED
PEOPLE AGREE

1,820 California adults aged 18-81 completed an online poll conducted by the Thirdhand Smoke Resource Center between 2/16/2021 and 3/13/2021.
For more information, email us at: contact@thirdhandsmoke.org

thirdhandsmoke.org

THIRDHAND SMOKE Resource Center

EVERYONE DESERVES TO HAVE A HEALTHY, SMOKEFREE HOME!

DID YOU KNOW?

People living in apartments are more likely to be exposed to secondhand smoke.[1]

» Smoke can enter your home through vents, electrical outlets, windows, and even tiny cracks in walls.

65% **Up to 65% of the air** in an apartment can come from other units in the building.[2]

ANY AMOUNT OF SECONDHAND SMOKE CAN BE HARMFUL

» **41,000 nonsmokers die** from secondhand smoke each year in the U.S.[3]

It is especially dangerous for children and can cause permanent damage to growing lungs.[4]

YOUR LUNGS CAN'T TELL THE DIFFERENCE

» **Marijuana secondhand smoke is harmful just like cigarette smoke.**[5] It has many of the same toxic chemicals that cause cancer and other diseases.

» Vaping produces tiny droplets of harmful chemicals, including lead. **It's NOT just harmless water vapor!**[6]

TO FULLY PROTECT YOUR HOME FROM SECONDHAND SMOKE,

YOUR ENTIRE APARTMENT COMPLEX NEEDS TO BE SMOKEFREE

This includes:

- Inside units
- On patios and balconies
- Outdoor common areas such as pools, parking lots, stairways, and courtyards.

Free help to quit tobacco is available from the Kick It California.

Visit **kickitca.org**

Call **1-800-300-8086**

Text **"Quit Smoking"** or **"Quit Vaping"** to **66819**

Download the free **No Butts** or **No Vape** mobile apps

YOU CAN MAKE A DIFFERENCE!

- Apartment owners have the legal authority to make their property entirely smokefree. Contact your local health department for resources to offer managers and landlords about the benefits of a smokefree property.
- Share information with neighbors about the harms of all forms of secondhand smoke. Try posting information on bulletin boards or in laundry rooms.
- Reach out to city officials about local laws that would require apartments and other multi-unit housing to be smokefree.
- Check the strength of your city's smokefree policies and take action at **www.secondhanddangers.org**

REFERENCES:

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CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT:	Consideration of Acceptance of the Property Located at 16331 6th Avenue Clearlake Ca 95422	**MEETING DATE:**	October 20, 2022
SUBMITTED BY:	Tina Viramontes – Recreation and Events Coordinator		
PURPOSE OF REPORT:	☐ Information only ☐ Discussion ☒ Action Item		

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to accept the property located at 16331 6th Avenue and authorize the City Manager to sign the Certificate of Acceptance.

BACKGROUND/DISCUSSION:

The owners of the property located at 16331 6th Avenue have offered to donate the property to the City of Clearlake. This parcel is also being presented to the Clearlake Planning Commission to verify the donation is consistent with the General Plan. If approved by Council, the City would then intend to offer the property to a qualifying purchaser to build a new construction home.

OPTIONS:

1. Move to approve the acceptance of the property located at 16331 6th Avenue and allow the City Manager to sign the Certificate of Acceptance.
2. Other direction

FISCAL IMPACT:

☒ None ☐ Budgeted Item? ☐ Yes ☒ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☐ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

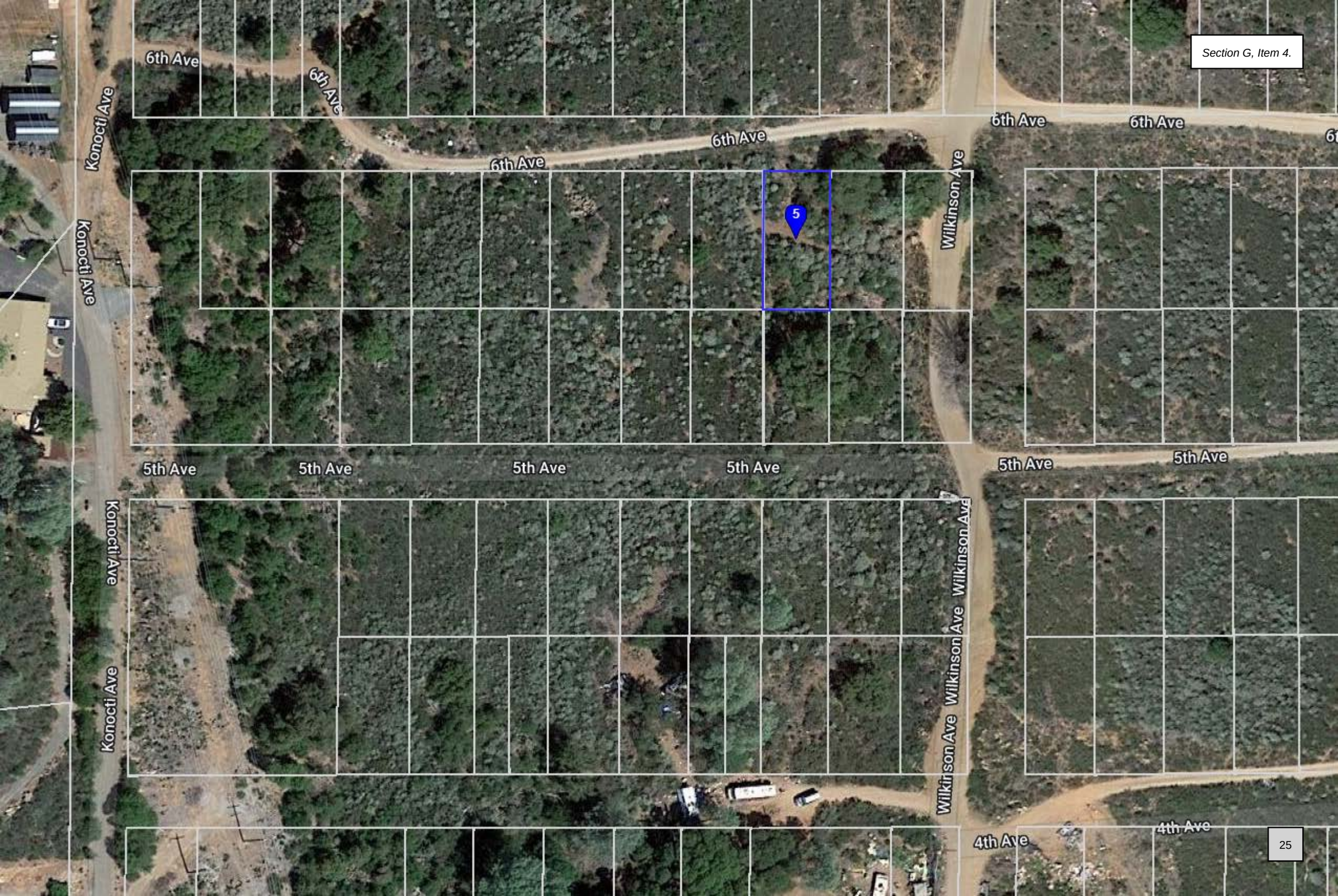
☒ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to approve the acceptance of the property located at 1633 6th Avenue and authorize the City Manager to sign the Certificate of Acceptance.

☒ **Attachments:**

1. Parcel information for the property located at 16331 6th Avenue
2. Parcel map of the property location.
3. Certificate of Acceptance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CERTIFICATE OF ACCEPTANCE

Pursuant to Government Code 27281

This is to certify that the interest in real property conveyed by the Grant Deed dated 9/29/2022 from Marlene M. Panacci, Trustee of the Panacci Family Trust to the City of Clearlake, a political corporation and/or governmental agency is hereby accepted by order of the City Council of the City of Clearlake on _____, and the grantee consents to recordation thereof by its duly authorized officer.

DATED:

CITY OF CLEARLAKE

Alan Flora
City Manager

By: _____
Alan Flora

Clearlake, CA

Check Register

Packet: APPKT01674 - 10/3/22 AP CHECK RUN AA

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP-Accounts Payable						
001897	AIRMEDCARE NETWORK	10/04/2022	Regular	0.00	162.00	13463
000085	ARAMARK UNIFORM SERVICES	10/04/2022	Regular	0.00	49.31	13464
001864	BUSINESS DESIGN SERVICES -ROBERT /	10/04/2022	Regular	0.00	3,645.00	13465
001413	CALIFORNIA BUILDING STANDARDS CC	10/04/2022	Regular	0.00	251.10	13466
VEN01107	CALIFORNIA LABOR LAW POSTER SERV	10/04/2022	Regular	0.00	192.00	13467
2404	CALTRONICS	10/04/2022	Regular	0.00	129.62	13468
VEN01265	CANTEEN SERVICES OF UKIAH, INC	10/04/2022	Regular	0.00	92.00	13469
000024	CLEARLAKE POLICE ASSOCIATION	10/04/2022	Regular	0.00	1,437.50	13470
000639	COUNTY OF LAKE HEALTH SERVICES DI	10/04/2022	Regular	0.00	644.00	13471
000639	COUNTY OF LAKE HEALTH SERVICES DI	10/04/2022	Regular	0.00	547.00	13472
000237	DEPT OF CONSERVATION	10/04/2022	Regular	0.00	1,223.34	13473
002258	ECO OFFICE INC	10/04/2022	Regular	0.00	1,655.28	13474
000120	FED EX	10/04/2022	Regular	0.00	80.98	13475
000241	GALL'S LLC	10/04/2022	Regular	0.00	1,566.42	13476
001732	GARY PRICE CONSULTING SERVICES	10/04/2022	Regular	0.00	1,210.00	13477
000096	GOLDEN STATE WATER COMPANY	10/04/2022	Regular	0.00	34.03	13478
001402	GREEN VALLEY CONSULTING	10/04/2022	Regular	0.00	10,246.35	13479
002065	HERC RENTALS INC	10/04/2022	Regular	0.00	167.38	13480
000108	LAKE COUNTY RECORD BEE	10/04/2022	Regular	0.00	476.03	13481
001489	NAPA AUTO PARTS	10/04/2022	Regular	0.00	26.90	13482
000026	NATIONWIDE RETIREMENT SOLUTION	10/04/2022	Regular	0.00	1,150.00	13483
000027	OPERATING ENGINEERS PUBLIC EMP	10/04/2022	Regular	0.00	63,441.00	13484
VEN01226	SPEAKWRITE LLC	10/04/2022	Regular	0.00	1,808.55	13485
VEN01336	SSA LANDSCAPE ARCHITECTS, INC.	10/04/2022	Regular	0.00	32,233.90	13486
002000	SUB TERRA CONSULTING	10/04/2022	Regular	0.00	12,350.00	13487
001540	US BANK CORPORATE PMT. SYSTEM	10/04/2022	Regular	0.00	2,442.56	13488
000708	VALIC LOCKBOX	10/04/2022	Regular	0.00	395.00	13489

Bank Code AP Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	45	27	0.00	137,657.25
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	45	**27**	**0.00**	**137,657.25**

Check Register **Packet: APPKT01674-**

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: PY-Payroll						
000190	EMPLOYMENT DEVELOP DEPT	10/06/2022	Bank Draft	0.00	11,229.13	DFT0001773
000008	INTERNAL REVENUE SERVICE	10/06/2022	Bank Draft	0.00	28,472.78	DFT0001774

Bank Code PY Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	0	0	0.00	0.00
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	8	2	0.00	39,701.91
EFT's	0	0	0.00	0.00
	8	**2**	**0.00**	**39,701.91**

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	45	27	0.00	137,657.25
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	8	2	0.00	39,701.91
EFT's	0	0	0.00	0.00
	53	**29**	**0.00**	**177,359.16**

Fund Summary

Fund	Name	Period	Amount
999	Pooled Cash	10/2022	177,359.16
			177,359.16

CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Authorization of the Subrecipient Agreement with Lake County Rural Arts Initiative	**MEETING DATE:** October 20, 2022
SUBMITTED BY: Kathy Wells, Finance Director	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to approve the Subrecipient Agreement with Lake County Rural Arts Initiative (LCRAI) to receive $474,700 of the Clean CA Grant.

BACKGROUND/DISCUSSION:

In February of 2022, the City (with LCRAI as the subrecipient) applied for and was awarded the Clean CA Grant for the "Beautification of City Signage/Downtown Corridor & Clean-up of City."

On June 2, 2022, Council authorized the Restricted Grant Agreement between the City and Caltrans; Resolution No. 2022-33.

LCRAI will manage three projects of the Clean CA Grant. The attached agreement describes each project and deliverables expected of LCRAI as the subrecipient.

OPTIONS:

1. Move to approve the subrecipient agreement with LCRAI and authorize City Manager to approve minor changes to the subrecipient agreement provided changes do not impact the NTE amount of $474,700.
2. Other direction

FISCAL IMPACT:

☒ None ☐ $474,700 Budgeted Item? ☒ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☒ Other: 356

Comments**:**

STRATEGIC PLAN IMPACT:

☒ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☒ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☒ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to approve the agreement with LCRAI in the amount of $474,700.

☒ **Attachments:** 1) Subrecipient Agreement

City of Clearlake

STANDARD SUBRECIPIENT AGREEMENT FOR CALTRANS -FUNDED PROJECTS BETWEEN THE CITY OF CLEARLAKE AND LAKE COUNTY RURAL ARTS INITIATIVE (LCRAI)

Program Year 2022-2024

THIS AGREEMENT is entered into this _____ day of _____, 2022, by and between the City of Clearlake, whose address is 14050 Olympic Dr., Clearlake, CA 95423 (hereinafter referred to as the "City"), and

Subrecipient Name	**Address**
Lake County Rural Arts Initiative	P.O. Box 1321 Kelseyville, CA 95451
Title of Project	**Amount of Grant**
Clean CA Grant	$474,700.00

WHEREAS, the City has applied for and received funds ("Funds") from the Government of the United States under Title I of the Housing and Community Development Act of 1974; and

WHEREAS, the City, as an entitlement grantee under the Caltrans program ("Caltrans Program") per 24 CFR 570 Subpart "D", wishes to engage the Subrecipient to assist the City in utilizing such Funds;

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions set forth in this Agreement, the parties agree:

1. DEFINITIONS: As used in this Agreement:

   A. "Subrecipient" means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 24 CFR 570.201(o), receiving Caltrans funds from the City.

   B. "Contractor" means an entity other than the Subrecipient that furnishes to the City or Subrecipient services or supplies (other than standard commercial supplies, office space or printing services).

   C. "City" means City of Clearlake.

   D. "Equipment" means tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of more than $300 per unit.

E. "Real Property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

F. "Supplies" means all expendable tangible personal property other than *equipment* as defined in this part.

G. "RGA" means the Clean CA Restricted Grant Agreement between Caltrans and the City of Clearlake.

2. SCOPE OF SERVICES: The Subrecipient shall perform all services according to the Scope of Services attached as Exhibit "A" and made part of this Agreement.

3. BUDGET: The Subrecipient shall provide all services described in Exhibit "A" and made part of this Agreement. The City may require a more detailed budget breakdown than the one included herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to the budget must be approved in writing by the City and the Subrecipient.

4. TERM OF AGREEMENT: This Agreement shall commence on the ___ day of ___, 2022, and end on the 30th day of June, 2024. All work shall be completed by June 30th, 2024 with closeout being completed no later than 60 days after. The Subrecipient agrees to comply with reversion of assets requirements set forth under 24 CFR 570.503(b)(7) as well as usage requirements for real property acquired or improved in whole or in part using funds in excess of $25,000 as set forth under 24 CFR 570.505.

5. AMENDMENTS: The parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, and signed by their duly authorized representatives. Such amendments shall not invalidate this Agreement, nor relieve or release any party from its obligations under this Agreement. At any time during the term of this Agreement, the City, in its discretion, may amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for any other reasons. If such amendments result in a change in the funding, the scope of Services, or schedule of, the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by the parties.

6. COMPLIANCE WITH APPROVED PROGRAM: All activities authorized by this Agreement shall be performed in accordance with the approved Scope of Services, the approved Budget, and the Grant Conditions.

7. SUBCONTRACTING: The performance covered by this Agreement shall not be subcontracted, assigned, or delegated without the prior written consent of the City. The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance.

8. PAYMENT: It is expressly understood and agreed that in no event will the City's payment to the Subrecipient exceed **$474,700.00** (USD) for full and complete satisfactory performance of this Agreement. Full and complete satisfactory performance shall include complying with the Scope of Services, showing accomplishments consistent with goals, and fulfilling this Agreement as provided in accordance with the terms and conditions contained herein and in accordance with the provisions of this agreement and authorized by Caltrans in the Restricted Grant Agreement (RGA) with the City of Clearlake.

   With the exception of certain advances, payments will be made only for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

If funding for any fiscal year is reduced or deleted by the US Congress of State Legislature of Caltrans for the purposes of this program, the City shall have the option to either terminate or reduce this agreement with no liability.

A. UNIFORM ADMINISTRATIVE REQUIREMENTS: The Uniform Administrative Requirements Cost Principles and Audit Requirements for Federal Grants identified in 2 CFR 200 or the related Caltrans provision.

B. DOCUMENTATION OF COSTS: All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

C. EQUIPMENT PURCHASES: Equipment purchased with Caltrans funds shall require prior approval by the City. Plans to purchase equipment must also be documented in the Subrecipient's application budget. The Subrecipient must document all equipment costs, in addition to keeping an up-to-date inventory of all equipment that includes, as necessary, a schedule of depreciation for each piece of equipment.

D. REQUESTS FOR PAYMENT: All requests for funds shall identify the corresponding budget line item. The Subrecipient shall certify that its financial management system complies with the standards in 2 CFR 200.302. The Subrecipient shall submit all requests for funds in a timely manner.

E. RESTRICTION ON DISBURSEMENTS: No money under this Agreement shall be disbursed by the Subrecipient to any contractor except pursuant to a written contract which incorporates the applicable requirements of this Agreement and City/ Caltrans regulations and unless the contractor is in compliance with City/Caltrans requirements for applicable accounting and fiscal matters as described herein.

F. RECORDS:

(1) Establishment and Maintenance of Records:

The Subrecipient shall maintain all records required by the Federal regulations that are pertinent to the activities to be funded under this Agreement. Records shall be maintained in accordance with requirements prescribed by Caltrans or the City with respect to all matters covered by this Agreement. The Subrecipient's files shall be orderly, comprehensive, secured for confidentiality where necessary, and up-to-date. The Subrecipient shall establish a process for determining which records need to be retained and for how long. Except as otherwise authorized by City, such records shall be maintained for a period of five (5) years after final closeout of the grant by the City, or longer if there is ongoing action that concerns the records. Records shall include:

(a) Records providing a full description of the activity undertaken;

(b) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with Caltrans assistance;

(c) Financial records

(2) Retention:

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to Caltrans in which the activities assisted under the Agreement are reported on for the final time. Close-outs:

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed by November 1, 2024.

9. RETENTION OF RECORDS/AUDITS:

   a. Subrecipient, its contractors, subcontractors, and sub-recipients, agree to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

   b. Subrecipient, its contractors, and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of Agency, its contractors, subcontractors, and sub-recipients shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Subrecipient, its contractors, subcontractors, and sub-recipients connected with Project performance under this agreement shall be maintained for a minimum of three (3) years from date of final payment to Subrecipient and shall be held open to inspection, copying, and audit by representatives of Caltrans, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by Subrecipient, its contractors, and subcontractors upon receipt of any request made by Caltrans or its agents. In conducting an audit of the costs and match credits claimed under this agreement and the Restricted Agreement between City and Caltrans, Caltrans will rely to the maximum extent possible on any prior audit of Agency pursuant to the provisions of State and Agency law. In the absence of such audit, any acceptable audit work performed by Agency's external and internal auditors may be relied upon and used by Caltrans when planning and conducting additional audits.

   c. For the purpose of determining compliance with applicable State and Agency law in connection with the performance of Subrecipient's contracts with third parties pursuant to Government Code Section 8546.7, Subrecipient, its contractors, and subcontractors shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment from Caltrans to City under the Restricted Grant Agreement between the City and Caltrans. Caltrans, the California State Auditor, or any duly authorized representative of Caltrans or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and Agency shall furnish copies thereof if requested.

   d. Subrecipient, its contractors, and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by Caltrans, for the purpose of any investigation to ascertain compliance with the Restricted Grant Agreement between the City and Caltrans.

   e. Any contract with a contractor, subcontractor, or subrecipient entered into as a result of the Restricted Grant Agreement between the City and Caltrans shall contain all provisions of this article.

10. NOTICES: All notices, correspondence, and other communications concerning this Agreement shall be directed to the parties' duly authorized representatives at the addresses set forth below or at any

other addresses as may be noticed, in writing. Any notice required to be given to the Subrecipient shall be deemed to be duly and properly given if mailed to the Subrecipient, postage prepaid, addressed to:

_____, _____
_____
_____
_____, CA 9____

Required notice may also be personally delivered to the Subrecipient at such address or at such other addresses as the Subrecipient may designate in writing to the City.

Any notice required to be given to the City shall be deemed to be duly and properly given if mailed to the City, postage prepaid, addressed to:

City of Clearlake
ATTN: Kathy Wells, Director of Finance
14050 Olympic Dr.
Clearlake, CA 95422

Required notice may also be personally delivered to the City at such address or at such other addresses as the City may designate in writing to the Subrecipient.

11. TERMINATION OF AGREEMENT:

A. Upon thirty days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Subrecipient. In the event of termination, Subrecipient shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Subrecipient delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Subrecipient or prepared by or for Subrecipient or the City in connection with this Agreement.

B. The Subrecipient may propose to terminate this Agreement in whole or in part, for good cause only by giving at least thirty (30) days written notice specifically stating the cause for such requested termination. Any such request for termination shall be subject to the written approval of the City, acted upon by the City within ten (10) days of receipt of the notice of request to terminate. The decision of the City shall be final and conclusive, provided that such approval shall not be unreasonably withheld.

12. PROGRAM CLOSEOUT: The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to, making final payments, disposing of Caltrans Program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.

13. USE AND REVERSION OF ASSETS: Upon the expiration, cancellation, or termination of this Agreement, the Subrecipient shall transfer to the City any Funds on hand at the time of expiration and any accounts receivable attributable to the use of City Funds. With respect to any real property under the Subrecipient's control that was acquired or improved in whole or in part with City Funds refer to the requirements identified under 21(M) – PROPERTY OWNERSHIP AND PROCUREMENT of the RGA between Caltrans and City.

14. COPYRIGHTS: Subrecipient agrees to obtain an Artist Release Form from all artists associated with the Project. If this Agreement results in a publication or other copyrightable material, the author may copyright the work, but the City and Caltrans reserve royalty free, nonexclusive, and irrevocable licenses to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all

material which can be copyrighted. Subrecipient acknowledges that City provided a “Before” photograph of the Project with the City’s application for the Clean California Local Grant Program. Subrecipient acknowledges and agrees that City must provide an “After” photograph of the Project as part of the close out reporting process.

a. City warrants it is the copyright owner of the “Before” and “After” Project photographs.
b. Neither the “Before” nor “After” Project photographs shall include faces of any individuals.
c. Subrecipient grants to City and Caltrans an irrevocable, perpetual, royalty-free, sublicensable, unlimited, worldwide license to prepare derivative works, make, publish, display, and distribute two-dimensional reproductions and/or copies, digitally and in print of the “Before” and “After” Project photographs, or derivatives thereof, for non-commercial purposes or any State government purposes. This includes, but is not limited to, reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education, and exhibition catalogues or other similar publication.
d. When applicable, Subrecipient shall obtain and provide to Caltrans any and all documentation Caltrans reasonably determines is necessary or desirable to perfect the license described in the Restricted Grant Agreement between the City and Caltrans . This documentation shall be provided to Caltrans within fifteen (15) days of written notice that this documentation is required.

e. Limited Grant of Rights to Caltrans for Use of Educational Programming (“educational programming”) Created or Produced for Project and Visual Art Located Outside of State Right-of-Way (“Artwork”) Created or Produced for Project
    i. Educational programming: Agency shall obtain from any and all copyright owner(s) of educational programming a sublicensable, irrevocable, perpetual, royalty-free, unlimited, worldwide license to prepare derivative works, make, publish, display, and distribute two-dimensional reproductions and/or copies, digitally and in print, of the educational programming created or produced for the Project under the Restricted Grant Agreement between the City and Caltrans , or derivatives thereof, for non-commercial purposes or any State government purposes or any State government purposes. This includes, but is not limited to, reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education, exhibition catalogues or other similar publication. Agency shall obtain any and all other intellectual property rights necessary to make this grant to Caltrans as described in the Restricted Grant Agreement between the City and Caltrans.

    ii. Agency grants to Caltrans an irrevocable, perpetual, royalty-free, sublicensable, unlimited, worldwide license to prepare derivative works, make, publish, display, and distribute two-dimensional reproductions and/or copies, digitally and in print, of the educational programming created or produced for Project under the Restricted Grant Agreement between the City and Caltrans, or derivatives thereof, for non-commercial purposes or any State government purposes. This includes, but is not limited to, reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education and exhibition catalogues or other similar publication.

    iii. When applicable, Agency shall obtain and provide to Caltrans any and all documentation Caltrans reasonably determines is necessary or desirable to perfect the license or sublicense described in this Restricted Grant Agreement between the City and Caltrans. This documentation shall be provided to Caltrans within fifteen (15) days of written notice that this documentation is required.

    iv. To the extent any logos, including trademarks or service marks, belonging to third parties and/or the Agency are used on educational programming created or produced for Project, Agency agrees to obtain and grant all necessary rights for Caltrans to use and allow agents of Caltrans to use the logos in connection with use of the educational programming for non-commercial purposes or State

government purposes. This includes but is not limited to reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education and exhibition catalogues or other similar publication. This documentation shall be provided to Caltrans within fifteen (15) days of written notice that this documentation is required.

f. Agency shall obtain from the artist(s), or any other copyright owner(s) of artwork, a sublicensable, Irrevocable, perceptual, royalty-free, unlimited, worldwide license to prepare derivative works, make, publish, display, and distribute two-dimensional reproductions and/or copies, digitally and in print, of artwork created or produced for Project under the RGA between Caltrans and the City, derivatives thereof, for non-commercial purposes or any State government purposes. This includes, but is not limited to, reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), education, and exhibition catalogues or other similar publication. Agency shall obtain any and all other intellectual property rights necessary to make this Grant to Caltrans described in the RGA between Caltrans and the City.

15. PATENTS: Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to Caltrans for determination by Caltrans as to whether patent protection on such invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

Government Purpose Rights for Inventions

A. Inventions are any idea, methodologies, design, concept, technique, inventions, discovery, improvement or development regardless of patentability made solely by Agency or jointly with the Agency's contractor, subcontractor and/or subrecipient during the term of this RGA between Caltrans and the City, provided that either the conception or reduction to practice thereof occurs during the term of this RGA and in performance of work issued under this RGA between Caltrans and the City.
B. City and Caltrans will have Government Purpose Rights to any inventions created as a result of the Project. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights, and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose any said invention. "Government Purpose Rights" also include the right to release or disclose any said invention(s) outside Caltrans for any State government purpose. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the invention(s) for any commercial purpose.

Additional Intellectual Property Provisions

A. To the extent any intellectual property is created or produced for Project under this agreement, and not covered in other provisions of the RGA between Caltrans and the City, Subrecipient agrees to take reasonable steps to ensure that City and Caltrans has the rights necessary to allow for use of the intellectual property in a fashion substantially similar to other rights for non-commercial uses and State government purposes described in the RGA between Caltrans and the City.
B. If additional uses are reasonably determined to be needed by City or Caltrans for public outreach purposes, Subrecipient will obtain rights and grant City and/or Caltrans and its agents said additional rights for use of the "Before" and "After" Project photos, artwork created or produced for Project under the RGA between Caltrans and the City. The grant will be an irrevocable, non-exclusive, perpetual, royalty-free, sublicensable, unlimited, worldwide license.
C. When requested to do so by agency, all reproductions and/or copies by Caltrans of "Before" or "After" Project photographs, educational programming, and artwork shall contain a credit to the Artist/Copyright owner(s) and a copyright notice in substantially the following form: © [Artist/Copyright owner's name, date of publication]. Subrecipient bears sole responsibility to promptly notify City and Caltrans, in writing, about instances where such accreditation is requested and provide the Artist/Copyright owner's name and date of publication. City and Caltrans will make reasonable efforts to affix the copyright notice in a timely manner.

D. Required disclaimer language for educational programming and artwork created or produced for project under the RGA between Caltrans and the City.

i. Educational programming: Subrecipient must place a disclaimer statement in a conspicuous manner on the educational programming that states that the content of the educational programming does not reflect the official views or policies of Caltrans. The educational programming does not constitute a standard, specification, or regulation.
ii. Artwork: Subrecipient must place a disclaimer statement in a conspicuous manner on or in close proximity to the Artwork created or produced for Project under the RGA between Caltrans and the City a disclaimer statement that the contents of the artwork do not reflect the official views or policies of Caltrans.

E. Avoidance of infringement: In performing work under this agreement, Subrecipient and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Subrecipient or its employees become aware of any such possible infringement in the course of performing any work under the this agreement, its employees shall immediately notify the City in writing.

F. Contractors, subcontractors, and Subrecipients: Through contract with its subrecipients, contractors, and subcontractors, Subrecipient shall affirmatively bind by contract all of its contractors/subcontractors, and service vendors (hereinafter "Subrecipient's Contractor/Subcontractor") providing services under this agreement to the provisions of paragraphs 31-33 of the RGA between Caltrans and the City. In performing services under this agreement, Subrecipient's Contractor/Subcontractors shall agree to avoid designing or developing any items that infringe one (1) or more patents or other intellectual property rights of any third party. If Subrecipient's Contractor/Subcontractor becomes aware of any such possible infringement in the course of performing any work under this agreement, Subrecipient's Contractor/Subcontractor shall immediately notify the City in writing, and City will then immediately notify Caltrans in writing.

16. EQUAL OPPORTUNITY AND NONDISCRIMINATION: The Subrecipient agrees to comply with equal opportunity requirements applicable to Caltrans activities. Specifically, the Subrecipient agrees to comply with:

A. TITLE VI, CIVIL RIGHTS ACT OF 1964: which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

B. TITLE VIII, CIVIL RIGHTS ACT OF 1968: which provides for fair housing throughout the United States. Kinds of discrimination prohibited include refusal to sell, rent, or negotiate, or otherwise to make unavailable; discrimination in terms, conditions and privileges; discriminatory advertising; false representation; blockbusting; discrimination in financing; and discrimination in membership in multi- listing services and real estate broker organizations. Discrimination is prohibited on the grounds of race, color, religion, sex and national origin. The City (and Subrecipients) shall administer programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this Title. An example of ensuring fair housing is to market information concerning housing services and activities through agencies and organizations that routinely provide assistance to protected groups.

C. SECTION 104(b), HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974: which provides that Caltrans funds shall be used to affirmatively further fair housing.

D. SECTION 109, HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1977: which provides that no person in the United States shall on the grounds of race, color, national origin or sex be excluded

from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Funds made available under this Title.

E. AGE DISCRIMINATION ACT OF 1975: which provides that no person shall on the basis of age, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

F. SECTION 504 OF THE REHABILITATION ACT OF 1973: which provides that individuals with disabilities or handicaps may not be excluded from participation in, be denied benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance. The City shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

G. EXECUTIVE ORDER 11063: as amended by Executive Order 12259, which requires equal opportunity in housing and related facilities provided by federal financial assistance.

H. EXECUTIVE ORDER 11246: as amended by Executive Orders 11375 and 12086, which prohibit discrimination on the grounds of race, creed, color, sex or national origin in employment under federally assisted construction contracts.

I. AMERICANS WITH DISABILITIES ACT OF 1990: which provides that no person shall on the basis of handicap, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

J. NONDISCRIMINATION CLAUSE (2 CCR 11105 CLAUSE B) The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

a. During the performance of this agreement, Subrecipient, its contractors, and subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Subrecipient shall ensure that the evaluation and treatment of employees and applicants for employment are free or such discrimination.

b. Subrecipient shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by Caltrans to implement such article.

c. Subrecipient shall permit access by representatives of the Department of Fair Employment and Housing and Caltrans upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or shall require to ascertain compliance with this clause.

d. Subrecipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

e. Subrecipient shall include the nondiscrimination and compliance provisions of this clause in all agreements with its contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under the agreement.

16. PROHIBITIONS:

A. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION: The assistance provided under this Agreement shall not be used in payment of any bonus or commission to obtain Caltrans or City approval of the application for such assistance or for additional assistance, or any other approval or concurrence required under this Agreement, Title I of the Housing and Community Development Act of 1974, as amended, or Caltrans regulations with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, rather than solicitation, are not prohibited if otherwise eligible as program costs.

B. PROHIBITION AGAINST KICKBACKS: The Subrecipient agrees to comply with the Copeland "Anti-Kickback" Act (18 USC Section 874) which prohibits kickbacks from public works employees agency."

C. POLITICAL ACTIVITY PROHIBITED: None of the Funds, materials, property or services provided directly or indirectly under this Agreement, shall be used for any candidate for public office or for political activities in violation of Chapter 15 of Title V of the U.S.C. The Subrecipient also agrees that no personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of such political activities.

D. PROHIBITION OF, AND ELIMINATION OF, LEAD-BASED PAINT HAZARD: Notwithstanding any other provision, the Subrecipient agrees to comply with the regulations set forth in 24 CFR 570.608 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards.

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to Caltrans Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all Caltrans-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

Every contract or subcontract including painting, pursuant to which such federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint and requiring the giving of notice as described above.

E. PROHIBITION OF ASSISTANCE FOR RELIGIOUS ACTIVITIES: The Subrecipient agrees that Funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization. Religious or other organizations that participate in the Caltrans program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

F. LOBBYING PROHIBITED: None of the Funds provided under this Agreement shall be used for publicity or propaganda purposes designed to defeat or support legislation pending before Congress.

G. USE OF DEBARRED, SUSPENDED OR PROHIBITED PARTIES: Subrecipient shall not use any City funds, directly or indirectly, to award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR 570 et seq.

17. CERTIFICATION REGARDING LOBBYING: The undersigned representative of the Subrecipient certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Subrecipient, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Subrecipient, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned representative of the Subrecipient shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities” in accordance with its instructions.

C. The undersigned representative of the Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

18. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS: The Subrecipient shall comply with all applicable local, State and Federal laws and regulations in carrying out its activities, including requirements (and as they may be amended) regarding verification of client citizenship.

19. COMPLIANCE WITH FEDERAL CALTRANS THIRD-PARTY CONTRACT PROVISIONS: The Subrecipient agrees to abide by all federal and City contract provisions in carrying out the subject Caltrans Program.

20. CLAIMS AGAINST THE CITY: The Subrecipient agrees to defend, indemnify and hold harmless the City from any and all claims of any nature whatsoever which may arise from the Subrecipient’s performance of this Agreement; provided, however, that nothing contained in this Agreement shall be construed as rendering the Subrecipient liable for acts of the City, its officers, agents or employees.

21. DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:

A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.

B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars ($1,000,000.00) per accident for bodily injury and property damage.

C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement.

D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars ($1,000,000.00) per occurrence and shall be endorsed to include contractual liability.

3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds. The insurance obligations under this agreement shall be: 1) all the insurance coverage and limits carried by or available to the Contractor; or 2) the minimum Insurance requirements shown in this agreement, whichever is greater. Any insurance proceeds in excess of the specified minimum limits and coverage required, which are applicable to a given loss, shall be available to the City of Clearlake.

21. DISALLOWANCES OF PROGRAM COSTS BY CITY OR CALTRANS : The Subrecipient agrees to indemnify and hold harmless the City from disallowances by Caltrans of program costs incurred by the Subrecipient which arise from the Subrecipient's performance of this Agreement due to the Subrecipient's failure to meet a national objective of the Caltrans Program pursuant to 24 CFR 570.208 or for failure to comply with Caltrans regulations or City regulatory requirements as determined by the City or HUD. The Subrecipient agrees to promptly repay the City for all such disallowed costs incurred by the Subrecipient.

22. INCONSISTENT TERMS: If the attachments or Exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

23. ADVANCE PAYMENTS AND INVOICING:

A. Subrecipient, its contractors, and subcontractors shall establish and maintain an accounting system and records system that properly accumulate and segregate incurred Project costs by line. The accounting system of Subrecipient, its contractors, and subcontractors shall conform to Generally Accepted Accounting Principles (GAAP) and any standards specified by the source of funds, to enable the determination of incurred costs at interim points of completion, and to provide support for reimbursement payment vouchers or invoices.

C. Advance payment to subrecipient will be authorized only for those allowable costs in accordance with the provisions of this agreement and in the scope of work.

F. Advance payments shall be made under this contract upon submission by subrecipient of a detailed budget identifying the corresponding line item(s) which must comply with the scope of services showing accomplishments, consistency with goals, and fulfilling this agreement as provided in accordance with the terms and conditions contained herein and in accordance with the provisions of this agreement and authorized by Caltrans in the RGA with the City of Clearlake. The amount of all advance payments previously approved shall not exceed **$474,700**.

G. Subrecipient agrees to provide invoices as soon as they are available which will include the following information:

1.) Names of the agency personnel performing work

2.) Dates and times of Project Work

3.) Locations of Project Work

4.) Itemized costs as set forth in Attachment A, including identification of each employee, contractor, or subcontractor staff who provided services during the period of the invoice, the number of hours and hourly rates for each employee, contractor, subrecipient or subcontractor staff member, authorized travel expenses with receipts, receipts for authorized materials or supplies, and contractor, subrecipient and subcontractor invoices.

5.) Agency shall submit written progress reports with each set of invoices to allow City to determine if Subrecipient is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.

H. Incomplete or inaccurate invoices shall be returned to subrecipient unapproved for correction. Failure to submit invoices on a timely basis may be grounds for termination of this contract for material breach per Section III – Termination, Item 12 of the RGA between Caltrans and the City.

J. The RGA Expiration Date refers to the last date for Subrecipient to incur valid Project costs or credits and is the date this agreement expires.

24. AMERICANS WITH DISABILITIES ACT: By signing this agreement, Subrecipient assures City that in the course of performing Project Work, it will fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, as amended, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 USC Section 12101 et seq.).

25. IRAN CONTRACTING ACT: Proposed Contractor must complete and submit to City the Iran Contracting Act Certification certifying that it is not on the most current DGS list of Entities Prohibited from Contracting with Public Entities in California per the Iran Contracting Act, 2010 (httos://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses), before the Agreement has been executed, unless Contractor is exempted from the certification requirement by Public Contract Code Section 2205(c) or (d). If claiming an exemption, the proposed Contractor shall provide written evidence that supports an exemption under Public Contract Code Section 2203(c) or (d) before execution of the Agreement.

IN WITNESS WHEREOF, the City and the Subrecipient have executed this Agreement as of the date first above written.

CITY OF CLEARLAKE

_____

_____, City of Clearlake

Date: _____

SUBRECIPIENT

_____

_____, _____

Date: _____

Attest:

_____

_____, City Clerk

Date: _____

Attachment A - Project Plan

Subgrantee contact

Name:

Title:

E-mail:
Telephone:

Client contact

Name:

Title:

E-mail:
Telephone:

The sub grantee is responsible for completion of Tasks A, B & C as outlined below. These Tasks are to be completed and invoiced by the grant expiration date of June 30th, 2024

Task "A" Murals Along Downtown Corridor

- **4 large murals**
- **4 small murals**

To accomplish this, the subgrantee will provide project management that will:

- **Engage the relevant constituents in the planning**
- **Find and contract with the chosen edifices**
- **Provide/contract with professional muralists**
- **Work with the edifice owners etc. to choose image and for any edifice prep**
- **Work with the muralists to ensure completion of the image as per their contract**

Task "A" Murals Along Downtown Corridor Detailed Funds Estimate

Entity	Hours	Rate Per Hour	CCLGP Total
LCRAI Project Manager	500	$60.00	$30,000
TOTAL			**$30,000**

Supplies/Materials	CCLGP Total
4 Large Murals	$40,000
4 Small Murals	$20,000
Mural Supplies/Building Prep Supplies	$2,400
TOTAL	**$62,400**

TASK "A" GRAND TOTAL $92,400

Task "B" Litter Abatement, Education/Outreach

To accomplish this, the subgrantee will provide project management and Community Education Coordinator that will:

- **Create and disseminate educatory materials that engage and inform the community on the benefits and processes of a "clean Clearlake"**
- **Work with groups i.e., Citizens Caring for Clearlake to:**
  - **provide and disseminate dump vouchers**
  - **provide, utilize and supply volunteers for clean up**

Task "B" Litter Abatement, Education/Outreach Detailed Funds Estimate

Entity	Hours	Rate Per Hour	CCLGP Total
LCRAI Community Education Coordinator	2,000	$50.00	$100,000
LCRAI Project Manager	100	$60.00	$6,000
TOTAL			**$106,000**

Supplies/Materials	CCLGP Total
(24) Dump Vouchers	$16,800
Education Program Materials	$2,500
Misc. Clean-up Supplies	$5,000
(100) Volunteer Incentive Stipend	$2,000
TOTAL	**$26,300**

TASK "B" GRAND TOTAL $132,300

Task "C" Eight Free Dump Days

To accomplish this, the subgrantee will provide project management that will:

- **Facilitate necessary contracts with dump**
- **Inform/engage the community on the free dump days**

Task "C" Eight Free Dump Days Detailed Funds Estimate

Entity	Hours	Rate Per Hour	CCLGP Total
LCRAI Project Manager	1,500	$60.00	$90,000
TOTAL			**$90,000**

Supplies/Materials	CCLGP Total
(8) Free Community Dump Days	$160,000
TOTAL	**$160,000**

TASK "C" GRAND TOTAL $250,000

CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Award of Bid for Roofing Repairs at 6805 Airport Road	**MEETING DATE:** October 20, 2022
SUBMITTED BY: Melissa Swanson, Administrative Services Director/City Clerk	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to award a bid for repairs to the roof of a City-owned building leased by Lake County Fire Protection District at 6805 Airport Road and authorize the City Manager to approve change orders up to 10% of the contract amount.

BACKGROUND/DISCUSSION:

In 1965, the County of Lake entered into a long-term lease agreement with Lakeshore Fire Protection District, now Lake County Fire Protection District, for use of a building located at the Airport Property: 6805 Airport Road. Upon transfer of the Airport Property to the City in the 90's, the City became owner of the building and the lease, which expires in 2066, transferred to the City. The lease is silent on which party is responsible for repairs and maintenance of the building.

The roof of the building is in disrepair and needs to be fixed before winter. Staff has had discussions with Chief Sapeta and negotiations for share-of-cost for repairs are in process. The bids are scheduled to be opened on October 18th. Once bids are opened, staff will update this report.

OPTIONS:

1. Move to award bid and authorize the City Manager to approve change orders up to 10% of the contract amount.
2. Other direction

FISCAL IMPACT:

☐ None ☒ $TBD Budgeted Item? ☐ Yes ☒ No

Budget Adjustment Needed? ☐ Yes ☐ No TBD If yes, amount of appropriation increase: $TBD

Affected fund(s): ☒ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments: The impact to the General Fund will be determined when bids are opened and share-of-cost with LCFPD is finalized.

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☐ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to award the bid to the lowest responsible bidder and authorize the City Manager to approve change orders up to 10% of the contract amount.

☐ **Attachments:** 1)

2)

Pearce Field

Lakeshore Fire Prot. Dist.

L E A S E.

This Lease, made and entered into this 18th day of September, 1967, by and between the County of Lake, a political subdivision of the State of California, hereinafter called LESSOR and the Lakeshore Fire Protection District, hereinafter called LESSEE.

W I T N E S S E T H.

1. LESSOR hereby leases to LESSEE, on the terms and conditions hereinafter setforth, all of the following property, situate in the County of Lake, State of California, described in Exhibit A, attached hereto and by this reference made a part hereof;

2. The term of this lease shall be for a period of ninety-nine (99) years, commencing on the first day of October, 1967;

3. The total rent is ten dollars ($10.00) , which sum LESSEE has paid to LESSOR upon the execution of this lease, the receipt of which sum is hereby acknowledged by LESSOR;

4. Purposes for which LESSEE shall use leased property shall be within the jurisdiction of a Fire Protection District, setforth in Health and Safety Code, Sections: 13801 through 13999;

5. LESSEE agrees to furnish Fire Protection Services to the Pearce Airport property and its facilities;

6. LESSEE agrees that any buildings or permanent improvements erected on leased property shall conform to applicable County, State and Federal laws, ordinances and rules and regulations relating to public health and safety;

7. LESSEE agrees that the property herein descrived shall not be sub-let or said lease assigned without written consent of LESSOR;

8. LESSEE agrees that LESSOR and all officers and employees thereof shall be held harmless from any and all liability resulting from any act or neglect of LESSEE and/or his agents, servants and employees in performance of work provided for in this lease.

EXHIBIT "A"

COMMENCING at the center of Section 34, Township 13 North, Range 7 West, M.D.B. & M., said point being a 1¼" Bronze capped iron pipe marked U.S.I.S., and running thence from said point of commencement, North 43° 24' 47" West, a distance of 614.33 feet to a 5/8" iron rod tagged L.S. 2581 on the Southerly line of the access road to Pearce Field; thence along the Southerly line of said access road South 52° 04' 25" West, a distance of 25.00 feet to a 5/8" iron rod tagged L.S. 2581, said point being the TRUE POINT OF BEGINNING of this description; thence from said True Point of Beginning, continuing along the Southerly line of said access road South 52° 04' 25" West, a distance of 188.31 feet to the Easterly line of the County Road number 205B known as old Highway 53; thence leaving the Southerly line of said access road and running along the Easterly line of said County Road South 26° 30' East, a distance of 7.01 feet to the Northwesterly corner of that certain tract as conveyed to Justman and of record in Volume 384 of the Official Records of Lake County at Page 591; thence leaving the Easterly line of said County Road and running along the Northerly line of said Justman tract, South 89° 50' 01" East, a distance of 241.04 feet to a point on the Northerly line of said Justman tract that is South 37° 55' 35" East of the True Point of Beginning; and thence leaving the Northerly line of said Justman tract North 37° 55' 35" West, a distance of 155.57 feet to the True Point of Beginning, and containing 0.36 of an acre of land, more or less.

9/15/67

IN WITNESS WHEREOF, LESSOR and LESSEE have executed this lease this 18th day of September, 1967:

LESSOR:

COUNTY OF LAKE

BY: _____
L. D. Kirkpatrick, Chairman
Board of Supervisors.

LESSEE:

LAKESHORE FIRE PROTECTION DISTRICT.

BY: _____
Fire Chief.

ATTEST:

JAMES L. SHINN
County Clerk.

BY: _____
Deputy.

APPROVED AS TO FORM: David L. Luce, District Attorney
County of Lake.

BY: _____

cc. Lakeshore Fire Prot. Dist.
Auditor
Surveyor
~~C.A.O.~~
D.A.

CITY OF CLEARLAKE

City Council

STAFF REPORT	
SUBJECT: Authorization of the Main Street Project Agreement with Lake County Rural Arts Initiative	**MEETING DATE:** October 20, 2022
SUBMITTED BY: Melissa Swanson, Administrative Services Director/City Clerk	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to approve an agreement with Lake County Rural Arts Initiative (LCRAI) for art project development in the previously approved and budgeted amount of $100,000.

BACKGROUND/DISCUSSION:

In FY 2019/2020, Council approved budgeting $100,000 to work with LCRAI to develop concepts for art installations on Lakeshore Drive, Olympic Drive and City Parks. The project stalled during 2020/21 due to COVID and staff turnover in both organizations. Former Director of Finance Young and Director Swanson met again with LCRAI over the summer to discuss how to move forward with the projects. Working collaboratively, the project is ready to move forward with Council's approval.

The initial concept is to draw tourism and attraction around augmented reality, projection technology, statue, murals and other related art central to the idea of a Lake Dragon, similar to the Loch Ness Monster.

The attached agreement describes the project management overview and deliverables expected of LCRAI, working in conjunction with City staff. This project will work in conjunction with the Clean California grant to harmonize ideas, concepts and outcomes.

OPTIONS:

1. Move to approve an agreement with LCRAI for art project development in the amount of $100,000
2. Other direction

FISCAL IMPACT:

☐ None ☒ $100,000 Budgeted Item? ☒ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☒ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☒ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☒ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to approve an agreement with LCRAI for art project development in the amount of $100,000

☒ **Attachments:** 1) Main Street Project Agreement

City of Clearlake and LCRAI Project Agreement

This Agreement ("Agreement"), dated as of September 7, 2022 is between **City of Clearlake** ("Clearlake") and **Lake County Rural Arts Initiative** ("LCRAI") a 501c3 organization.

Background

Clearlake is currently engaged in creating economic vibrancy though a variety of projects one of which is the *Main Street* project that in partnership with LCRAI uses creativity and innovative thinking as well as the arts to add an attraction to the narrative of Clearlake that will support tourism and the economic vitality attached to it. The project is focused on the downtown area(s) of Clearlake but is intended to have wider benefit.

LCRAI will use the funds that Clearlake has set aside for this project ($100,000) to create a compelling attraction the intent of which is to draw multigenerational, year-round tourism to the downtown area of Clearlake and its current and future businesses.

Project

The nature of the project is a friendly *dragon* that inhabits the lake (ala Nessie of Loch Ness) and can be created given todays augmented reality and projection technology as well as statues, murals and other art related support to the mythology. The mythological dragon will have a variety of activities attached to its persona.

LCRAI will facilitate the and oversee the project to its fruition including managing a project management team hired for the purpose of implementing the concept.

The project outline (with major project steps and fulfillments) is in Attachment A. The details of the project will be designed by the project management team hired for the project in alignment with LCRAI and Clearlake.

Clearlake and LCRAI agree as follows:

1. Project Funds and Compliance

1.1 Funds Payment
Upon signing of the contract, Clearlake will transfer the $100,000 Funds to a LCRAI bank account created specifically for this project

1.2 Use of Funds
LCRAI will use Funds solely as described in the Project Plan or has been agreed on as a supplemental area by Clearlake. LCRAI will not use Funds for any activity that is prohibited by Internal Revenue Code Section 501(c)(3).

1.3 Report and Materials
LCRAI will provide such reports and documents as outlined the Project Plan or as Clearlake may otherwise request in connection with Project execution and compliance with the Project Plan within 15 days of such a request.

1.4 Compliance with Project Agreement
LCRAI will comply with all provisions of the Agreement and related activities, including funds use, reporting requirements.

2. Project Execution

2.1 Project Activities
LCRAI will carry out the Project in accordance with this Agreement and applicable law.
See **Attachment A** page 5 of this document for project steps and outcomes

2.2 Project Contacts

Clearlake and LCRAI will each appoint one individual to act as the principal contact person and to coordinate activities in connection with the Project. The initial appointees are identified in the Project Plan.

2.3 Recordkeeping

LCRAI will maintain records relating to its Project responsibilities as contemplated by the Project Plan and in a manner such that Clearlake can evaluate LCRAI's compliance with this Agreement. LCRAI will make those records available for review by Clearlake on 15 days notice during the term of this Agreement.

2.4 External Communications

For consistency of communication, except as contemplated by the Project Plan or as required by law, neither Clearlake nor LCRAI will issue any public statement (including statements on its website) relating to the Project, or use each other's trademarks or logo in any promotional materials, or in any website, press release, or public communication, without obtaining the other's prior written consent.

2.5 Responsibility for Actions

LCRAI will have sole responsibility for planning and carrying out its activities. LCRAI will have sole responsibilities for contracting, monitoring, and paying its contracts with third parties. Clearlake will not assume any liability for the performance by LCRAI of its contracts or of any of its other obligations..

2.6 Confidentiality

Each of LCRAI and Clearlake will use the other's Confidential Information (as defined below) only in connection with activities under this Agreement and will keep it confidential. Confidential information does not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by the receiving party; (b) was known by the receiving party prior to its being furnished by the disclosing party; (c) is or becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party; or (d) is independently developed by the receiving party; or (e) information that is required to be disclosed pursuant to California law.

2.7 Adverse Developments

LCRAI will notify Clearlake promptly of: (a) any changes in LCRAI's status as a nonprofit corporation in good standing under local law or as a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code; (b) any changes in the project management team or key personnel responsible for carrying out the Project; (c) loss of its ability to carry out the Project or its other obligations under this Agreement; or (d) any material changes in Project design or implementation.

3. Insurance and Indemnification

3.1 Indemnification of Clearlake

LCRAI will be the contracting party with any third party used in the project implantation and the contract will specify a hold harmless clause for both LCRAI and Clearlake

LCRAI will defend, indemnify, and hold Clearlake and Clearlake's directors, officers, employees, agents, and assigns (collectively, "Clearlake Parties"), harmless against all third- party claims, liabilities, losses, damages, and expenses, including, without limitation, reasonable attorneys' fees and expenses, plus penalties and interest, any Clearlake Party may suffer and which arise directly or indirectly from LCRAI's execution of the Project to the extent that the claims, liabilities, losses, damages, and expenses are caused by LCRAI's gross negligence or willful misconduct. LCRAI will have no obligation to indemnify any Clearlake Party to the extent the liability is caused by such Clearlake Party.

4. Termination

4.1 Termination by Clearlake Without Cause

Clearlake may terminate this Agreement at any time for convenience and without cause by giving LCRAI a minimum of five (5) calendar days' prior written notice of Clearlake's intent to terminate this Agreement. Upon such termination for convenience, LCRAI shall be compensated only for those services and tasks which have been performed by LCRAI up to the effective date of the termination.

4.2 Termination for Breach

If either party materially breaches any of its obligations under this Agreement, the non- breaching party may provide the breaching party with written notice of the material breach. If the breaching party fails to cure the breach within fifteen (15) days after receipt of such notice, the non-breaching party may terminate this Agreement effective immediately upon delivery to the breaching party of a written notice to that effect. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

4.3 Effect of Termination

LCRAI upon Clearlake's request will repay to Clearlake any unused portion of the Funds within thirty (30) days after the effective date of termination. Clearlake and LCRAI will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination.

5. General Provisions

5.1 Entire Agreement

This Agreement, together with the Project Plan and any other exhibits, expresses the final, complete, and exclusive agreement between LCRAI and Clearlake, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealing, or understanding between LCRAI and Clearlake relating to its subject matter. If there are any inconsistencies between the Project Plan and this Agreement, this Agreement will control.

5.2 Amendment

This Agreement may be amended only as stated in and by a writing signed by both LCRAI and Clearlake which recites that it is an amendment to this Agreement.

5.3 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

5.4 Waiver

Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

5.5 Independence

Clearlake and LCRAI are and will remain independent contracting parties. The arrangements contemplated by this Agreement do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Clearlake nor LCRAI has the power or authority to bind or obligate the other to a third party or commitment in any manner. Any use of the term "partner" or comparable term in any communications is solely for convenience

5.6 Notices

Notices and consents under this Agreement must be in writing and delivered by mail, hand delivery, fax, or e-mail to the contact persons set out in the Project Plan. These addresses may be changed by written notice to the other party

5.7 Governing Law

This Agreement will be governed by California law.

5.8 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

Clearlake and LCRAI signed this Agreement as of the date stated in its first paragraph.

[Clearlake]	**[Name of LCRAI Entity]**
By: _____	By: _____
Name: _____	Name: Alicia Brisker
Title:	Title:

Attachment A

Project Steps/Outcomes

Engage the project management/implementation team (shared with current Caltrans project to assure synergy) to initially:

- **Develop, document and get agreement on detailed project plan**
- **Set up project communication & financial reporting system**

Project management team will direct, manage and (where appropriate) implement the following:

1. **Work with local artist(s) to design lake dragon image (and persona) to be used through out**

2. **Plan/implement format for dragon appearances:**
   - **Identify where dragon will appear**
   - **Construct on-going mechanisms for dragon to appear e.g., AR and projection**

3. **Create/implement a PR plan to get the buzz going on the lake dragon including press and social media**

4. **Work with businesses/associations/Native Americans on plan to "partner with/leverage" lake dragon**

5. **Identify additional dragon activities e.g., footprints, festivals, book?**

6. **Have constructed a dragon sculpture/statue that is "interactive" for multi-generational fun**

Project team will work with Clearlake to ensure the on-going ability for Clearlake to manage the lake dragon once the project has been completed by them.

LCRAI will oversee the project team to ensure implementation of the above.

CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Discussion and Consideration of Amendments to the City's Environmental Guidelines to Include Internal Guidance for Management of Tribal Cultural Resources and Consultation	**MEETING DATE:** Oct. 20, 2022
SUBMITTED BY: Alan D. Flora, City Manager	
PURPOSE OF REPORT: ☐ Information only ☒ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL:

The City Council is being asked to consider amending the City's current environmental guidelines to include more detail on management of tribal cultural resources and consultation.

BACKGROUND/DISCUSSION:

In 2016 the City adopted a set of environmental guidelines, including Appendix O "Native American Tribal Consultation Program". While this is only one small part of the guidelines, it was in part, to implement the requirements of AB 52 from 2015.

Historically, there have been three tribes with connections to ancestorial lands within the City of Clearlake boundaries; the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, the Koi Nation of Northern California, and the Middletown Rancheria of Pomo Indians of California. While in large part consultation and coordination between the City as lead agency and the tribes has worked quite well, more recently new staff within the tribal environmental community have resulted in a inconsistent, confrontational, and difficult approach to complete projects. Staff believe that by adopting a more comprehensive policy framework related to tribal cultural resources would result in more predictability, less room for disagreement, and a more streamlined and economic project completion.

The draft policy before you is adapted from several similar policies adopted within the past few years by various California municipalities. This includes Volume 1, the policy framework (to be adopted by the Council) and a Volume 2, internal implementation guidelines, which direct staff on specific steps towards implementing the policy framework.

While this policy framework is well vetted with tribes in California, it has not been discussed with any Lake County tribes. The Council may wish to pursue this discussion, however staff believe at a minimum an interim policy is needed to guide staff in tribal relations.

OPTIONS:

1. Adopt Volume 1: Tribal Policy
2. Adopt volume 1: Tribal Policy as interim guidance and direct staff to work with local tribes to gather feedback on the policy prior to final future adoption.
3. Provide alternative direction to staff.

FISCAL IMPACT:

☐ None ☐ $ Budgeted Item? ☐ Yes ☒ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments**:**

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☐ Goal #4: Improve the Image of Clearlake

☒ Goal #5: Ensure Fiscal Sustainability of City

☒ Goal #6: Update Policies and Procedures to Current Government Standards

☒ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

☒ **Attachments:** Volume 1: Tribal Policy

APPENDIX O

Internal Guidance for Management of Tribal Cultural Resources and Consultation

Internal Guidance for Management of Tribal Cultural Resources and Consultation
Volume I: Policy

City of Clearlake

October 2022

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MANAGEMENT SUMMARY

In 2022, the City of Clearlake determined a need for internal guidance intended to provide consistency and fairness in the manner in which tribes are consulted with prior to and during project construction, to ensure a consistent application of policies for all discretionary projects by the City, and to exercise responsible management and use of public funds.

This guidance document is organized into two parts. First is the City's position on tribal participation during the project planning and approval process for discretionary projects. This includes both private sector and public (City) projects, which are subject to state and local laws and regulations that are under the jurisdiction of the City. It also includes guidance for City planners on determining when mitigation measures related to Native American participation are warranted under CEQA, standard treatment and mitigation measures that can be used consistently in project planning, and guidance on the City's use of public funding when conducting consultation.

Second, this guidance document also provides information and guidance for City staff and contractors during the project construction and implementation phases. This includes thresholds for payment for tribal participation, instructions for contractors in the event of an unanticipated discovery, and guidance for City staff in assessing and acting upon unanticipated discoveries.

This guidance document is organized into two sections. Volume 1 is the City policy and procedures, which was adopted by the City Council on October 20, 2022. Volume II is the implementation manual, which includes templates, forms, and example mitigation measure language. The City will periodically review Volume I to determine if revisions to the City's policies warrant consideration by the City Council.

Volume II is intended to be a living document, and modifications to that volume will not require City Council adoption, as long as those amendments are consistent with the policy in Volume 1.

VOLUME I CONTENTS: POLICY

LIST OF FIGURES

LIST OF ACRONYMS AND ABBREVIATIONS

AB	Assembly Bill
CC&Rs	Covenants, Conditions, and Restrictions
CEQA	California Environmental Quality Act
MLD	Most Likely Descendant
NAHC	Native American Heritage Commission
NHPA	National Historic Preservation Act
PRC	Public Resources Code
SB	Senate Bill
TCR	Tribal Cultural Resources
USACE	U.S. Army Corps of Engineers

1.0 INTRODUCTION

1.1 Regulatory Setting

In recent years, a number of changes have occurred in the regulatory context within which the City operates. These changes occurred at various levels of jurisdiction, including at the city, state, and national levels and in the thresholds and expectations for best professional practices in cultural resources management. Changes have also occurred in terms of the level of involvement by stakeholders in cultural resources, particularly Native American tribes, as well as historical societies and the general public. The relevant laws and regulations include the following.

- Assembly Bill (AB) 52, passed by the California legislature in 2014, amended the California Environmental Quality Act (CEQA) to require early consultation with California Native American tribes when preparing a CEQA document for a specific project. The City, as CEQA lead agency, must offer consultation with tribes that request notification of projects at the initiation of CEQA. The consultation, if initiated, is to determine whether or not Tribal Cultural Resources (TCR), as defined by AB 52, would be affected by the project. Subsequently, an update to the CEQA Guidelines took effect September 27, 2016 that revised Appendix G to the CEQA Guidelines to separate the consideration of tribal cultural resources from cultural and paleontological resources, and to add sample checklist questions.
- Senate Bill (SB) 18 was signed into law in September 2004 and became effective in March 2005. SB 18 (Burton, Chapter 905, Statutes of 2004) requires city and county governments to consult with California Native American tribes early in the planning process with the intent of protecting traditional tribal cultural places. The purpose of involving tribes at the early stage of planning efforts is to allow consideration of tribal cultural places in the context of broad local land use policy before project-level land use decisions are made by a local government. As such, SB 18 applies to the adoption or substantial amendment of general or specific plans. The process by which consultation must occur in these cases was published by the Governor's Office of Planning and Research through its *Tribal Consultation Guidelines: Supplement to General Plan Guidelines* (November 14, 2005).
- The regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966 were amended in 2000 and 2004. The amended regulations, found in the Federal Register at 36 CFR Part 800, specify how federal agencies are required to take into account the effects of their undertakings on historic properties. The Section 106 regulations apply to projects in the City when the project would receive federal funding, assistance, licenses, approvals, or permits (such as a Section 404 Clean Water Act permit from the U.S. Army Corps of Engineers [USACE] or funding by the Federal Highway Administration through the California Department of Transportation (Caltrans)). While the City is not a lead agency under Section 106, its projects may be subject to compliance with it.
- Section 5097.5 (a, b & c) of the California Public Resources Code Section states:

  > "A person shall not knowingly and willfully excavate upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological, rock art, or vertebrate paleontological site, including fossilized footprints, inscriptions made by

human agency, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over such lands. Violation of this section is a misdemeanor. As used in this section, "public lands" means lands owned by, or under the jurisdiction of, the state, or any city, county, district, authority, or public corporation, or any agency thereof."

- Public Resources Code 5097.9 establishes that no public agency or private party using or occupying public property or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977 shall interfere with the free expression or exercise of Native American religion. This code also prohibits damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.
- Public Resources Code 5097.98 specifies procedures to be followed in the event of the discovery of Native American human remains. This code specifies that the county coroner shall immediately notify the persons believed to be most likely descended from the deceased Native American. It provides that the most likely descendant (MLD) has the right to inspect the site, with permission of the land owner, and provide recommendations for treatment of the remains and grave goods within 48 hours of being granted access to the site. The code also provides procedures in the event that the MLD is unable to be identified or the identified descendants fail to make a recommendation.
- Public Resources Code 5097.99 states that no person shall obtain or possess any Native American artifacts or human remains except as otherwise provided by law. The code further states that unlawful possession of these items is a felony, punishable by imprisonment.
- Health and Safety Code 7050.5 establishes the intentional disturbance, mutilation, or removal of interred human remains a misdemeanor. This code also requires that upon the discovery of human remains outside of a dedicated cemetery excavation or disturbance of land cease until a county coroner makes a report. The code also requires that the county coroner contact the NAHC within 24-hours if he or she determines the remains to be of Native American origin.

In addition, the City is constrained by budgetary factors, coupled with a recent post-recession increase in private-sector development, that have led to the need for mindful expenditures of public funds. Thus, efficiency and consistency in compliance with the above laws and regulations are driving the need to develop standardized guidance for City staff.

1.2 History of Tribal Participation in City Projects

Overall, there has been an increased awareness of the importance of early consultation with resource stakeholders as part of project planning, particularly with tribes. There is an increasingly complex tribal consultation process that the City is either directly or indirectly affected by, and which varies from project to project. Typically, tribal consultation involves two classifications of consulting parties: the California Native American Heritage Commission (NAHC) and California Native American Tribes.

The California NAHC is composed of a nine-member governor-appointed advisory body responsible for the identification and cataloging of places of special religious or social significance to Native Americans,

including sacred sites and known Native American graves and cemeteries. The NAHC may serve as a trustee agency under CEQA and is responsible for identifying an MLD for Native American human remains that are unearthed in California. The NAHC may also serve as a mediator between landowners, agencies, and California Native American tribes.

California Native American Tribes (tribes) are defined in Section 21073 of the California Public Resources Code and Chapter 905 of the Statutes of 2004 and apply to both AB 52 and SB 18 tribal consultation. Under the former, the tribes that notified the City in writing of their request to receive notice of all projects subject to CEQA are subject to specific procedures enacted by AB 52. These tribes need not be physically located in or near Clearlake but must be traditionally and culturally affiliated with the land currently under the jurisdiction of the City. In addition, California Native American Tribes, including but not limited to those that do not request that the City notice them under AB 52, may be consulted under SB 18. The SB 18 lists of tribal contacts typically provided by the NAHC in response to City requests include a number of tribes in the Clearlake region. The City is required to offer consultation to all of the tribes named by the NAHC on its SB 18 list, when SB 18 applies.

With both AB 52 and SB 18 consultation, the culturally affiliated tribes that most often engages the City in consultation during project planning and construction are the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, the Koi Nation of Northern California, and the Middletown Rancheria of Pomo Indians of California; however, other culturally affiliated tribes are given equal opportunities to consult with the City. The tribal participation in projects typically occurs in one of two points in the process: 1) during pre-project planning and environmental review under CEQA (AB 52) and/or SB 18; and 2) during unanticipated discoveries that may occur during construction. Often, the former leads to requests for more involvement during project construction and implementation, which must be balanced by the requirements and thresholds of CEQA and other applicable laws and regulations.

1.3 Purpose and Need for Internal Guidance

The need for internal guidance for City staff is based on several factors, including the project-specific regulatory complexity for any given project, the diversity and inevitable turnover of City planning staff and elected officials, and limitations on public funding. Internal City guidance is intended to provide consistency and fairness in the manner in which tribes are consulted with prior to and during project construction, to ensure a consistent application of policies for all discretionary projects by the City, and to exercise responsible management and use of public funds.

Therefore, the City developed the following internal guidance, which is organized into the two phases noted above. Section 2.0 describes the City's position on tribal participation during the project planning and approval process for discretionary projects. This includes both private sector and public (City) projects, which are subject to state and local laws and regulations that are under the jurisdiction of the City. Section 2.0 also includes guidance for City planners on determining when mitigation measures related to Native American tribal participation are warranted under CEQA, standard treatment and mitigation measures that can be used consistently in project planning, and guidance on the City's use of public funding when conducting consultation.

Section 3.0 provides information and guidance for City staff and contractors during the project construction and implementation phases. This includes thresholds for payment for tribal participation, instructions for contractors in the event of an unanticipated discovery, and guidance for City staff in assessing and acting upon unanticipated discoveries.

This internal guidance document was developed by the City staff and assembled by a qualified professional who meets Secretary of the Interior's Professional Qualification Standards for Archaeology codified in 36 CFR Part 61.

This guidance document is organized into two sections. Volume 1 is the City policy and procedures, which was adopted by the City Council on October 20, 2022. Volume II is the implementation manual, which includes templates, forms, and example mitigation measure language. Volume II is intended to be a living document, and modifications to that volume will not require City Council adoption, as long as those amendments are consistent with the policy in Volume 1.

2.0 TRIBAL CONSULTATION DURING PROJECT PLANNING AND APPROVAL

2.1 Coordination with Existing Laws and Confidentiality Requirements

In developing this internal guidance, it is the City's intent to follow closely the requirements in applicable law. Nothing in this guidance document is intended to conflict with existing law, and where such conflicts may arise, existing law governs. This applies to the statute and guidelines implementing CEQA, the California Public Resources Code, the California Government Code, and the California Health and Safety Code. The City previously developed standard operating procedures for compliance with AB 52 and SB 18, which are provided in Volume II of this guidance document.

With regard to compliance with AB 52, the City's legal interpretation of the requirements thereof will require tribal consultation when the City is preparing any of the following:

- Initial Study/Negative Declaration
- Initial Study/Mitigated Negative Declaration
- Project or Program Environmental Impact Report
- Supplemental Environmental Impact Report
- Subsequent Environmental Impact Report

It is the City's interpretation of current state law that tribal consultation is not required under AB 52 for Statutory Exemptions, Categorical Exemptions, consistency determinations, or preparation of Addendum CEQA documents; however, tribes may request receipt of all routing notices as notification of all City projects, regardless of the type of discretionary review, thereby allowing for tribal input on the use of Categorical Exemptions.

With regard to compliance with SB 18, the City's legal interpretation of the requirements thereof will require tribal consultation when the City is preparing any of the following:

- Adoption or Amendment of a General Plan
- Adoption or Amendment of a Specific Plan
- Dedication of Open Space that Contains Tribal Resources

In the event that an SB 18 action also triggers CEQA review, then both SB 18 and AB 52 consultation are required; however, it is not necessarily the case that an SB 18 action will trigger a CEQA document that is subject to AB 52.

TCRs may or may not manifest as archaeological sites. In some cases, TCRs are viewsheds, plant gathering areas, or other sacred spaces that are not readily identifiable to non-tribal members. In many cases, TCRs also include an archaeological component, such as artifacts, features, and sites (with or without human remains), and these "archaeological TCRs" are more visible to the public, and thus, more likely to be subject to looting or pothunting. Therefore, maintaining confidentiality of the location and nature of archaeological sites and TCRs is of the utmost importance to the City. Similarly, federal and state law recognize this need. As it pertains specifically to CEQA and this internal guidance document, the City shall make best efforts to ensure that information about the location, description, and use of the tribal cultural resources is not included in the environmental document or otherwise disclosed by the City to the public. Such information is protected from public dissemination through an exemption to the California Public Records Act. In addition, although no federal lands currently exist within the City boundaries, dissemination of archaeological site information is also prohibited by Exemption 3 of the federal Freedom of Information Act (5 USC 552), because the disclosure of cultural resources location information is prohibited by the Archaeological Resources Protection Act of 1979 (16 USC 470hh) and Section 304 of the NHPA. Therefore, it is also exempted from disclosure under the Freedom of Information Act.

In light of these requirements for confidentiality, it is the City's policy to not make publicly available the locations of cultural resources and TCRs, and dissemination of such information will be tightly guarded on a "need to know" basis only. Such circumstances are generally limited to City staff, landowners of property that contain resources, and consultants and engineers who are responsible for designing proposed projects in accordance with these Guidelines.

2.2 Policy of Payment for Consultation

In many areas of California, including the City of Clearlake, some tribes have requested payment of public funds for their participation in the early planning stages of City projects. The purpose of this guidance is to clarify what costs the City will pay in the event the City receives a request for payment for participation in a project planning process.

Currently, there are no laws or regulations that require payment to either consulting parties or tribes during project planning activities, consultation, or construction. In fact, "consultation" is defined by Government Code Section 65352.4 as "the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance."

The City recognizes the importance of providing information, staff time, or contract labor time at no cost to the tribes and expects tribes to provide information to the City at no cost to the City. Additionally, there are numerous California Native American tribes in the region that may ascribe cultural affiliation to the Clearlake area and may request consultation or participation in the future. Because different tribes have

different opinions, interpretations, cultural values, and information, it is the City's intent to consult meaningfully with all California Native American tribes who wish to do so.

Furthermore, because CEQA is founded on consultation with interested parties, commenting agencies, stakeholders, and the public, the City is tasked with consulting with many organizations and individuals regarding all aspects of CEQA review, including biological and wildlife non-profit organizations, professional societies and associations, and members of the public. All voluntarily provide input and information to the City on a wide range of environmental topics covered by CEQA, which is taken into account during the decision-making process for discretionary projects. It has always been the City's view that meaningful consultation cannot take place if such discussions are couched in financial or contractual relationships between the consulting parties and the public.

In addition, the City recognizes the difference between a "consulting party" (as described above) and a "consultant," where the City delegates the preparation of environmental documents and supporting technical information to third party consultants, selected according to qualifications, cost, and technical expertise. Use of registered professionals is defined further in Section 15149 of the CEQA Guidelines and does not include consulting parties. Such consultants represent the subject matter being analyzed and do not require concurrence or agreement from other experts in the field to be considered valid for the purposes of CEQA.

The City does not generally compensate any "consulting parties," including tribes, members of the public, or stakeholders, during project planning and environmental review for: 1) consultation during the City's project planning process; 2) for information that any consulting tribe or party wishes the City to take into consideration during project planning; and 3) for tribes, members of the public, stakeholders, or other parties to visit or survey project areas to make recommendations to the City.

2.3 Accommodations for the Expression of Religion

The City recognizes the right of all citizens to freely express religion, and the City does not intend to willfully interfere with religious expression by Native American tribes or by any member of the public in implementing this internal guidance or during the environmental review or consultation processes. Therefore, it is the City's policy to make "reasonable accommodations" for the expression of religion. "Reasonable accommodations" would be evaluated on a case by case basis and may include, but are not limited to:

- Facilitating project area tours during the project planning process;
- Providing privacy for tribal members when visiting TCRs;
- Honoring requests for meetings with tribal members to receive comments verbally, when members do not wish to document comments in writing;
- Temporarily pausing construction activities to accommodate a visit by tribal representatives, when determined by the City to be reasonable and feasible;
- Developing access agreements with tribes to allow for legal visitation of TCRs on City-owned property;

- Accommodating voluntary tribal observation during construction when tribal monitoring is not warranted under CEQA;
- Offering tribal representatives an opportunity to participate in pre-construction meetings with contractors to express tribal views regarding unanticipated discoveries;
- Requiring, as a mitigation measure, tribal monitoring during construction activities where such monitoring is deemed necessary under CEQA;
- Developing TCR treatment and reburial methods that are mindful of tribal values and culture;
- Providing reasonable opportunity for comment in order for the tribe to provide comments on projects during project planning that is subject to AB 52 and SB 18 consultation; and
- Any other accommodation deemed reasonable by the City.

Reasonable accommodations may be rescinded, revoked, or denied in the event of any of the following:

- Cause an unreasonable cost increase or delay that jeopardizes the viability of the project as determined by the City;
- Willful trespass of tribal members or representatives;
- After the City has initiated consultation, failure of a tribe or its representatives to respond to the City in a timely manner or in good faith;
- Any other behavior that is deemed to not be in good faith, as determined by the City.

2.4 Standard Mitigation Measures and Conditions of Approval

The City has developed standard mitigation measures and conditions of approval for discretionary projects under the City's jurisdiction. Below are descriptions of these measures, including guidance on their applicability and use. Actual example mitigation measure language is provided in Volume II (Implementation Manual).

2.4.1 Avoidance and Preservation in Place

Consistent with Section 21084.3(a) of the Public Resources Code, the City shall, when feasible, avoid damaging effects to any TCR. This can be achieved through several possible scenarios, depending on the project circumstances. Each of the following scenarios represents a different level or strength of protection.

Use of Exclusionary Fencing

Where the City has determined that a TCR is located immediately adjacent to ground-disturbing activity, but where the location of the TCR is not proposed for impact, the City may require the placement of temporary construction fencing to prevent accidental or incidental impacts to the location during construction. This may also be appropriate when the TCR is located within a riparian area that cannot be impacted by the project. The exclusionary fencing must be included on all construction plans, specifications, and bid packages, which must stipulate the timing of the installation and conditions under which fencing is monitored and inspected until removal. This mechanism is appropriate when

construction-related activities could inadvertently impact a site but does not provide long-term management or preservation measures.

Modification of Project Boundaries

Where the City has determined that a TCR is located in an area that can be feasibly excluded from the project entirely, it may require that the project be redesigned to avoid the site. This may require either a lot line adjustment, construction perimeter fencing, or other feasible avoidance options. Such a decision would need to occur during the preparation of the CEQA document and could be memorialized as a mitigation measure if agreeable to all parties. This mechanism would allow for avoidance during construction, as well as post-construction, however it would not guarantee preservation of the resource that is no longer within the project boundary.

Incorporation into Open Space with Deed Restrictions

For projects that include the planned dedication of open space (which would also require compliance with SB 18), there may exist an opportunity to capture the TCR into the open space, either as currently designed or through a modification to open space boundaries to incorporate the TCR into it. This is common in oak woodland areas, where there tends to be a correlation between oak trees and bedrock mortars, as one example. Open space typically requires that the landowner restrict future development through recording of a deed restriction on the property; any such restrictions are public documents and must not specifically identify the location of TCRs. Moreover, care should be exercised when using deed restrictions, which can be reversed by landowners in the future. Therefore, this option may be better suited for City projects, as opposed to third party developers, unless additional measures can be put into place that ensure the deed restriction is not reversed without the City's knowledge.

Management of open space may be the responsibility of a homeowner's association, parks and recreation department, or non-profit preserve manager, all of whom would require knowledge of the resource and its location. Furthermore, because open space areas may allow for public visitation, the use of open space as an avoidance and preservation mechanism must be accompanied by a plan that dictates the activities that are allowed and prohibited within the location of the TCR. These activities may differ between the TCR and that which are allowed in the balance of the open space. In general, management of the protected resource should include, but not be limited to, the same types of activities that apply to deed restrictions, as described below.

Use of Development Restrictions in Perpetuity

The strongest method of avoidance and preservation in perpetuity of TCRs is the dedication of a deed restriction or declaration of covenants and restrictions over the site, recorded with the County, to restrict development in perpetuity. The easement may be held either by the City, the County, a non-profit corporation, or a California Native American tribe, as long as the landowner and the easement holder are not the same.

Development restrictions in perpetuity take much longer to negotiate and record, are more expensive due to the funding assurances required (Property Analysis Records and endowments) and are typically more expensive to manage (third party preserve managers and more stringent monitoring and management requirements); however, they are also very difficult to reverse in the future. As such, deed restrictions provide the highest level of assurances that a site will be preserved in perpetuity.

The entity selected for management must be able to demonstrate capability to perform the following actions, as deemed appropriate: fence and gate repair; sign replacement; regular monitoring and associated reporting by a professional archaeologist for damage; erosion control; trash removal; vegetation and weed control; security patrols; vandalism abatement; and removal of trespassers. No signs indicating the presence of tribal cultural resources shall be permitted.

Finally, deed restrictions are public documents and must not specifically identify the location of TCRs; however, the document must specifically include the conservation of cultural and tribal values.

2.4.2 Pre-Project Repatriation Designation

The City may recommend that the landowner or project proponent (if not the City) designate a reburial location on the property for any tribal cultural materials or human remains that may be unearthed during ground-disturbing activities during the project. The location shall be one that will not be subjected to ground-disturbing activities in the future. This location will be documented as a reinternment location by the Native American tribe, and the tribe may file it as such with the NAHC, County, City, and the California Historical Resources Information System. The site of any reburial of Native American human remains shall be kept confidential and not be disclosed pursuant to the California Public Records Act, California Government Code §§ 6254.10, 6254(r). The LakeLake County Coroner is also responsible for withholding from public disclosure any information related to such reburials, pursuant to the specific exemption set forth in California Government Code § 6254.5(e).

2.4.3 Pre-Construction Inspections

In some cases, vegetation, structures, or pavement obscure the ground surface, making identification of archaeological TCRs difficult. When the project description calls for the removal of the material, exposure of the natural soil may reveal evidence of archaeological sites, features, or constituents that were not visible during project planning, which would justify the need for construction monitoring. Conversely, it may indicate that no sites exist below the material, such that monitoring during construction was, in hindsight, not necessary. Therefore, the City may elect to allow tribal representatives an opportunity to perform an inspection during the first week of ground-disturbing activity, in lieu of full-time construction monitoring. The City's policies regarding payment (Section 2.2) shall apply.

In this event, a minimum of seven calendar days prior to beginning earthwork or other soil disturbance activities, the construction manager should notify the City's representative of the proposed earthwork start-date, in order to provide the City with time to contact a culturally affiliated tribe. A tribal representative would be invited to inspect the project location, including any soil piles, trenches, or other disturbed areas, within the first five days of ground-breaking activity, at the discretion of the tribe. During this inspection, a meeting of construction personnel is recommended in order to afford the tribal representative the opportunity to provide tribal cultural resources awareness information. In the event that the tribe does not send a representative within the prescribed time frame, then the City is not obligated to re-invite the tribe and activity will proceed.

2.4.4 Tribal Monitoring

As part of environmental and CEQA review, tribal consultation may or may not cause the City to determine that TCRs (as defined by Section 21074(a) of the Public Resources Code) may be significantly impacted by a proposed project. In many cases, the City receives requests from tribes for tribal

monitoring, regardless of the CEQA findings. The purpose of this section is to define the thresholds for when tribal monitoring shall be a mitigation measure or condition of approval, and when it should not.

As shown in the flow charts and procedures in Volume II, the City first must determine, through consultation if requested by a tribe, whether or not a TCR is present within the project area. The City will evaluate the information provided by consulting tribes to determine if the information meets the definitions in Section 21074(a)(1) of the Public Resources Code. If not, then the City will next determine if substantial evidence has been provided, pursuant to Section 21074(a)(2) of the Public Resources Code. The City does not recognize the fair argument standard as meeting the definition of substantial evidence under Section 21074(a)(2).

If the City determines that information submitted by a tribe does not meet the legal definitions of a TCR under state law, then the City shall document this finding in the administrative record, CEQA document, and in its termination of consultation (without agreement) letter to the tribe. The City may elect to use the following language as part of the record:

> "After reviewing the information provided by the tribe, the City has determined that there is not substantial evidence present to support the notion that Tribal Cultural Resources, as defined in Section 21074(a) of the Public Resources Code, will be impacted by the proposed project; however, we would welcome any input on the contractor awareness training session, should you so desire. In addition, the City will notify the tribe in the unlikely event of an unanticipated discovery of potential Tribal Cultural Resources so that we may consult with you on identification and appropriate treatment, pursuant to applicable state law. The City hereby concludes consultation with the tribe pursuant to Section 21080.3.2(b)(2) of the Public Resources Code."

However, if the City determines that a TCR is present, then the City next will determine whether or not the TCR will be significantly impacted by the project (see Volume II). The presence (or likely or possible presence) of a TCR within a project area does not, in and of itself, trigger mitigation. Only after the City determines that the TCR will be significantly impacted does the City consider the appropriate type of mitigation. Tribal consultation will assist the City in making the following decisions.

Appropriate mitigation for TCRs must take into account two primary factors. The first is that the proposed mitigation must be appropriate for the nature of the resource being impacted. For example, tribal monitoring during construction would not necessarily be appropriate if the resource is not archaeological in nature, or if the location will be protected from project activity by exclusionary fencing. Tribal monitoring would also not be appropriate for most activities that occur above the ground surface, or those that are located within and would not excavate below areas of documented fill. Tribal monitoring would, however, be appropriate when there is a known or high likelihood that an archaeological TCR will be encountered during ground-disturbing activities. The City should consider whether or not tribal monitoring, if warranted, should be focused only on vegetation removal, ground disturbance to a specific depth, or in only certain portions of the project.

The second factor is that the proposed mitigation must pass the seven tests for mitigation under CEQA (Figure 1). If the City determines that tribal monitoring (or any mitigation measure) is appropriate given the nature of the TCR and project activity, then the City must subject the proposed measure to the seven tests shown in Figure 1.

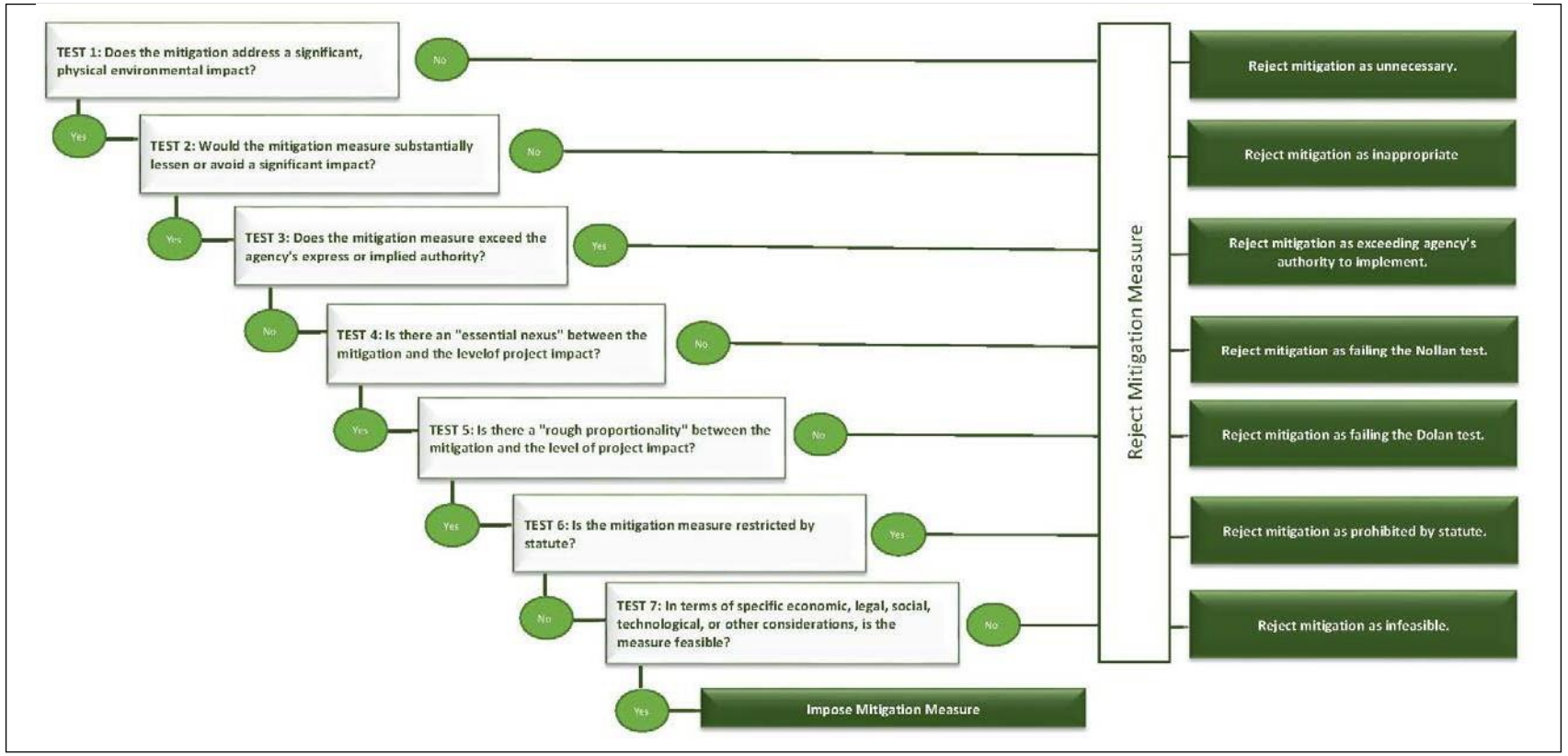

Figure 1. Seven Tests for Mitigation Measures (adapted from Placeworks 2012).

If the City determines that the proposed mitigation of tribal monitoring is both appropriate for the nature of the resource and passes the seven tests for mitigation under CEQA, then the City shall require that as a mitigation measure in the environmental document, pursuant to Section 21082.3(a) of the Public Resources Code. The City should then terminate consultation (with agreement) according to Section 21080.3.2(b)(1) and consider the requirement for payment of tribal monitoring, as described in Section 3.0.

In the event that the City applies the screening methods above to a tribe's proposal for tribal monitoring and determines that the mitigation is neither appropriate nor allowable under CEQA, then the City shall reject the tribe's recommendation. In doing so, the City must document the justification for the decision in the administrative record and in the termination of consultation (without agreement) letter to the tribe. The City may consider using part or all of the following response:

> "In determining appropriate mitigation for significant impacts to Tribal Cultural Resources, the City considered: 1) recommendations submitted by the tribe during AB 52 consultation under Section 21080.3.2(a) of the Public Resources Code; 2) requirements under Section 15041(a) and 15126.4(a)(3) of the CEQA Guidelines for feasible and mandatory mitigation, respectively; and 3) Section 21082.3 of the Public Resources Code regarding mitigation of significant impacts to Tribal Cultural Resources. After evaluating the information provided by the tribe through consultation, and in consideration of the City's legal obligations under CEQA and the requirements cited above, the City determined that tribal monitoring during construction will not reduce the impact to TCRs to a level that is Less Than Significant. However, in accordance with Section 21084.3(b), the City determined that appropriate and feasible mitigation will be composed of the following: [insert].
>
> The City hereby concludes consultation with the tribe pursuant to Section 21080.3.2(b)(2) of the Public Resources Code."

In consideration of the factors above, in general, tribal monitoring would be considered under any of the following circumstances:

- when one or more buried archaeological or known (non-isolate) TCRs is likely in the vicinity, but its specific location is unknown;
- when ground-disturbing activities will come within 100 feet of a recorded Native American archaeological site or TCR; and
- when installing or verifying the placement and integrity of temporary exclusionary (orange barrier or silt) fencing around TCRs that must be avoided.

Mitigation measures that require tribal monitoring must be written with specificity in mind, and must, at minimum:

- specify the exact number of tribal monitors for the project (as these will be paid monitors);
- not name a specific tribe, but reference "a culturally affiliated tribe;"
- clearly define the scope of what should be monitored (e.g., "all ground-disturbing activity for the project," or "initial vegetation removal only," or "ground disturbance down to X feet below the surface," or "all ground-disturbing activity in the [define] area of the project");

- specify the number of hours' notice that a tribe is given in advance of the start of monitoring activity (e.g., 72 hours);
- indicate whether or not activity can proceed without a monitor who did not arrive as scheduled, as long as the notification procedures were followed;
- specify the authority of the tribal monitor to halt project activity and for how long (see Section 3.0 for more information); and
- specify the reporting requirements back to the City for reconciliation with the Mitigation Measure Reporting Program (e.g., monitoring logs).

The City further recognizes that there are numerous culturally affiliated tribes with whom it consults, and that the City is not able to hire more monitors than are necessary simply because there is more than one interested tribe. In cases where more than one tribe wishes to monitor, then the City may require that interested tribes alternate monitoring days or projects, in cases where there are multiple project phases or segments.

Finally, monitoring is considered a last resort to minimizing or mitigating significant impacts and is not the default treatment for all projects. Should the City determine that monitoring is not an appropriate mitigation, then the City (with permission from the landowner, if on private property), may extend an opportunity to tribes to visit the project during construction on a volunteer basis, provided that, if required by the landowner, the visitors receive safety training and sign liability release waivers. The City does not have the authority to grant property access to private property over the objections of the landowner.

2.4.5 Capping

In certain cases, the use of capping with natural materials (e.g. certified sterile soils) may be used to effectively bury a TCR or archaeological site to protect it. This could include sites that are located in highly visible areas where public access could otherwise present a risk to the preservation of the site, where existing topography or future grade differentials could cause erosion and stabilization issues, or where there is not sufficient horizontal separation from project activities, but that vertical separation could be achievable. In these scenarios, the use of capping with soil, vegetation, and/or geotextile fabric may be preferred over complete exposure of the site.

If determined appropriate by the City, in consultation with culturally affiliated tribes, temporary protection, as discussed below, may be provided to cemeteries, burials, burial objects, burial soil, sacred objects, sacred sites, and sacred structures within the direct area of impact or exposed by project-related activities during project construction. These procedures may be undertaken where there is the potential for construction activities to damage site, objects, or human remains. In consultation with a City representative, a tribal monitor and qualified archaeologist will demarcate the limits of the area to be capped.

Where capping is considered an appropriate treatment measure, the following guidelines are recommended:

- The culturally affiliated tribe(s) should be afforded an opportunity to review and comment upon the capping plan and monitor its installation.

- The thickness of the soil cap must take into consideration the size and shape of the site, particularly the elevation of above-surface features like bedrock outcrops.
- The methods used to cap the resource must be designed to avoid damage to the resource during the process of installing the cap (such as prohibition of heavy equipment during installation).
- Caps may be covered with vegetation (without invasive root systems) to discourage erosion and unauthorized digging.
- No buildings or structures shall be placed on top of the cap.
- No signage to indicate the location of a site beneath the cap shall be installed.
- Deed restrictions that limit future use and development in perpetuity should be considered for areas subject to capping.
- As appropriate, the capping should include a combination of layers of culturally sterile and chemically-compatible soil of different colors and/or the layering of cyclone, chain link, or orange barrier fencing to discourage digging.

2.4.6 Project-Specific Public Interpretation and Education

In cases where a significant effect to a TCR will occur and the TCR is deemed significant because of its association with tribal culture, history, religion, or other values, but where the impact by the project is determined to be indirect, or because the qualities that convey the significance of the TCR are not location or materials, interpretation of the TCR for the benefit of the public may be an appropriate mitigation.

This can be achieved through the development of:

- One or more interpretive panels in parks, along trails, or at scenic overlooks (without disclosing the specific locations to the public);
- An educational module for K-12 students;
- Development of an exhibit for the Lake County Museum;
- Creating replicas of artifacts, including the potential for commissioning the creation of cultural items from Native American artisans for museum or educational use; or
- Digital scanning and archiving of sites.

The consultation conducted with the culturally affiliated tribe would determine whether or not one or more of these measures is appropriate for TCRs.

2.4.7 Covenants, Conditions, and Restrictions

For residential development projects that may be located in close proximity to known and/or preserved TCRs, the City may elect to require a notice to future property owners of the prohibition of artifact collecting and excavation, without disclosing specific locations of sites. This can be accomplished through Covenants, Conditions, and Restrictions (CC&Rs) that are recorded on each parcel. In such a case, the City may require the following:

> "The collecting, digging, disturbance, or removal of any artifact or other prehistoric [precontact] or historic object located in an open space area, conservation easement, a lot subject to a deed restriction, or to any archaeological site that may become unearthed in the future, is prohibited."

2.4.8 Tribal Access Agreements

One of the barriers to traditional use of tribal resources has been private land. Many tribes have not been able to demonstrate a continuum of use of a TCR because the land upon which it is located was claimed or deeded to others. This has resulted in either an inability to use TCRs, or the need to risk trespass in order to do so.

In order for a California Native American tribe to gain access to a TCR (located on City property) for visitation, the City may develop a right-of-access authorization for requesting tribes. The authorization shall specify the terms under which tribal access can be legally achieved and shall define the acceptable and prohibited uses thereof, and appropriate liability waivers.

In the event that a tribe requests access to a TCR that is located on private property, the City may require the landowner to develop an access agreement with a culturally affiliated tribe as part of a CEQA mitigation measure.

2.4.9 Contractor Awareness Training

There always remains a possibility that unanticipated discoveries may occur during project construction. For this reason, an archaeological sensitivity training program (Contractor Awareness Training) may be appropriate for both cultural resources and TCRs. In that event the City will develop a program with a focus that is tailored to the type of resources likely to be encountered. For example, a project that involves demolition and replacement of a historic-era building in Clearlake might have a greater potential for the discovery of historic (non-Native American) archaeological materials, and thus, a training program would be developed by a qualified professional archaeologist and not require participation by tribes. However, in cases where the project location is near a natural waterbody or is in an area determined to be sensitive for precontact or Native American resources, then the development of a training program would require input from culturally affiliated tribes.

If deemed necessary by the City, in consultation with a culturally affiliated tribe, sensitivity training should be conducted during a pre-construction meeting for construction supervisors prior to beginning any ground-disturbing project work. The sensitivity training program should provide information about notification procedures when potential archaeological material is discovered, procedures for coordination between construction personnel and monitoring personnel, and information about other treatment or issues that may arise if cultural resources (including human remains) are discovered during project construction. This protocol shall be communicated to all new construction personnel during orientation,

prior to the employee beginning ground-disturbing work on the project, and on a poster that is placed in a visible location inside the construction job trailer.

If the project has the potential to impact TCRs, then tribal input into the program is advised. In this case, the program should include relevant information regarding sensitive tribal cultural resources, including applicable regulations, protocols for avoidance, and consequences of violating state laws and regulations. The program should also describe appropriate avoidance and minimization measures for resources that have the potential to be located on the project site and will outline what to do and whom to contact if any potential TCRs are encountered. The program should also underscore the requirement for confidentiality and culturally appropriate treatment of any find of significance to Native Americans and behaviors, consistent with Native American Tribal values.

2.4.10 Post-Review Discoveries

There always remains the potential for ground-disturbing activities to expose previously unrecorded cultural resources or TCRs, even for projects that do not have known resources present. If subsurface deposits believed to be cultural or human in origin are discovered during construction, then the City must carry out steps to identify, evaluate, and treat the find in accordance with applicable state law. Because this potential exists for all projects that involve ground disturbance, it is recommended that an unanticipated discovery procedure be a required mitigation measure or condition of approval for all projects that will disturb the ground. Specific procedures for addressing discoveries are provided in the following chapter.

2.4.11 Alternative Treatment Measures

Based on the number and type of resources within a project, or based on the construction timing of the project, there may be a need to develop and negotiate certain types of mitigation that are not provided for above. There may also be requests from consulting tribes for methods of identification that may be considered to be non-traditional in mainstream cultural resources management (hereafter, “alternative”). The City, in consultation with appropriate professionals, experts, and tribes, shall be solely responsible for making the decision about whether or not an alternative method is appropriate for City projects. For private projects, where a project applicant objects to an alternative method, the City may opt to require a suitable substitute, as long as it has a similar result or effect. In any case, the City shall not require mitigation when the effects are found under CEQA to be not significant, and any such mitigation must be commensurate with the impact.

However, there are specific types of alternative methods that the City has determined are not appropriate at this time, including:

- Unless mutually agreed to by all culturally affiliated consulting tribe(s) and the City, use of forensic or human remains detection canines for surveys;
- Use of compensatory mitigation (payment of funds in exchange for impacts);
- Any mitigation or treatment that appears to benefit a specific entity, person, or tribe, rather than mitigating for a resource;

- Any method that is not proven or accepted by the professional community that would create an undue financial burden on the City or applicant; and
- Any other method or treatment that the City deems is not appropriate.

Controlled Grading

One example of an alternative method is controlled grading to slowly and carefully remove overburden and allow for less destructive exposure of any cultural constituents. This may be implemented during the excavation of soil that is identified as part of a precontact site. When used specifically for precontact archaeological sites or TCRs, this technique would, by definition, require the use of both an archaeological monitor and a tribal monitor from a culturally affiliated tribe. Because a tribal monitor would be required in this scenario, payment for monitoring is appropriate (see Section 3.0 for policies on payment).

Controlled grading would not be required for soil that is identified as non-cultural formational soil or fill dirt imported to the site that is determined to lack cultural constituents. The determination of the transition from cultural soil to formational soil should be made jointly by the project's archaeological consultant, City staff, culturally affiliated tribe(s), and geotechnical professionals.

Controlled grading will involve use of a small piece of equipment or a road grader to peel away native soil using shallow cuts made in approximately two-to-five-inch-deep layers. The grading equipment will push the shallow cuts of soil to the outside of the cultural deposit area. This deposited soil may be sampled and screened to ensure adequate detection of any cultural materials that may be present. The monitors will observe and may provide input on the controlled grading process; however, the pace of the grading and the depth of layers to be removed will be directed by the City and implemented by the contractor. The potential exists that discoveries may temporarily suspend the controlled grading process if they are significant and require focused archaeological excavations or other appropriate treatment.

The archaeological monitor and tribal monitor will observe the removal of soil by a backhoe equipped with a flat-edge bucket or follow closely behind the grading equipment and mark any cultural material with pin flags. Each artifact will be recorded to provide horizontal and vertical locational data. If no cultural deposits are encountered, the road grader will continue to make passes until one of two conditions are met (whichever occurs first):

- Grading will continue to a depth of 30 centimeters below the depth of any recorded artifacts, suggesting an end to the potential for cultural deposits; or
- Non-cultural formational soils are encountered that predate any human occupation of this location.

Once the cultural deposit has been completely removed, the controlled grading process will be terminated, and mass grading may proceed.

3.0 TRIBAL PARTICIPATION DURING PROJECT CONSTRUCTION

The intent of tribal consultation during project planning and environmental review is to resolve potential conflicts between projects and resources early in the planning stages. In many cases under the City's jurisdiction, this has been successful. However, there are circumstances that arise during project construction, such as unanticipated discoveries, that can lead to additional participation by tribes. This section describes the City's policies and procedures for addressing tribal participation during construction.

3.1 Policy of Payment for Tribal Participation During Construction

If the City determines that tribal monitoring or participation is required as a mitigation measure or condition of approval, then payment is appropriate (payment for non-required tribal observation and for consultation is not; see Section 2.0.). The following policy is intended for both City and private projects under the jurisdiction of the City.

When a mitigation measure of a certified environmental document or a condition of a permit or approval requires tribal monitoring of construction-related activities, the City shall retain the specified number of tribal monitor(s) under contract for the purpose expressed in the mitigation measure using the payment schedule provided further below.

3.1.1 Tribal Monitor

A tribal representative that is paid for his or her participation as a monitor:

- has the Tribe's authority to make daily decisions on Native American beliefs, wishes or policy, but may consult with other tribal members with authority and/or experience when it does not delay project progress;
- has the Tribe's authority to consult on their behalf with the Project Archaeologist on the archaeological investigations;
- is required to report to the appropriate tribal members on project progress, activities, finds, problems by whatever methods are appropriate;
- is required to report to the designated job supervisor on a daily basis; and
- has the Tribe's authority to lodge a formal complaint.

Examples (for the purpose of this section) include Tribal Historic Preservation Officers, Tribal Council Members, and Tribal Monitors. The Maximum Actual Hourly Rate paid for a Tribal Monitor shall be consistent with the most current version of the Caltrans North Region Native American Monitoring Procedures pay rates. The City will revisit the pay schedule with each update of these Guidelines, which may or may not result in a revision.

In addition, the following parameters apply:

- Tribal Monitors shall be compensated only for City-authorized labor spent on the job site and are subject to applicable labor laws with respect to paid rest breaks and unpaid meal periods.

- The City shall not compensate more than one Tribal Monitor per project without prior approval by City staff in advance.
- The City shall not compensate trainees or interns for tribal monitoring.
- The City shall not pay for monitoring of activities that do not involve ground or vegetation disturbance that would have the potential to impact a TCR, as determined through the City's environmental review and associated consultation process.
- All representatives and monitors must adhere to job site safety protocols.
- Private property owners reserve the right to prohibit entry to private lands.
- The City will identify Tribal Monitors and will discuss Tribal Monitor assignments with culturally affiliated tribes prior to monitoring activities.
- Tribal Monitors shall not be considered employees of the City.

Pay rates for tribal monitoring and participation for private developments (where the City is not the project proponent) may be separately negotiated between the tribe and project proponent. Nothing in these guidelines or in applicable law prohibits a private landowner from separately entering into an agreement with a tribe to provide unrequired monitoring or monitoring at higher rates, so long as doing so does not attempt to circumvent existing laws and consultation processes.

In the event that the City receives a request for tribal monitoring after project approval, which may be just before or during construction, when tribal monitoring was not a mitigation measure or condition of approval, the City shall not pay for tribal monitoring. However, the City will consider requests from interested tribes to visit the project site to observe project activities on a voluntary basis, as long as appropriate safety procedures are followed and a waiver of liability (including proof of workers compensation insurance) is on file with the City.

3.2 Contractor Guidance for the Response to Unanticipated Discoveries

In the event that project construction activities result in the discovery of previously unknown cultural resources, which may or may not include TCRs, the following procedures generally apply. These procedures may be superseded by equivalent or more effective mitigation measures in the approved CEQA document, or by federal permits and conditions. Therefore, these procedures are intended to serve as guidance when another permit or environmental document is silent on one or more of these issues. Deviation from these procedures may also be warranted, in the event that the discovery is atypical. The City shall exercise discretion in deviating from this guidance. The City may also choose to extend the timelines as stated in the procedures below. Any extension of timelines shall be documented in writing, which may be satisfied by electronic communication.

3.2.1 Initial Pause and Assessment for All Discoveries, Regardless of Cultural Affiliation

In the event of an unanticipated discovery during construction, all ground disturbing work must pause within a 100-foot radius of the discovery, and the construction manager must take reasonable measures to protect the discovery from damage by equipment or personnel. This may include placement of plywood or steel plates over the excavation area (if feasible), or placement of exclusionary fencing. Work may continue on other parts of the project while the following procedures are carried out, but construction personnel are strictly prohibited from disclosing the discovery to the public, which includes posting on social media.

Immediately upon taking reasonable measures to protect the discovery, the construction manager must notify the City's representative by phone, regardless of the presence of an archaeological or tribal monitor. The City's representative will immediately coordinate with the monitoring archaeologist (if present) or contact the project archaeologist, or, in the absence of either, contact a qualified professional archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards for archaeologist.

The professional archaeologist must make a determination, based on professional judgement and supported by substantial evidence, within one business day of being notified, as to whether or not the find represents a cultural resource or has the potential to be a tribal cultural resource. The subsequent actions will be determined by the type of discovery, as described below. These include: 1) a work pause that, upon further investigation, is not actually a discovery and the work pause was simply needed in order to allow for closer examination of soil (a "false alarm"); 2) a work pause and subsequent action for discoveries that are clearly not related to tribal resources, such as can and bottle dumps, artifacts of European origin, and remnants of built environment features; and 3) a work pause and subsequent action for discoveries that are likely related to tribal resources, such as midden soil, bedrock mortars, groundstone, or other similar expressions.

Whenever there is question as to whether or not the discovery represents a tribal resource, the City shall consult with culturally affiliated tribes in making the determination. Whenever a tribal monitor is present, he or she shall be consulted.

3.2.2 Response to False Alarms

If the professional archaeologist determines that the find is negative for any cultural indicators, then work may resume immediately upon notice to proceed from the City's representative. No further notifications or tribal consultation is necessary, because the discovery is not a cultural resource of any kind. Should tribal representatives or monitors desire to take possession of non-cultural materials, the tribe may execute a voluntary agreement with the property owner to take possession as long as removal has been approved in writing by the property owner (if not the City). In this case, where the find is determined to not be a cultural resource, then the maximum delay to the project activities is expected to be one business day.

If the find represents a paleontological resource, then the City's representative will notify a professionally qualified paleontologist to address the find separately and notice to resume work at that location cannot occur until authorized by the City's representative, and the time required to do so is not addressed in this

guidance. Tribal representatives may not remove paleontological materials without permission from the City and property owner (if not the City).

If the find is determined to be a cultural resource, then the procedures below apply.

3.2.3 Response to Non-Tribal Discoveries

If a tribal monitor is not present at the time of discovery and the professionally qualified archaeologist determines that the discovery is a cultural resource but is not reasonably associated with Native American culture, then the City shall notify by e-mail any tribes that specifically requested notification of such discoveries, with a description and a photograph of the find. These requests for notification must be provided to the City in writing in advance of a discovery. Notified tribes shall be afforded up to 24 hours (none of which time period may fall on weekends or City holidays) to review the information (which may or may not include a site visit) and determine whether or not the tribe possesses information about the discovery that would differ from the determination made by the professionally qualified archaeologist. If a notified tribe responds within 24 hours to indicate that the find represents a tribal cultural resource, then work may not resume at the location until the City, in consultation with the tribe(s), addresses the find in accordance with CEQA and Section 3.2.4.

If the tribe fails to respond within 24 hours or responds to concur with the archaeologist that the discovery does not constitute a tribal resource, then the archaeologist shall submit to the City, within two business days, a brief plan for evaluating the significance and recommended treatment. The City shall have up to two business days to review and approve the implementation of the plan.

Upon receiving a notice to proceed from the City, the professional archaeologist must complete the evaluation within five business days, unless additional time is granted by the City in light of the nature of the find. The results of the evaluation may be communicated to the City in an email; formal reporting may continue during construction, after the data collection is completed and the City authorizes a notice to resume work at the location.

If the evaluation results in a finding that the discovery is not a historical resource under CEQA, then work may resume at the location of the discovery immediately upon notification of such from the City's representative. The delay to project construction at that location would be expected to be no more than 10 business days.

If the evaluation results in a finding that the discovery is a historical resource under CEQA, then the professional archaeologist shall immediately implement the treatment specified in the work plan. Work may not resume at the location of the discovery until the City issues a notice to proceed. The amount of delay to the discovery location depends on the nature and extent of the discovery; however, the City shall issue a notice to resume work at that location as soon as data collection is completed by the archaeologist. Formal reporting and analysis may continue during construction, after the City authorizes a notice to resume work at the location.

3.2.4 Response to Tribal Discoveries

If the professional archaeologist determines within one business day that the find does represent a cultural resource, and that it is reasonably believed to be associated with Native American culture, or when a notified tribe responds pursuant to the notification process in Section 3.2.3 that the find does, in fact,

represent tribal resources, then the City shall notify by email, within one business day of receiving such information, all culturally affiliated tribes that specifically requested such tribal consultation notification during environmental review and planning. Tribes that did not respond to offers to consult or declined consultation without such request for notification will not be contacted. Each notified tribe will have one business day from the time of notification to request a visit of the discovery location (if so desired). Tribal representatives who wish to visit the location must notify the City's representative in its response to obtain access and safety information and all non-agency and non-contracted personnel are subject to approval by private property owners. However, it should be noted that while a property owner has the legal right to approve non-agency and non-contracted personnel, the City will not authorize work to resume until appropriate personnel have been approved for entry so that the project conditions can be satisfied. Notified tribes that do not respond or visit the location within one business day may submit comments to the City in writing; however, field visits may or may not be accommodated.

Each visiting tribe will have two business days from the time of the site visit to submit written recommendations to the City for appropriate treatment. Recommendations must be accompanied by supporting information that constitutes substantial evidence for any determination of a TCR. Any recommendations for treatment or mitigation are subject to the process illustrated in Figure 1. Only those recommendations that are determined by the City, as lead agency and engaging in good faith consultation, to be both appropriate and allowable under CEQA would be subject to payment for tribal representatives or monitors.

The City shall have three business days from the close of the two-day comment period to review the information submitted and determine: 1) whether or not the find is subject to state law; 2) whether or not the find represents either a TCR or a historical resource; 3) whether or not the find has been significantly impacted; and if so, then 4) the appropriate treatment. In the absence of substantial evidence or in the case of conflicting tribal comments, the City may elect to exercise one or more of the options specified in Section 21084.3(b), if feasible. Any recommendations submitted by tribes that are not implemented by the City shall be documented in the administrative record with an explanation as to why the recommendations were rejected. If the City determines that the find is either a TCR or a historical resource, then work cannot resume at that location until the resource is treated to the satisfaction of the City, acting as the Lead Agency.

If the City determines that the find is neither a TCR nor a historical resource, then no additional treatment is necessary under state law, and the City's representative shall issue a notice to proceed with activity at that location. In this case, the maximum delay to project activities is expected to be eight business days.

The amount of delay to the discovery location depends on the nature and extent of the discovery; however, the City shall issue a notice to resume work at that location as soon as possible. If other areas outside of the 100-foot radius of the discovery are available to continue with work, notice to resume work may be given for these locations. Formal reporting or other types of mitigation (such as public interpretation) may continue during construction, after the City authorizes a notice to resume work at the location.

3.2.5 Response to Human Remains Subject to State Law

If it is determined that human remains are found, or remains that are potentially human, then the treatment shall conform to the requirements of state law under California Health and Safety Code Section 7050.5

and Public Resources Code (PRC) Section 5097.98. For the purposes of this project, the definition of remains subject to state law (Section 5097.98) shall apply. This definition states: "(d)(1) Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness. (2) Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains. "The City understands that Native American tribes ascribe importance to objects and surrounding soil matrix associated with human remains that is broader than what is defined in state law. The City will consider requests from tribes to treat additional objects and matrix in the same manner as human remains and will exercise its discretion in doing so on a case-by-case basis.

If the find includes human remains, or remains that are potentially human (as defined in state law), then the individual making the discovery shall ensure reasonable protection measures are taken to protect the discovery from disturbance (AB 2641, Native American human remains and multiple human remains). The archaeologist shall notify the Lake County Coroner (per Section 7050.5 of the Health and Safety Code). The provisions of Section 7050.5 of the California Health and Safety Code, Section 5097.98 of the California Public Resources Code, and AB 2641 will be implemented. If the Coroner determines the remains are Native American and not the result of a crime scene, then the Coroner will notify the NAHC, which then will designate a Native American MLD for the project (Section 5097.98 of the Public Resources Code). The designated MLD will have 48 hours from the time access to the property is granted to make recommendations concerning treatment of the remains. Further, pursuant to California Public Resources Code Section 5097.98(b), remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. If the landowner does not agree with the recommendations of the MLD, then the NAHC can mediate (Section 5097.94 of the Public Resources Code). If no agreement is reached, the landowner must rebury the remains where they will not be further disturbed (Section 5097.98 of the Public Resources Code). This will also include either recording the site with the NAHC or the appropriate Information Center, using an open space zoning designation or deed restriction as appropriate, and/or recording a reinterment document with Lake County (AB 2641).

3.3 Policy of Payment for Unanticipated Discovery Response

Under state law (Public Resources Code section 5097.98(a)), where human remains are encountered and the NAHC identifies a MLD, the MLD "may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site." The landowner must next discuss and confer with the MLD "all reasonable options regarding the descendants' preferences for treatment."

The Public Resources Code (PRC section 5097.98(e)) further provides: "Whenever the commission is unable to identify a descendant, or the descendants identified fail to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance."

The Public Resources Code requires that under limited circumstances (e.g., when the MLD fails to make a recommendation, or the landowner rejects the recommendation) the landowner must reinter remains and associated items. It is therefore the City's policy to cover the reasonable cost of that reinterment when the find occurs on City property. In the event that reinterment applies to projects on non-City (private) property, then the landowner may negotiate the cost separately with the MLD.

In the event of the disturbance of human remains on City-owned property, the City shall be responsible for the reasonable reinterment of remains in a manner that is considered equivalent to the physical condition that the remains were in at the time of discovery, with the intent of restoring the remains to that form. That is, the City is responsible for mitigating direct, physical construction impacts caused by a City project to human remains, consistent with the nexus provisions of CEQA. Any proposal for reburial on City property must first be reviewed and approved by the City to confirm the location does not conflict with current or reasonably foreseeable City improvements, utilities, maintenance, or other City operations.

For the purposes of this section, "remains" is inclusive of associated grave goods, plus any additional objects and matrix the City has agreed to treat in the same manner are human remains. The City will not compensate or reimburse for the processing of remains or reburial using methods that cannot be reasonably ascertained from the discovery. The City is responsible for the reasonable and necessary costs of the disinterment and reinterment process, but not for any cleaning, blessing, data recovery, or other "processing" of the remains, or for any interim storage where the purpose is to provide space for such "processing." As an example, if the remains were encountered as a cremation, the City will not pay for the cost of reinterring the cremains in wooden boxes or with other materials, as doing so would not be returning them to their original form at the time of discovery. However, the City will make reasonable accommodations of time for the MLD to prepare the cremains in any other manner that is beyond that which the City can compensate. Examples are given below; they are intended for illustrative purposes only and may not represent all potential scenarios encountered. These examples would also provide guidance to the discovery of non-Native American human remains that are not the result of a crime scene. These examples are written based on the assumption that the remains are left in place until the new burial site is prepared, and therefore interim storage is not needed. However, there may be circumstances in which the City determines that interim storage would be needed, such as if the remains need to be removed from the construction site before the new burial site is ready.

3.3.1 Scenario 1

In the event of the discovery of cremated or fragmented remains in a discrete concentration, the City will be financially responsible for securing a location free from future disturbance; retaining a tribal representative to oversee or carry out the placement of remains into the reinterment location; transport of the remains to the reinterment site; providing a backhoe and operator to excavate a reinterment location roughly proportional to the dimensions of the concentrations and backfilling after reinterment; and filing of a deed restriction on the location to ensure no future disturbance, as necessary. The City will not be financially responsible for religious ceremony, ritual, or blessing; wrapping, padding, or similar preparation; wooden boxes or vessels; or space for interim storage or processing; however, the City will not willfully interfere with religious expression by Native American tribes, should they wish to provide additional treatment of materials prior to reburial.

3.3.2 Scenario 2

In the event of the discovery of cremated or fragmented remains in a dispersed context that are not in a discrete concentration or intact burial, the City will be financially responsible for securing a location free from future disturbance; retaining a tribal representative to oversee or carry out the placement of remains into the reinterment location; transport of the remains to the reinterment site; providing a backhoe and operator to excavate a reinterment location roughly proportional to the volume of material recovered, and backfilling after reinterment; and filing of a deed restriction on the location to ensure no future disturbance, as necessary. The City will not be financially responsible for religious ceremony, ritual, or blessing; wrapping, padding, or similar preparation; wooden boxes or vessels; or space for interim storage or processing; however, the City will not willfully interfere with religious expression by Native American tribes, should they wish to provide additional treatment of materials prior to reburial.

3.3.3 Scenario 3

In the event of the discovery of an intact burial (articulated skeleton), the City will be financially responsible for securing a location free from future disturbance; retaining a tribal representative from the MLD to oversee or carry out the placement of remains into the reinterment location in a similar configuration as original burial; transport of the remains to the reinterment site; providing a backhoe and operator to excavate a reinterment location roughly proportional to the dimensions of the burial(s), and backfilling after reinterment; and filing of a deed restriction on the location to ensure no future disturbance, as necessary. The City will not be financially responsible for religious ceremony, ritual, or blessing; wrapping, padding, or similar preparation; wooden boxes or vessels; or space for interim storage or processing; however, the City will not willfully interfere with religious expression by Native American tribes, should they wish to provide additional treatment of materials prior to reburial.

3.3.4 Scenario 4

In the event of the discovery of an intact grave with remnants of, or an intact, coffin or container, the City will be financially responsive for securing a location free from future disturbance; if the coffin or container was damaged during the unanticipated discovery, materials and labor to create or provide a replacement coffin or container that is roughly in-kind if requested by the MLD[1]; retaining a tribal representative to oversee or carry out the placement of remains into the coffin or container and into the reinterment location; transport of the remains to the reinterment site; providing a backhoe and operator to excavate a reinterment location roughly proportional to the dimensions of the grave, and backfilling after reinterment; and filing of a deed restriction on the location to ensure no future disturbance, as necessary. The City will not be financially responsible for religious ceremony, ritual, or blessing; wrapping, padding, or similar preparation; or space for interim storage or processing; however, the City will not willfully interfere with religious expression by Native American tribes, should they wish to provide additional treatment of materials prior to reburial.

[1] The original coffin or container may be of religious or other significance to the MLD, and therefore replacement should be offered, but should be a decision of the MLD.

4.0 REFERENCES

Placeworks. 2012. A Practical Guide to the California Environmental Quality Act.

CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT:	Authorization of a Joint Use Agreement with Konocti Unified School District (KUSD) for the Use of the Clearlake Youth Center for Youth- and Recreation-Oriented Activities	**MEETING DATE:**
SUBMITTED BY:	Melissa Swanson, Administrative Services Director/City Clerk	
PURPOSE OF REPORT:	☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to approve a Joint Use Agreement with Konocti Unified School District (KUSD) for the use of the Clearlake Youth Center located at 4750 Golf Avenue, Clearlake for youth- and recreation-oriented activities, and authorize the City Manager to negotiate the final agreement with KUSD.

BACKGROUND/DISCUSSION:

In June, your Council approved the formation of the Recreation and Events Division of the Administrative Services Department with the intent to increase public engagement and activities through the creation of recreation programs and community events. Since formation, staff has spent many hours meeting with community groups and potential collaborators to develop the best and most effective means to serve the community.

To that end, staff has formed a valuable partnership with KUSD to jointly bring youth and recreation programs to the Youth Center. KUSD has agreed to assist with funding and completing much-needed repairs and remodeling in return for cooperative use of the Youth Center for planned after-school activities, youth camps, and City and District employee daycare. Additionally, the City would retain the flexibility to allow use by many other youth activity groups such as the South Shore Little League, scout troops, and Children's Museum of Art and Science.

If your Council approves this agreement, it will be presented to the KUSD Board for approval. Staff is recommending your Council authorize the City Manager to make minor legal and technical changes to the agreement as negotiated by the City (as approved by the City Attorney) and KUSD. Any substantive changes to the agreement which alter the intent would be brought back for consideration of the Council.

OPTIONS:

1. Move to approve a Joint Use Agreement with Konocti Unified School District (KUSD) for the use of the Clearlake Youth Center located at 4750 Golf Avenue, Clearlake for youth- and recreation-oriented activities, and authorize the City Manager to negotiate the final agreement with KUSD
2. Other direction

FISCAL IMPACT:

☒ None ☐ $ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☐ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments**:**

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☒ Goal #4: Improve the Image of Clearlake

☒ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☒ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to approve a Joint Use Agreement with Konocti Unified School District (KUSD) for the use of the Clearlake Youth Center located at 4750 Golf Avenue, Clearlake for youth- and recreation-oriented activities, and authorize the City Manager to negotiate the final agreement with KUSD.

☒ **Attachments:** 1) Joint Use Agreement

AGREEMENT BETWEEN CITY OF CLEARLAKE AND KONOCTI UNIFIED SCHOOL DISTRICT FOR JOINT USE OF CITY PROPERTY FOR COMMUNITY RECREATIONAL/SCHOOL USES

THIS AGREEMENT, made and entered into this _____day of _____, 2022, by and between City of Clearlake, a California municipal corporation (hereinafter referred to as "CITY") and Konocti Unified School District, a public school district organized and operating pursuant to the California Education Code (hereinafter referred to as "DISTRICT").

RECITALS

A. CITY and DISTRICT are authorized by Part 7, Chapter 10 of the Education Code, commencing with Section 10900 to cooperate and enter into Joint Use Agreements to organize, promote and conduct programs of community recreation, establish systems of playgrounds and recreation; and acquire, construct, improve, maintain and operate recreation centers.

B. CITY has property known as the Clearlake Youth Center currently used as a city recreational facility and available for joint use to enhance use of the facility and maximum taxpayer dollars.

C. The parties have determined that it is in the public interest to provide for the joint use of the facility by the general public for recreational purposes and school students and staff to provide for additional school facilities, childcare programs and community program enhancement.

AGREEMENT

It is hereby agreed by and between the parties hereto as follows:

1. USE OF CLEARLAKE YOUTH CENTER: City agrees to provide that facility and property thereof commonly known as Clearlake Youth Center to DISTRICT for use as additional school facilities, childcare programs and such other related school/community recreational uses as may be determined.

2. DEVELOPMENT OF PLANS AND CONSTRUCTION STANDARDS: District will jointly develop the necessary plans and specifications for improvements to the property meeting city construction standards and any other applicable legal requirements.

3. SPECIFIC PUBLIC RECREATIONAL USE: The parties agree that said recreational facilities shall continue to be available for use by the City under the following terms and conditions:

   a. City and District shall work cooperatively to develop a schedule of regular and/or special school use for the facilities, under which the school may have the non-exclusive right to use the facilities during the regular school term and during

summer school and/or special sessions when the facilities are needed for school-related purposes.

b. City may authorize use of facilities by City-approved eventholders for community events when not in use by District.

4. MAINTENANCE: DISTRICT and CITY shall develop a work plan to provide necessary maintenance and repair to facility during the term of this Agreement. As of the date of this Agreement, said repairs include but are not limited to:
   a. Rear exterior wall siding
   b. Exterior fencing of entire perimeter
   c. Construction of wall inside north auxiliary room
   d. Removal of mirrors from north auxiliary room
   e. Replacing of ceiling tiles
   f. Demolition of pony wall in main room
   g. Construction of exterior walkway to north auxiliary room
   h. Demolition/removal of exterior planter boxes
   i. Replacement of north auxiliary room exterior door with panic hardware door

5. OWNERSHIP OF FACILITIES: Ownership of Clearlake Youth Center shall remain with CITY.

6. ENVIRONMENTAL REVIEW: Prior to either party constructing its respective projects (i.e. basketball court area and parking lot) each shall determine whether there is any environmental review required and if so, each of its own accord shall prepare appropriate environmental review of the project acting as lead agency and the other as responsible agency. Each party shall provide the environmental analysis to the other for review.

9. TERM: This agreement shall remain in full and effect until such time as either CITY OR DISTRICT provides notice to the other party of intent to terminate as set forth below.

10. TERMINATION OR MODIFICATION: This Agreement is revocable only by mutual consent or on written notice given by one party to the other party at a minimum of one year prior to the proposed termination date. Parties agree to review AGREEMENT every ten years from date first stated above to discuss any proposed modifications. Any modifications to AGREEMENT shall be in writing signed by both parties and shall not become effective until both party's governing body have reviewed and approved them as an addendum to this AGREEMENT.

11. NOTICES: All notices, demands, requests, approvals, authorizations or designations by either DISTRICT or CITY to the other shall be in writing and shall be given and served upon the other party, or may be deposited in the United States Mail, postage prepaid, addressed as follows:

City of Clearlake	Konocti Unified School District
City Manager	Superintendent

14050 Olympic Drive
Clearlake, CA 95422

P.O. Box 5000, 9430 Lake Street
Lower Lake, CA 95457

12. MUTUAL CROSS-INSURANCE: CITY and DISTRICT shall provide liability insurance coverage for the recreational facilities in the same amount and type of coverage as each provides for its other facilities. Each insurance policy shall name the other party as additional insured as respects to the facilities which are the subject of this Agreement. Either party may fulfill its obligation under this paragraph by participation in a joint powers authority which provides primary self-insurance for the public entities which are members of the authority.

13. MUTUAL CROSS-INDEMNITY: CITY agrees to save harmless and to indemnify DISTRICT from every claim or demand of any kind or nature whatsoever which may be made by any person resulting from the action or inaction of CITY, its officers, agents or employees; and DISTRICT agrees to save harmless and to indemnify CITY from every claim or demand of any kind or nature whatsoever which may be made by any person resulting from the action or inaction of DISTRIT or its officers, agents or employees.

14. BINDING ON SUCCESSORS: This Agreement shall inure to the benefit of and bind the parties hereto, and their successors or assigns, including any and all public agencies to which the real property and facilities herein referred to may be transferred by reason of incorporation, disincorporation, annexation, consolidation or for any other reason

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on behalf of the persons duly authorized by the governing body of the parties hereto on the date first hereinabove written.

CITY OF CLEARLAKE

By:_____

Title:_____

Attest:

_____

Approved as to form:

_____
City Attorney

KONOCTI UNIFIED SCHOOL DISTRICT

By:_____

Title:_____

Attest:

_____

Approved as to form:

_____
District Legal Counsel

CITY OF CLEARLAKE

City Council

STAFF REPORT	
SUBJECT: Consideration of Waiving the Live Scan Rolling Fee for Volunteers of Youth Services Organizations; Adopt Resolution # 2022-60	**MEETING DATE:** October 20, 2022
SUBMITTED BY: Andrew White, Police Chief	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to authorize the police department to waive the live scan rolling fee for volunteers of youth services organizations.

BACKGROUND/DISCUSSION:

Assembly Bill 506, signed into law in September 2021, requires regular volunteers of youth services organizations to complete a live scan background check. The purpose of the legislation is to identify and exclude persons with a history of child abuse.

The Police Department performs live scan service for the public for a fee of $10. This fee covers the cost of rolling the prints and maintaining the equipment. The fee is addition to any fee charged by DOJ for the processing of the fingerprints.

The South Shore Little League approached the Police Department and requested assistance in performing live scan service for their volunteers. The rolling fee would impose a financial burden on their organization.

Youth programs are a cornerstone of a healthy community and deter young persons from being involved in criminal activity. Volunteers fill critical roles in making these programs viable.

Staff is requesting the City Council authorize the waiving of the live scan rolling fee for volunteers of youth services organizations. The department may restrict appointment slots to ensure staff are not overwhelmed and to ensure access for other live scan transactions.

OPTIONS:

1. Authorize the waiving of the live scan rolling fee as specified.
2. Do no authorize the waiving of the live scan rolling fee as specified.
3. Provide direction to staff.

FISCAL IMPACT:

☐ None ☒ Est <$2,000 annually Budgeted Item? ☐ Yes ☒ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☒ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments**:**

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☒ Goal #2: Make Clearlake a Statistically Safer City

☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☐ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

1. Adopt Resolution 2022-60: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE AMENDING THE MASTER FEE SCHEDULE TO WAIVE THE LIVE SCAN ROLLING FEE FOR VOLUNTEERS OF YOUTH SERVICES ORGANIZATIONS

☒ **Attachments:** 1) Resolution No. 2022-60

RESOLUTION NO. 2022-60

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE AMENDING THE MASTER FEE SCHEDULE TO WAIVE THE LIVE SCAN ROLLING FEE FOR VOLUNTEERS OF YOUTH SERVICES ORGANIZATIONS

WHEREAS, Assembly Bill 506, signed into law in September 2021, requires regular volunteers of youth services organizations to complete a live scan background check. The purpose of the legislation is to identify and exclude persons with a history of child abuse; and

WHEREAS, youth programs are a cornerstone of a healthy community and deter young persons from being involved in criminal activity and volunteers fill critical roles in making these programs viable.

NOW, THEREFORE BE IT RESOLVED that the City's Master Fee Schedule is hereby revised to reflect a $0 live scan rolling fee for volunteers of youth services organizations operating in Lake County; and

BE IT FURTHER RESOLVED, that the Chief of Police may restrict the availability of appointments for no fee live scan rolling of volunteers.

PASSED AND ADOPTED by the City Council of the City of Clearlake, County of Lake, State of California, on this 20th day of October 2022, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:_____ _____
City Clerk Mayor