



**BENICIA CITY COUNCIL
REGULAR MEETING AGENDA**

**City Council Chambers
June 04, 2013
6:00 PM**

*Times set forth for the agenda items are estimates.
Items may be heard before or after the times designated.*

*Please Note:
Regardless of whether there is a Closed Session scheduled, the open session will begin
at 7:00 PM*

I. CALL TO ORDER (6:00 PM):

II. CLOSED SESSION:

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

**Property: 4850 Park Road, 3300 Park Road and 3190 Bayshore Road
Negotiating Parties: City Attorney, City Manager and Economic
Development Manager**

**Under Negotiation: Instruction to negotiator on both payment and lease
terms.**

B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Subdivision (b) of Government Code Section 54957)

Title: City Attorney

III. CONVENE OPEN SESSION (7:00 PM):

A. ROLL CALL.

B. PLEDGE OF ALLEGIANCE.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC.

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

IV. ANNOUNCEMENTS/PROCLAMATIONS/APPOINTMENTS/PRESENTATIONS:

A. ANNOUNCEMENTS.

1. Announcement of action taken at Closed Session, if any.

2. Openings on Boards and Commissions:

Arts and Culture Commission
1 unexpired term
2 full terms
Application due date: Open until filled

Benicia Housing Authority Board of Commissioners
1 full term
Application due date: June 14, 2013

Human Services Board
2 full terms
Application due date: June 14, 2013

Open Government Commission
1 full term
Application due date: June 14, 2013

Historic Preservation Review Commission
2 full terms
1 unexpired term
Application due date: June 14, 2013

Library Board of Trustees
2 full terms
Application due date: June 14, 2013

Parks, Recreation and Cemetery Commission
2 full terms
Application due date: June 14, 2013

Economic Development Board
1 unexpired term
Application due date: June 14, 2013

3. Mayor's Office Hours:
Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

4. Benicia Arsenal Update
Verbal update from City Attorney

B. PROCLAMATIONS.

C. APPOINTMENTS.

D. PRESENTATIONS.

1. BENICIA HISTORICAL MUSEUM ANNUAL REPORT

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT.

B. PUBLIC COMMENT.

VII. CONSENT CALENDAR (7:30 PM):

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

A. APPROVAL OF THE MINUTES OF THE MAY 21, 2013 CITY COUNCIL MEETING. (City Clerk).

B. SECOND READING AND ADOPTION OF AN ORDINANCE TO INCORPORATE REGULATIONS PERTAINING TO COTTAGE FOOD OPERATIONS. (Community Development Director)

Effective January 1, 2013, Assembly Bill No. 1616 states that local jurisdictions shall not prohibit cottage food operations (CFO) in residential dwellings. As a result, a Zoning Ordinance text amendment is proposed to establish regulations pertaining to CFO within the City of Benicia. The proposed amendment to Title 17 would establish an administrative permitting process for cottage food operations to be conducted within a portion of existing dwelling units as an accessory use to the residence involving negligible or no expansion of the dwellings.

Recommendation: Adopt an ordinance amending Benicia Municipal Code Title 17 (Zoning) to incorporate regulations pertaining to cottage food operations.

C. ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR SOUTHAMPTON UNIT D-7. (Public Works Director)

The public improvements for the Southampton Unit D-7 subdivision were completed two years ago to the satisfaction of the City Engineer except for the copper water services, which were discovered to be corroding. The Developer is now replacing the services under a separate settlement agreement with the City, which includes a one year warranty on this work and stipulates that the developer's subdivision performance bond and one year warranty bond be released. Formal acceptance of D-7 by the City is now needed to release these bonds.

Recommendation: Adopt a resolution accepting the public improvements for the Southampton Unit D-7 subdivision.

D. ENERGY COMMISSION GRANT: ELECTRIC VEHICLE FAST CHARGER AND BATTERY BACKUP. (Community Development Director)

CEC awarded ABAG \$1.5 million to install electric vehicle charging stations in the Bay Area, of which \$79,200 has been awarded to the City. PG&E is providing an additional \$40,000 to support the project. Coda, Energy Vault LLC, GELI, Bass Electric and the non-profit Electric Vehicle Communities Alliance (EVCA) are providing services to design and install the equipment, which will include a Coda battery that will store power from the solar panels to backup the City Hall diesel generator in the event of an emergency and help increase the energy and cost savings from solar power production.

Recommendation: Adopt a resolution authorizing the City Manager to (1) sign a grant agreement with the Association of Bay Area Governments (ABAG) as administrator for a California Energy Commission (CEC) grant, (2) accept an incentive payment from PG&E and (3) sign a contract with Growing Energy Labs, Inc. (GELI) to serve as project lead contractor, for installation of an electric vehicle fast charger and battery backup for City Hall.

E. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

VIII. BUSINESS ITEMS (8:00 PM):

A. APPROVAL OF LEASE AGREEMENT WITH CBS OUTDOOR FOR MODIFICATION AND OPERATION OF DIGITAL BILLBOARD AT 4850 PARK ROAD. (Economic Development Manager)

CBS Outdoor proposes to lease the land of the former “Nationwide” I-680 freeway-oriented electronic billboard sign that is located on City property adjacent to Park Road and Interstate-680. CBS Outdoor intends to remove the existing sign, replace it with an enhanced electronic readerboard digital LED screen.

Recommendation: Adopt proposed Resolution approving proposed lease agreement with CBS Outdoor to modify an existing billboard sign at 4850 Park Road.

IX. ADJOURNMENT (9:00 PM):

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access or Special Needs

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
May 21, 2013

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the Closed Session to order at 6:00 p.m.

All Council Members were present.

II. CLOSED SESSION:

- A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Property: 4850 Park Road, 3300 Park Road & 3190 Bayshore Road
Negotiating Parties: City Attorney, City Manager & Economic Development Manager
Under Negotiation: Instruction to negotiator on both payment and lease terms

III. CONVENE OPEN SESSION:

Mayor Patterson called the Open Session to order at 7:00 p.m.

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Christine Mead led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC

IV. ANNOUNCEMENTS/PROCLAMATIONS/ APPOINTMENTS/PRESENTATIONS:

A. ANNOUNCEMENTS

- 1. Announcement of action taken at Closed Session, if any.**

Heather McLaughlin, City Attorney, reported that Council received information from Staff on the price and terms of payment, and gave direction to Staff.

2. Openings on Boards and Commissions:

Arts and Culture Commission

1 unexpired term

2 full terms

Open Until Filled

Benicia Housing Authority Board of Commissioners

1 full term

Application due date: June 14, 2013

Human Services Board

2 full terms

Application due date: June 14, 2013

Open Government Commission

1 full term

Application due date: June 14, 2013

Historic Preservation Review Commission

2 full terms

1 unexpired term

Application due date: June 14, 2013

Library Board of Trustees

2 full terms

Application due date: June 14, 2013

Parks, Recreation and Cemetery Commission

2 full terms

Application due date: June 14, 2013

3. Mayor's Office Hours:

4. Benicia Arsenal Update

Verbal update from City Attorney

Heather McLaughlin, City Attorney stated there was nothing new to report since the last Council meeting.

B. PROCLAMATIONS

1. In Recognition of National Public Works Week - May 19-25, 2013

C. APPOINTMENTS

D. PRESENTATIONS

1. National Public Works Week
2. Benicia Historical Museum Annual Report

Item cancelled due to illness.

V. ADOPTION OF AGENDA:

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council adopted the Agenda, as presented, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge
Noes: (None)

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

One item received (copy on file).

B. PUBLIC COMMENT

None

VII. CONSENT CALENDAR (7:30 PM):

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council adopted the Consent Calendar, as presented, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge
Noes: (None)

A. APPROVAL OF THE MINUTES OF THE MAY 7, 2013 CITY COUNCIL MEETING

B. AWARD OF CONTRACTS FOR THE WATER TREATMENT PLANT SECURITY SURVEILLANCE PROJECT

RESOLUTION 13-29 - A RESOLUTION ACCEPTING THE BIDS FOR THE WATER TREATMENT PLANT SECURITY SURVEILLANCE IMPROVEMENT

PROJECT AND AWARDING THE CONSTRUCTION CONTRACT TO WEST CORPORATION IN THE AMOUNT OF \$238,402; APPROVING A CONSTRUCTION MANAGEMENT CONTRACT WITH CALIFORNIA TECHNICAL CONCEPTS IN THE AMOUNT OF \$27, 590; APPROVING AN ENGINEERING SUPPORT SERVICES CONTRACT WITH STANTEC CONSULTING SERVICES IN THE AMOUNT OF \$11,635; AUTHORIZING THE PURCHASE OF THE CONTROL ROOM CONSOLE FROM WINSTED CONTROL ROOM CONSOLES IN THE AMOUNT OF \$46,726; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS ON BEHALF OF THE CITY

C. 2013 ASPHALT OVERLAY PROJECT -- CONTRACT AWARD

RESOLUTION 13-30 - A RESOLUTION ACCEPTING BIDS FOR THE 2013 ASPHALT OVERLAY PROJECT INCLUDING TRAFFIC STRIPING FOR THE ROSE DRIVE TRAFFIC CALMING PROJECT, APPROVING A GAS TAX FUND BUDGET AMENDMENT TO FULLY FUND THE CONSTRUCTION CONTRACT, AWARDING THE CONSTRUCTION CONTRACT TO ARGONAUT CONSTRUCTORS IN THE AMOUNT OF \$764,341.50, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

D. REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORTS FOR THE QUARTERS ENDED DECEMBER 31, 2012 AND MARCH 31, 2013

E. APPROVAL OF CITY OF BENICIA INVESTMENT POLICY

RESOLUTION 13-31 - A RESOLUTION APPROVING THE CITY OF BENICIA INVESTMENT POLICY

F. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

VIII. BUSINESS ITEMS (8:00 PM):

A. ACCEPTANCE OF DOWNTOWN INTERMODAL FACILITIES PROJECT

RESOLUTION 13-32 - A RESOLUTION ACCEPTING THE DOWNTOWN INTERMODAL FACILITIES PROJECT AS COMPLETE INCLUDING CONTRACT CHANGE ORDER NOS. 1-30, APPROVING CONTRACT CHANGE ORDERS NOS. 19-30 FOR \$63,118, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE THE SAME WITH THE SOLANO COUNTY RECORDER

Mayor Patterson recused herself from the discussion on this item, as she had a

conflict of interest (she owns property near the project site). Vice Mayor Campbell would chair this portion of the meeting.

Mike Roberts, Engineer, reviewed the staff report.

Council Member Hughes and Staff discussed some previously stated concerns by the public regarding safety issues (such as tight turns on 1st and Military). The curbs were painted yellow, flashing buttons were placed on curb, and the lanes were marked more clearly.

Public Comment:

None

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council adopted Resolution 13-32, on roll call by the following vote:

Ayes: Schwartzman, Campbell, Hughes, Strawbridge

Noes: (None)

B. COUNCIL MEMBER STRAWBRIDGE REQUEST TO AGENDIZE AN ITEM REGARDING THE TERMINATED BENICIA BUSINESS PARK PROJECT

Council Member Strawbridge reviewed her request to agendize this item. There had been recent interest expressed by the developer, and the economic situation is better than it was when the project was put on hold.

Vice Mayor Campbell discussed his lack of support for residential development on the Seeno property, as it would adversely affect the Benicia Industrial Park.

Council Member Hughes clarified that Council Member Strawbridge was not advocating any certain development, but wanted to revisit and receive an update on the project/situation. Council Member Hughes was in support of revisiting this item on a future agenda.

Council Member Schwartzman discussed support for agendizing this item.

Public Comment:

1. Elyse Reynolds - Ms. Reynolds spoke in support of Council placing this item on a future agenda.

Mayor Patterson discussed the need for a structured and informed discussion on the issue. Council does not currently have the information necessary for an

informed discussion. She and Staff discussed how the discussion would be set up. Staff would like this issue to move slowly, with the first meeting setting up the stage and having Council make Staff aware of Council's expectations. Staff felt it should fall under the two-step process.

Council Member Schwartzman and Staff discussed the need for updates on subdivision laws, what steps would be required if Council were to entertain an application, etc. It could be a one or two-step process.

Mayor Patterson clarified that the previously adopted resolution needed to be the basis for the discussion. There are new requirements by the State. Council needs to find out if there is still support for the resolution. If there is not, the public needs to know that.

Council Member Strawbridge discussed the City's adopted Business Action Plan. She would like Council to consider where the City is at with the business climate.

Mr. Kilger clarified that he would bring back information on the issue and present a structure format to Council. He recommended this item follow the two-step process.

Mayor Patterson recommended starting with the previously adopted resolution, to see how much support there was from the Council.

Council Member Schwartzman agreed the resolution should be reviewed. Council needs to be reminded about the past, what the current situation is, hear the updates on laws, and if there are to be changes, hear what the process would be like.

Council Member Hughes preferred Staff bring everyone up to speed from where the project was left off three years ago, and provide direction to Council on what the developer would need to do to formally introduce a project to the City. If Council is not interested in residential in the proposed area, the developer should know firsthand, before they and City staff waste time and money.

Mr. Kilger discussed his preference to have the first meeting reviewing previous history to update Council.

Vice Mayor Campbell discussed the letter recently submitted by Seeno stating their desire to build a residential development on the property.

Mayor Patterson discussed that General Plan, which stipulates land use. She could not support the request to re-agendize this item, as it would be sending the wrong signal to the developer.

On motion of Council Member Hughes, seconded by Council Member

Strawbridge, Council approved placing this item on a future agenda for discussion, on roll call by the following vote:

Ayes: Schwartzman, Hughes, Strawbridge

Noes: Campbell, Patterson

C. Council Member Committee Reports:

(Council Members serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by the Council Members are made only by exception.)

- 1. Mayor's Committee Meeting.(Mayor Patterson) Next Meeting Date: June 19, 2013**
- 2. Association of Bay Area Governments (ABAG)<http://www.abag.ca.gov/>. (Mayor Patterson and Council Member Strawbridge)Next Meeting Date: TBD**
- 3. Finance Committee. (Vice Mayor Campbell and Council Member Strawbridge)Next Meeting Date: May 24, 2013**
- 4. League of California Cities. (Mayor Patterson and Vice Mayor Campbell) Next Meeting Date: July 31, 2013**
- 5. School Liaison Committee. (Council Members Strawbridge and Council Member Hughes) Next Meeting Date: June 13, 2013**
- 6. Sky Valley Open Space Committee. (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: August 7, 2013**
- 7. Solano EDC Board of Directors. (Mayor Patterson and Council Member Strawbridge) Next Meeting Date: July 11, 2013**
- 8. Solano Transportation Authority (STA). <http://www.sta.ca.gov/> (Mayor Patterson and Council Member Schwartzman) Next Meeting Date: June 12, 2013**
- 9. Solano Water Authority-Solano County Water Agency and Delta Committee. <http://www.scwa2.com/>(Mayor Patterson) Next Meeting Date: June 13, 2013**
- 10. Traffic, Pedestrian and Bicycle Safety Committee. (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: July 18, 2013**

11. **Tri-City and County Cooperative Planning Group. (Council Member Hughes) Next Meeting Date: June 10, 2013**
12. **Valero Community Advisory Panel (CAP). (Mayor Patterson and Council Member Hughes) Next Meeting Date: TBD**
13. **Youth Action Coalition. (Mayor Patterson, Council Member Strawbridge and Council Member Hughes) Next Meeting Date: May 22, 2013**
14. **ABAG-CAL FED Task Force-Bay Area Water Forum. <http://www.baywaterforum.org/> (Mayor Patterson)Next Meeting Date: TBD**
15. **SOLTRANS Joint Powers Authority (Mayor Patterson, Council Member Hughes and Council Member Schwartzman) Next Meeting Date: June 27, 2013**

IX. ADJOURNMENT:

Mayor Patterson adjourned the meeting at 7:48 p.m.

AGENDA ITEM
CITY COUNCIL MEETING DATE - JUNE 4, 2013
CONSENT CALENDAR

DATE : May 8, 2013

TO : City Council

FROM : Community Development Director

SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE TO INCORPORATE REGULATIONS PERTAINING TO COTTAGE FOOD OPERATIONS**

RECOMMENDATION:

Adopt an ordinance amending Benicia Municipal Code Title 17 (Zoning) to incorporate regulations pertaining to cottage food operations.

EXECUTIVE SUMMARY:

Effective January 1, 2013, Assembly Bill No. 1616 states that local jurisdictions shall not prohibit cottage food operations (CFO) in residential dwellings. As a result, a Zoning Ordinance text amendment is proposed to establish regulations pertaining to CFO within the City of Benicia. The proposed amendment to Title 17 would establish an administrative permitting process for cottage food operations to be conducted within a portion of existing dwelling units as an accessory use to the residence involving negligible or no expansion of the dwellings.

BUDGET INFORMATION:

The establishment of a cottage food operation within the City of Benicia would require an administrative permit from the Community Development Department and a business license from the Finance Department. The cost of Community Development Department staff time associated with this permit is anticipated to be the same as with a Home Occupation Permit. Home Occupation Permits are subject to a review fee of \$50 to cover staff time for permit review and administrative processing. Accordingly, the proposed Community Development Department fee is \$50.

Class B business license for a retail establishment issued by the Finance Department would be required. For this class, the business license fee is a minimum of \$65 annually with minimal increases annually per the Consumer Price Index.

GENERAL PLAN:

Relevant General Plan Goals:

- GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies and Actions:

- Strategic Issue 3: Strengthening: Economic and Fiscal Conditions Retain
 - Strategy 3: Retain and attract business
 - Action 3 (b): Continue and expand business support tools and policies that balance sustainability with economic vitality

ENVIRONMENTAL REVIEW:

The proposed ordinance would not have a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 - Existing Facilities and by the General Rule, Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to AB1616, the establishment of a cottage food operation is not considered to be a change in occupancy of a dwelling unit.

BACKGROUND:

The ordinance was introduced at the May 7, 2013 City Council meeting.

Effective January 1, 2013, under Assembly Bill No. 1616 a city or county shall not prohibit the establishment of cottage food operations (CFO) within any residential dwelling. A CFO is an enterprise within a private residential dwelling, operated by the occupant of the home, where specified low-risk food products are prepared and/or packaged for sale to consumers.

The law, which modifies Part 7 of Division 104 of the California Health & Safety Code, related to food safety, requires the California Department of Public Health (DPH) to implement and impose certain responsibilities on local planning and environmental health agencies. DPH maintains a list of low-risk foods such as baked goods, candy, dried fruit, honey, nuts, popcorn, coffee, etc. that are considered to be non-hazardous and appropriate for a CFO. The current list is a starting point and DPH will establish a process by which foods can be added to the list or removed.

The Solano County Department of Resource Management, Environmental Health Division is responsible for permitting and inspection of CFO's countywide. Establishment of a CFO requires either registration with the Health Division or a

permit depending on whether the CFO is a Class A or Class B. Class A CFO's are only allowed to engage in direct sales (CFO to consumer) and therefore only a self-certification checklist is required; Class B CFO's may engage in both direct and indirect sales (CFO to a third-party retailer to the consumer) and therefore a permit is required.

The highlights of the new law are as follows:

- Operation within a private residence only
- Limit on gross annual sales per calendar year (2013 = \$35,000; 2014 = \$45,000; 2015 = \$50,000 per AB1616)
- 1 employee maximum
- Direct and/or Indirect sales to consumers
- Registration with the Solano County Health Division
- Production is limited to specified nonpotentially hazardous foods

For additional information, please refer to Exhibit A: AB 1616 Frequently Asked Questions.

ANALYSIS:

The most substantive modification to the Zoning Ordinance (Title 17) is the addition Section 17.70.370 Cottage Food Operations which modifies Chapter 17.70 Site Regulations. Chapter 17.70 Site Regulations contains miscellaneous land use and development regulations that are applicable to properties in multiple districts; for specific activities such as home occupations, animal keeping, swimming pools and performance standards.

In addition to the new section, amendments to Sections 17.12.030 Definitions, 17.24.020 RS, RM, and RH districts – Land Use Regulations and 17.70.070 Home Occupations are included for consistency.

This ordinance does not propose any general plan land use or zoning district redesignations. The proposed ordinance is consistent with the requirement set forth by AB1616 by including a process for approval that does not prohibit establishment of CFO's. The law provides flexibility for local agencies to determine the appropriate permit process and allows for three potential planning review processes:

1. Permitted by right,
2. Nondiscretionary (administrative) permit, or
3. Use permit.

The proposed administrative review process is similar to that for a home occupation and allows a CFO by right in any legal dwelling unit as long as the operation complies with the conditions based on the requirements of AB1616.

The conditions as outlined in the draft BMC Section 17.70.370 C are as follows:

1. The applicant for the cottage food operation permit shall be the individual who conducts the cottage food operation from his or her private dwelling unit and is the owner of the cottage food operation. The permit shall not be transferable to another operator, nor transferable to another site.
2. No greater than one cottage food employee, as defined by California Health and Safety Code Section 113758(b)(1), shall be permitted on the premises of the cottage food operation, not including an immediate family member or household member of the cottage food operator.
3. The cottage food operation shall be registered or permitted by the Solano County Environmental Health Division in accordance with Section 114365 of the California Health and Safety Code. Cottage food operations shall comply with all California Health and Safety Code requirements.
4. The use shall be conducted within the kitchen of the subject dwelling unit except for attached rooms within the dwelling that are used exclusively for storage or bookkeeping. No more than 25 percent of the dwelling or 500 square feet of floor area, whichever is less, may be used for cottage food operations, and it shall not be conducted within an accessory building, except that the Community Development Director may grant approval of storage or minor processing operations within a garage or accessory building if the applicant demonstrates that the kitchen within the residence is not suitable for the type of food to be produced; the activity complies with Health and Safety Code requirements; and no more than 150 square feet of the garage or accessory building is utilized for the operation. No outdoor storage is permitted.
5. One nameplate sign measuring no more than two square feet may be placed on the premises attached to the main building near the business entrance, indicating the property address, name of the business, hours of operation, contact information, and goods provided. The existence of a cottage food operation shall not otherwise be apparent beyond the boundaries of the site.
6. Except for vehicle parking, no outdoor portions of the premises shall be utilized for a cottage food operation including outdoor sales and visitation. No more than one truck, with a maximum capacity of one ton, incidental to the cottage food operation shall be kept on the site. Customer and delivery parking shall not occur by double-parking or

VII.B.4

blocking of neighboring driveways.

7. The number of parking spaces available to a dwelling unit housing a cottage food operation shall not be reduced to less than the required number of spaces for the dwelling unit. All required parking spaces shall remain available for the purpose of parking vehicles.
8. A cottage food operation shall not create pedestrian, automobile, or truck traffic significantly in excess of the normal amount in the district. Specifically, direct sales of products from the site of the cottage food operation shall be conducted by prior appointment-only, and shall be limited to no more than two on-site customers at any given time.
9. Direct sales, cottage food operation related sales and loading activities shall not occur between the hours of 8 p.m. and 7 a.m.
10. The use shall conform to the noise standards prescribed in BMC Chapter 8.20.
11. There shall be no on-site consumption of products other than free, small samples.

At the May 7, 2013 meeting, the City Council amended the draft ordinance by adding a condition of approval to address potential noxious odors. Condition of Approval No. 12 was added as follows:

12. A cottage food operation shall not create persistent odors beyond the property line that are offensive to the reasonable person.

The proposed amendments are shown in the draft ordinance with strikeout through the text to be removed, and new text is underlined.

Attachment:

- Draft Ordinance (redlined)

CITY OF BENICIA

ORDINANCE NO. 13-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.12.030 (DEFINITIONS) OF CHAPTER 17.12 (DEFINITIONS), SECTION 17.24.020 (RS, RM, AND RH DISTRICTS – LAND USE REGULATIONS) OF CHAPTER 17.24 (RESIDENTIAL DISTRICTS), AND SECTION 17.70.070 (HOME OCCUPATIONS IN R DISTRICTS) OF CHAPTER 17.70 (SITE REGULATIONS), AND ADDING SECTION 17.70.370 (COTTAGE FOOD OPERATIONS) OF CHAPTER 17.70 (SITE REGULATIONS), ALL OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO UPDATE REGULATIONS PERTAINING TO COTTAGE FOOD OPERATIONS PER SECTION 113758 OF THE CALIFORNIA HEALTH & SAFETY CODE

Section 1.

Section 17.12.030 (Definitions) of Chapter 17.12 (Definitions) of Title 17 (Zoning) shall be amended to add as follows:

“Cottage food operations” means an enterprise within a dwelling unit where cottage food products are prepared or packaged direct, indirect or direct and indirect sale to consumers pursuant to California Health & Safety Code Section 113758.

Section 2.

The definition of Home Occupations of Section 17.12.030 (Definitions) of Chapter 17.12 (Definitions) of Title 17 (Zoning) shall be amended to read as follows:

Home occupations" means occupations conducted in a dwelling unit, garage, or accessory building ~~in a residential district~~ that are incidental to the principal residential use of the lot or site. It does not include cottage food operations defined separately herein.

Section 3.

Section 17.24.020 (RS, RM, and RH districts – Land use regulations.) of Chapter 17.24 (Residential Districts) of Title 17 (Zoning) is amended to add cottage food operations to note G as follows:

17.24.020 RS, RM, and RH districts – Land use regulations.

RS, RM, and RH Districts: Land Use Regulations

- P – Permitted
- U – Use Permit
- L – Limited (See “Additional Use Regulations”)
- – Not Permitted

	RS	RM	RH	Additional Regulations
Accessory Uses	P/U	P/U	P/U	(A)(G)(H)(I)(J)(K)

(G) See BMC 17.70.370 Cottage food operations and BMC 17.70.070, Home occupations in R districts.

Section 4.

Section 17.70.070 (Home Occupations) of Chapter 17.70 (Site Regulations of Title 17 (Zoning) is amended to read as follows:

17.70.070 Home occupations in R districts.

A. Permit Required. A home occupation in a dwelling unit, garage or accessory building ~~an R district~~ shall require a home occupation permit obtained by filing a completed application form with the community development director. The community development director shall issue the permit upon determining that the proposed home occupation complies with the requirements of this section.

Section 5.

Section 17.70.370 (Cottage Food Operations) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) is added to read as follows:

17.70.370 Cottage food operations

A. Permit Required. A cottage food operation in a dwelling unit shall require a cottage food operations permit obtained by filing a completed application form with the community development director. The community development director shall issue the permit upon determining that the proposed cottage food operation complies with the requirements of this section.

B. Contents of Application. An application for a cottage food operations permit shall contain:

1. The name, address, and telephone number of the applicant;
2. A complete description of the proposed cottage food operation, including the type of food to be prepared, number and occupation of persons employed,

amount of floor space occupied, provisions for storage of materials, and number and type of vehicles used.

3. A copy of the submitted application and/or issued permit from the Solano County Environmental Health Division for operation of the subject cottage food operation.

C. Required Conditions. Cottage food operations shall comply with the following regulations:

1. The applicant for the cottage food operation permit shall be the individual who conducts the cottage food operation from his or her dwelling unit and is the owner of the cottage food operation. The permit shall not be transferable to another operator, nor transferable to another site.

2. No more than one cottage food employee, as defined by California Health and Safety Code Section 113758(b)(1), shall be permitted, not including an immediate family member or household member of the cottage food operator.

3. The cottage food operation shall be registered or permitted by the Solano County Environmental Health Division in accordance with Section 114365 of the California Health and Safety Code. Cottage food operations shall comply with all California Health and Safety Code requirements.

4. The use shall be conducted within the kitchen of the subject dwelling unit except for attached rooms within the dwelling that are used exclusively for storage or bookkeeping. No more than 25 percent of the dwelling or 500 square feet of floor area, whichever is less, may be used for the cottage food operation, and it shall not be conducted within an accessory building, excepting that the Community Development Director may grant approval of storage or minor processing operations within a garage or accessory building if the applicant demonstrates that the kitchen within the residence is not suitable for the type of food to be produced; the activity complies with Health and Safety Code requirements; and no more than 150 square feet of the garage or accessory building is utilized for the operation. No outdoor storage is permitted.

5. One nameplate sign measuring no more than 2 square feet may be placed on the premises attached to the main building near the business entrance, indicating the property address, name of the business, hours of operation, contact information, and goods provided. The existence of a cottage food operation shall not otherwise be apparent beyond the boundaries of the site

6. Except for vehicle parking, no outdoor portions of the premises shall be

utilized for cottage food operation including outdoor sales and visitation. No more than one truck, with a maximum capacity of one ton, incidental to the cottage food operation shall be kept on the site. Customer and delivery parking shall not occur by double-parking or blocking of neighboring driveways.

7. The number of parking spaces available to a dwelling unit housing a cottage food operation shall not be reduced to less than the required number of spaces for the dwelling unit. All required parking spaces shall remain available for the purpose of parking vehicles.

8. A cottage food operation shall not create pedestrian, automobile, or truck traffic significantly in excess of the normal amount in the district. Specifically, direct sales of products from the site of the cottage food operation shall be conducted by prior appointment-only, and shall be limited to no more than 2 on-site customers at any given time.

9. Direct sales, cottage food operation related sales and loading activities shall not occur between the hours of 8 p.m. and 7 a.m.

10. The use shall conform to the noise standards prescribed in BMC Chapter 8.20.

11. There shall be no on-site consumption of products other than free, small samples.

12. A cottage food operation shall not create persistent odors beyond the property line that are offensive to the reasonable person.

D. No more than one cottage food operation per dwelling unit is allowed.

E. The permit for a cottage food operation that is not operated in compliance with these regulations shall be revoked by the community development director after 30 days' written notice unless the cottage food operation is altered to comply.

Section 6.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or

as applied.

* * * *

On motion of Council Member _____, seconded by Council Member _____, the ordinance was introduced at a regular meeting of the City Council on the 7th day of May, 2013, and adopted at a regular meeting of the City Council held on the 4th day of June, 2013, by the following vote:

Ayes:
Noes:
Abstain:
Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - JUNE 4, 2013
CONSENT CALENDAR

DATE : May 29, 2013

TO : City Manager

FROM : Public Works Director

SUBJECT : **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR SOUTHAMPTON
UNIT D-7**

RECOMMENDATION:

Adopt a resolution accepting the public improvements for the Southampton Unit D-7 subdivision.

EXECUTIVE SUMMARY:

The public improvements for the Southampton Unit D-7 subdivision were completed two years ago to the satisfaction of the City Engineer except for the copper water services, which were discovered to be corroding. The Developer is now replacing the services under a separate settlement agreement with the City, which includes a one year warranty on this work and stipulates that the developer's subdivision performance bond and one year warranty bond be released. Formal acceptance of D-7 by the City is now needed to release these bonds.

BUDGET INFORMATION:

This item has no direct impact on the City's budget.

Per the settlement agreement, the \$747,000 cost to replace the water services in Units D-6 (previously accepted in 2007) and D-7 is being split 50/50 between the City and the developer. The City's share is \$373,500 and was previously set aside in the Water Enterprise Fund.

GENERAL PLAN:

Relevant Goals include:

- Goal 2.20: Provide a balanced street system to serve automobiles, pedestrians, bicycles and transit.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Strategic Issue #4: Preserving and Enhancing Infrastructure
 - Strategy #1: Provide safe, functional, and complete streets.

BACKGROUND:

The Southampton Unit D-7 subdivision is located in the vicinity of McAllister Drive and Kearney Street. The subdivision created 131 single-family homes and constructed the supporting public infrastructure including the streets and water, sewer, and storm drain facilities.

These public improvements were substantially completed in 2008; however, as a rule, subdivisions are not recommended by staff for acceptance until the last home has been constructed, because homebuilding activities oftentimes damage the streets or sidewalks. The last home in D-7 was completed in 2011, so the public improvements in this subdivision would normally have been accepted two years ago.

However, in 2010, it was discovered that the copper water services that were installed in both D-6 and D-7 were corroding. An extensive soil investigation was completed in early 2011, which concluded the corrosion was likely caused by the cumulative effects of different soil characteristics.

In November, 2012 the City entered into a settlement agreement with the developer, Benicia CS Developers, which includes Centex Homes (acquired by Pulte Homes) and Shea Homes. The agreement includes 50/50 cost sharing for the developer to replace the 336 copper services in D-6 and D-7 with high strength polyethylene water services, including slurry sealing the streets, a one year warranty on this work, and release of the D-7 Subdivision \$1.5M performance bond and \$150K one year warranty bond. Southampton Unit D-6, which constructed 205 single family homes, was previously accepted by the City in 2007. The project budget for the service replacements for D-6 and D-7 per the settlement agreement is \$747,000. The City's share, which is half or \$373,500, was previously set aside in the Water Enterprise Fund to cover the cost of this work.

In order to release the bonds for Southampton Unit D-7, the City must first accept the public improvements. Excepting the copper service replacement work, which is bonded, the public improvements have passed final inspection and are ready to be accepted by the City.

Attachments:

- Proposed Resolution
- Location Map

RESOLUTION NO. 13-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE SOUTHAMPTON UNIT D-7 SUBDIVISION

WHEREAS, the Final Map for the Southampton Unit D-7 subdivision was approved by City Council on April 1, 1997 by Resolution No. 97-46; and

WHEREAS, the public improvements for this subdivision, including streets, water lines, sewer lines and storm drain lines, have been completed to the satisfaction of the City Engineer, except for the water services, which are being replaced under a separate settlement agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia hereby accepts the public improvements for the Southampton Unit D-7 subdivision as complete.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to file a certified copy of this resolution with the Solano County Recorder.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4th day of June, 2013, and adopted by the following vote:

Ayes:

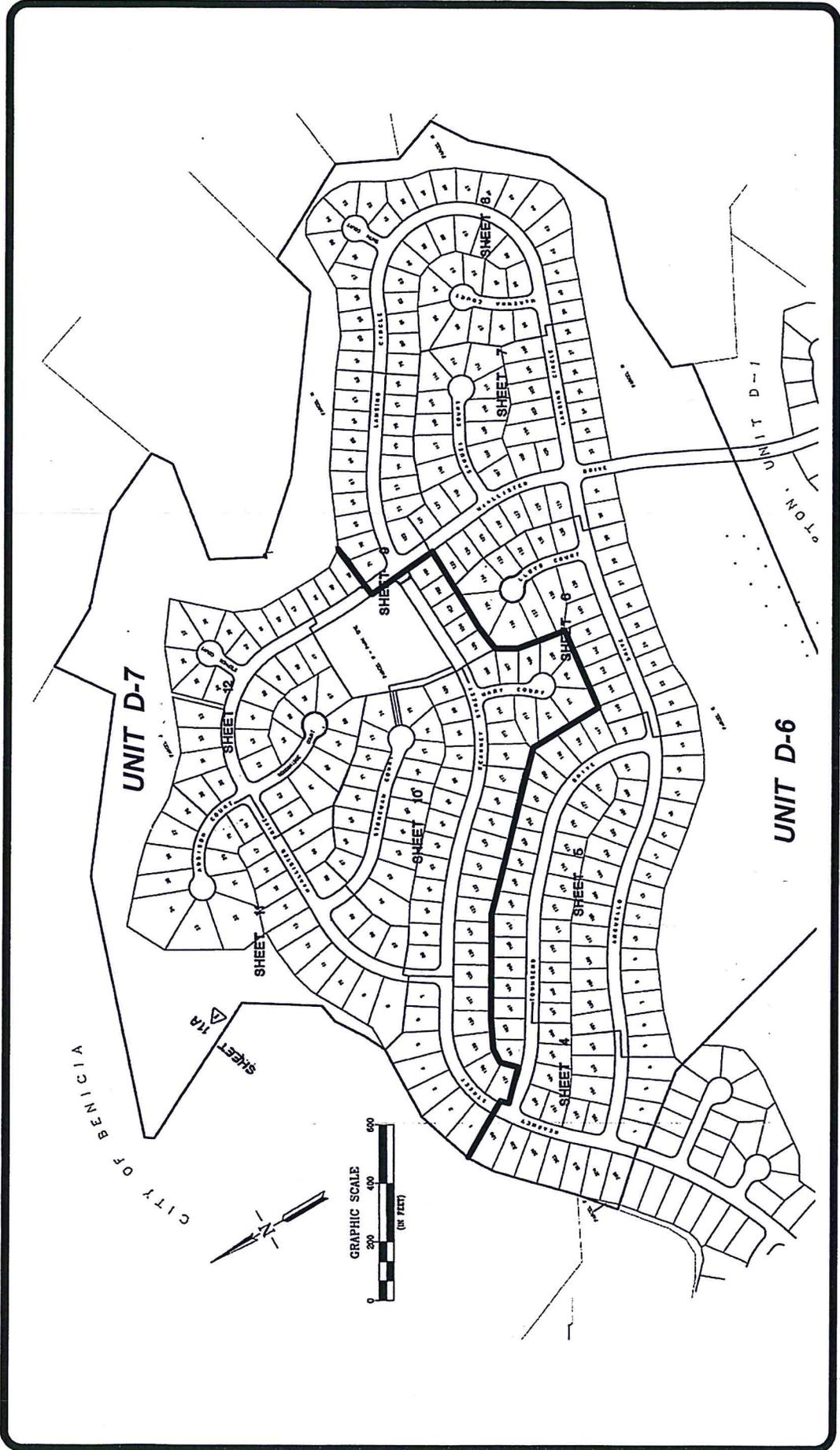
Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



PUBLIC WORKS
DEPARTMENT

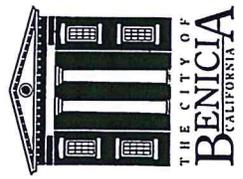
CITY OF BENICIA

SOUTHAMPTON UNIT D-7 SUBDIVISION

SHEET

PROJECT
MAY 2013

DATE



REVISIONS

NO.	DESCRIPTION	BY	DATE

**AGENDA ITEM
CITY COUNCIL MEETING DATE - JUNE 4, 2013
CONSENT CALENDAR**

DATE : May 15, 2013

TO : City Manager

FROM : Community Development Director

SUBJECT : **ENERGY COMMISSION GRANT: ELECTRIC VEHICLE FAST CHARGER AND BATTERY BACKUP**

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to (1) sign a grant agreement with the Association of Bay Area Governments (ABAG) as administrator for a California Energy Commission (CEC) grant, (2) accept an incentive payment from PG&E and (3) sign a contract with Growing Energy Labs, Inc. (GELI) to serve as project lead contractor, for installation of an electric vehicle fast charger and battery backup for City Hall.

EXECUTIVE SUMMARY:

CEC awarded ABAG \$1.5 million to install electric vehicle charging stations in the Bay Area, of which \$79,200 has been awarded to the City. PG&E is providing an additional \$40,000 to support the project. Coda, Energy Vault LLC, GELI, Bass Electric and the non-profit Electric Vehicle Communities Alliance (EVCA) are providing services to design and install the equipment, which will include a Coda battery that will store power from the solar panels to backup the City Hall diesel generator in the event of an emergency and help increase the energy and cost savings from solar power production.

BUDGET INFORMATION:

As a match for the \$79,200 CEC grant and \$40,000 PG&E incentive payment, City staff time totaling \$4,800 is required, which will primarily consist of grant management and reporting.

ENVIRONMENTAL REVIEW:

The project qualifies for a categorical exemption per California Environmental Quality Action Guidelines Section 15303(a), which applies to electrical equipment for existing buildings.

GENERAL PLAN:

The project supports the overarching Goal of the General Plan, which is Sustainability.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #2: Protecting and Enhancing the Environment
 - Strategy #1: Reduce greenhouse gas emissions and energy consumption
 - Strategy #3: Pursue and adopt sustainable practices

CLIMATE ACTION PLAN:

Relevant Climate Action Plan Objectives and Strategies:

- Objective E-6.: Conduct a Smart Grid Feasibility Study by 2020
 - Strategy EO-6.1. Smart Grid Feasibility Study
- Objective T-8: Reduce Reliance on Conventional Automobile Travel
- Objective E-2: Increase Amount of Renewable Energy in Benicia
 - Strategy E-2.3. Renewable Energy for City Facilities

BACKGROUND:

The project will consist of a direct-current station that can power electric vehicles in a matter of minutes, as opposed to the several hours required for most existing stations (including the two already in operation at City Hall). In addition to supporting alternative-power vehicles and renewable energy at City facilities, the Climate Action Plan also calls for “smart grid” installations that can provide supplemental power in the event of an emergency. Adding the backup battery to convey electricity directly between the solar panels and the fast charging station will serve this purpose and also reduce the amount of energy needed from PG&E when the panels are not operating at night.

Coda Energy representatives have provided verbal assurance that the Coda Automotive bankruptcy action does not affect delivery of the battery. Even if such were not the case, the contract allows GELI to select a battery from another vendor.

Attachments:

- Proposed Resolution
- Growing Energy Labs, Inc. Proposal and Contract
- Electric Vehicle (EV) Corridor Base Document
- EV Corridor – Exhibit 1 and 2
- EV Corridor – Exhibit A Work Statement

RESOLUTION NO. 13-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS FOR AN
ELECTRIC VEHICLE FAST-CHARGING STATION AND BATTERY BACKUP
FOR CITY HALL**

WHEREAS, the California Energy Commission awarded the Association of Bay Area Governments (ABAG) \$1,493,165 to implement the Bay Area Electric Vehicle (EV) Corridor Project to install EV charging stations in the Bay Area; and

WHEREAS, the City has arranged with partners Coda, Energy Vault LLC, Growing Energy Labs Inc., and the Electric Vehicle Communities Alliance to develop a project that will increase facility resiliency and EV infrastructure, and maximize solar production and credits; and

WHEREAS, the City has been awarded \$79,200 by CEC and \$40,000 by PG&E for the project; and

WHEREAS, ABAG agreed to disburse the \$79,200 to the City as a Sub-grantee.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia authorizes the City Manager to execute contracts accepting \$79,200 in grant funding from the CEC and \$40,000 from PG&E to install a fast electric vehicle charging station and battery backup at City Hall.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4th day of June, 2013, and adopted by the following vote.

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT is made and entered into between the City of Benicia, a general law city in Solano, County, California, hereinafter called "CITY" and **Growing Energy Labs, Inc. (GELI)**, hereinafter called "CONTRACTOR".

CONTRACTOR’S Business Address: 22 Battery Street, San Francisco, CA 94111; Phone # (415) 857-4354

The parties to this agreement mutually agree as follows:

1. DESCRIPTION OF SERVICES TO BE PROVIDED

CONTRACTOR shall provide services to CITY in accordance with the Proposal dated May 20, 2013 for the **Electric Vehicle Fast Charger and Battery Backup**. The Proposal is incorporated herein by reference and is attached as Exhibit “A”. CONTRACTOR shall perform the services contemplated hereunder in a competent and professional manner and to the satisfaction of the CITY’S Community Development Director or his/her designee. These services shall be provided in accordance with all terms and conditions as required by the Association of Bay Area Governments (ABAG) an administrator for a California Energy Commission (CEC) grant. The grant agreement is attached as Exhibit “B” for reference.

2. PAYMENT

CONTRACTOR shall be paid for the above described services in the amount of \$122,000. The compensation agreed to be paid to CONTRACTOR shall be the sole and exclusive consideration paid or provided to the CONTRACTOR by the CITY. The CITY shall pay CONTRACTOR invoices after the ABAG approves documentation and issues grant to the CITY.

CONTRACTOR shall be paid for the service it/he/she renders hereunder:

X within 30-60 days after invoice is submitted to and approved by ABAG in accordance with EV Corridor Project Invoicing Procedures attached as Exhibit “C”.

3. FUNDING FOR PROJECT

CONTRACTOR shall be paid for the above described services from grant funds totaling \$79,200 and from a Pacific Gas & Electric Company (PG&E) Self-Generation Incentive Program payment of \$40,000. The CITY shall not make any payment of invoices from any other funds besides those listed above.

3. CONTRACT TERMINATION

Both parties agree and understand that this contract may be terminated under the following conditions:

- (a) by failure of the CONTRACTOR to substantially perform the above described services;
- and/or
- (b) the CITY reserves the right to cancel the work or services before the work or service begins, even though requested for.

In the event the contract is canceled under the circumstances described in paragraph 3(a), the determination of payment to the CONTRACTOR shall be at the discretion of the City's Community Development Department Director or his designee.

4. CONTRACTOR RELATIONSHIP

CONTRACTOR understands and agrees that in performing the above described services, the CONTRACTOR shall act as an independent contractor and not an employee of the CITY.

The CONTRACTOR shall be solely responsible for the reporting of income for tax purposes.

5. COMPLIANCE WITH THE LAW

CONTRACTOR, in the conduct of the services contemplated hereunder, shall comply with all statutes, state or federal, and all ordinances, rules and regulations of the City Council of the City or of the City's Public Works Department.

6. SUPPLIES

CONTRACTOR shall acquire, provide, maintain and repair at its/his/her sole cost and expense such equipment, materials, supplies, etc., as CONTRACTOR needs for its/his/her use for the proper conduct of the aforesaid work or services.

7. INDEMNIFICATION AND INSURANCE

(a) CONTRACTOR agrees to indemnify, release, defend and hold harmless the CITY, its officers, agents and employees ("indemnitees") from and against any and all claims, demands, losses, defense costs or liability of any kind or nature which indemnitees may sustain or incur or which may be imposed upon them for injuries to or death of persons, or damage or injury to property as a result of, arising out of, or in any manner connected with CONTRACTOR'S performance under the terms of this agreement.

(b) In the event CONTRACTOR desires to hire or employ any other company or person to perform any part of the services contemplated herein, the written approval therefore must be first obtained from the CITY. The CITY may withhold such approval for any reason. If approval is given by the CITY, CONTRACTOR shall secure Worker's Compensation insurance covering said approved employee(s) in statutory amounts and providing 30 days' advance notice to CITY in the event said policy is canceled.

(c) Without limiting CONTRACTOR'S indemnification, it is agreed that CONTRACTOR shall maintain in force at all times during the performance of this contract, the following types of insurance providing coverage on an "occurrence" basis. Said insurance shall name the CITY, its officers, agents and employees as additional insureds and provide for 30 days' advance notice of cancellation. Evidence of said insurance shall be delivered to CITY at the same time CONTRACTOR signs this Agreement in certificate forms acceptable to the CITY.

 X Automobile insurance for the vehicle(s) CONTRACTOR uses in connection with the performance of this Agreement. Coverage: \$1,000,000 per occurrence for bodily injury and property damage.

X Commercial general liability and property damage insurance. Coverage: \$1,000,000 combined, single limit.

X Worker's Compensation insurance to cover its employees as required by the Labor Code of the State of California. CONTRACTOR's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment." In the event any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation Statutes, the CONTRACTOR shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

_____ Pollution and/or Asbestos Pollution Liability and/or Errors and Omissions insurance. Coverage: \$1,000,000 each occurrence, \$2,000,000 policy aggregate.

8. ASSIGNMENT

The parties acknowledge that the above-described services shall not under any circumstances be assigned to any other person without the prior written consent of the CITY. It is further recognized by the parties hereto that a substantial inducement to the CITY for entering into this agreement was, and is, the professional reputation and competence of the CONTRACTOR.

9. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California. It constitutes the entire agreement between the parties regarding its subject matter. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force.

WITNESS THE EXECUTION THEREOF, this _____ day of _____, 20__.

CITY OF BENICIA

CONTRACTOR

BY _____

Brad Kilger
CITY MANAGER

Signature

Title

RECOMMENDED BY:

Charlie Knox

ASSISTANT PUBLIC WORKS DIRECTOR

APPROVED AS TO FORM:

Heather McLaughlin
CITY ATTORNEY

Exhibit A



PROJECT PROPOSAL AND LETTER OF COMMITMENT
TO
THE CITY OF BENICIA
BY
GROWING ENERGY LABS, INC. (GELI)
FOR AN
ELECTRIC VEHICLE FAST CHARGING ENERGY STORAGE SYSTEM

PROJECT DESCRIPTION

This is a Project Description and Letter of Commitment from Growing Energy Labs, Inc. (GELI) to the City of Benicia to provide an electric vehicle (EV) fast charger and battery backup at the Benicia City Hall. GELI will be the lead contractor for this project. The energy system will be installed and integrated into the existing solar photovoltaic (PV) system and will provide the following Energy Applications:

1. Fast EV charging services,
2. Abatement of electricity charges arising from the high power Level III car charger,
3. Lowered electricity charges for the building by automated energy storage actions,
4. Lowered energy charges by charging the energy storage at night and using it during the day, and
5. Increases the value of solar electricity by shifting dawn and dusk generated energy into peak times.

Participating in PG&E's Demand Response program may generate additional revenue because PG&E pays customers to reduce energy use during peak use periods. Automating energy storage as a demand response asset will allow participation in a demand response program without effecting operations of the facility.

This project is to demonstrate the features of fast EV charging (Level III) combined with energy storage to be utilized in commercial systems and can be applied to the City's other facilities utilizing large amounts of power and energy, such as the Waste Water Treatment Plant, which will benefit significantly from minimizing demand charges when energy is used during peak energy use periods with an automated energy storage system. The GELI EOS will coordinate the energy assets to maximize value across multiple value streams if and when appropriate and approved by City Council.

This project is being primarily funded by a California Energy Commission (CEC) grant, administered by the Association of Bay Area Governments (ABAG), for the fast electric vehicle

charger and an additional incentive through the Self Generation Incentive Program (SGIP) funded by PG&E. The SGIP provides financial incentives for the installation of new, qualifying self-generation equipment.

PROJECT DEVELOPERS

Project Lead: GELI (Growing Energy Labs, Inc.)

22 Battery St., 11th Floor, San Francisco CA 94107 (415.857.4354)

Developing, deploying, and maintaining the GELI EOS Software for energy storage systems and microgrids is the primary mission of GELI. GELI also provides Design & Management Services for GELI Partners and Projects. GELI has developed a unique product being the Energy Operating System (GELI EOS) that consists of original integration software, operational software, economic software, and network software (collectively known herein as GELI EOS SOFTWARE) and the trademarked name of “EOS”. The GELI EOS SOFTWARE is an Enterprise Software Operating System Platform for secure, economic and reliable energy storage systems and microgrids enabling the integration, networking, controls, automation, and optimization of power conversion, energy storage, electrical meters, electric vehicle charging infrastructure, electrical devices, other system software, hardware, communications, devices, the Internet, and the grid.

Project Electrical & General Sub-Contractor: BASS Electric

390 Swift Ave., Suite 12 South San Francisco CA 94080 (415) 295-1600

BASS Electric is a San Francisco-based licensed General Contractor, Electrical Contractor and provider of energy solutions. BASS Electric sub-contracts with Growing Energy Labs, Inc. (GELI) and Energy Vault LLC (ENERGY VAULT) for the purpose of the providing project management, design services, energy storage hardware and software.

Partner: Energy Vault, LLC

Energy Vault, LLC is an energy system developer and operator working in joint venture which includes the physical integration of components such as energy storage, electric vehicle charging infrastructure and renewable energy for building and community applications including energy security, energy resiliency, microgrids, energy efficiency and energy services.

BUDGET

Benicia City Hall will have a resilient energy system that can provide backup power in the event of an emergency and provide EV charging services. Adding EV (Part 1) and the Energy Vault Energy Storage System with CODA Energy Tower and the GELI EOS (Part 2) to the City Hall will reduce electricity demand charges and energy charges for the facility, stabilize solar generation, and will provide the community the energy service of fast EV charging.

Funding

California Energy Commission/Assoc. of Bay Area Governments	\$79,200		
PG&E Self-Generation Incentive Program (SGIP)	\$40,000		
BASS Electric	\$2,800		
City of Benicia	\$4,800 (in-kind)		
TOTAL	\$126,800		

Costs

	Total	CEC	Match
BTC Fast Charging station (dual connector compatible)	\$29,000	\$29,000	
CODA Energy Tower 40 Kwh Battery and BMS Integration	\$39,500	\$20,000	\$19,500
GELI EOS Node & Integration	\$7,632	\$3,625	\$4,007
Electrical Installation - BASS Electric	\$30,668	\$14,575	\$16,093
BASS Electric Project Management	\$20,000	\$12,000	\$8,000
TOTAL	\$126,800	\$79,200	\$47,600

GELI will submit initial invoices and supporting documentation to the City for review. City will then submit all required documentation to the ABAG. ABAG will pay 90% of the invoices submitted by the 20th of each month for any work performed and a 10% holdback will occur until the project is complete.

GELI will arrange with vendors and sub-contractors on the terms of payments for hardware outlays.

Incentive funds from the SGIP Program will be paid after verification of system operation. System inspection is expected to occur in the 2nd Week of August 2013 and payment 30-60 days following.

The joint venture of GELI and Energy Vault will cover project costs until reimbursements and incentives are obtained. Payment prioritization will be to BASS Electric and hardware vendors.

WORKPLAN

- PART 1:
 - Electrical analysis for design and diagrams will be generated for the complete system. The electrical drawings will be approved, stamped and authorized by PG&E and City Building Officials will review and approve. The Fast Electric Vehicle Charger will be installed at the Benicia City Hall and will undergo initial testing.
- PART 2:
 - BASS Electric will manage and install an energy storage system with CODA Energy Tower and the GELI EOS and integration components including electrical sub-meter and electrical upgrades to the City Hall to reduce electricity demand charges and energy charges, stabilize solar generation, and provide the community the energy service of fast electric vehicle charging. Configuration and commissioning of the system will commence. An inspection by an SGIP official will provide validation of system operation. City Building Officials will conduct a post-installation inspection to ensure compliance with local and state building codes. GELI will provide reports on the performance of the system as required by the ABAG/CEC grant.

TIMELINE

	2013 April				2013 May				2013 June				2013 July				2013 Aug				2013 Sept			
	W1	W2	W3	W4	W1	W2	W3	W4	W1	W2	W3	W4	W1	W2	W3	W4	W1	W2	W3	W4	W1	W2	W3	W4
Energy Data Collection																								
Energy System Design																								
April 26 Proposal Complete for Project Team					26																			
Submit SGIP Reservation Form																								
Submit Proposal to ABAG/CEC																								
Provide Project Presentation																								
May 21 Proposal for City Internal Approval									21															
May 28 Final Proposal all Docs ready to sign									28															
June 4 Benicia City Council for Approval									4															
Send Purchase Orders to Vendors																								
Obtain Final Construction Documents																								
Permitting																								
Installation																								
Commission																								
SGIP Field Review																								
ABAG/CEC Report 1																								
ABAG/CEC Final Report (TBD)																								
BASS Electric																								
GELI/Energy Valut																								
City of Benicia																								

REPORTING REQUIREMENTS FOR ABAG

GELI will prepare and provide reports on the data collection and lessons learned descriptions as required in the contract between the City of Benicia and ABAG. The City of Benicia will include this information in reports as required by ABAG.

The monthly and cumulative Data Collection Reports will include:

- Vehicle use patterns
- Charging frequency and profiles
- Electric fuel use
- Climate variations
- Availability of vehicle chargers
- "Real world" electric range
- Operating costs
- Time of use rates

The Lessons Learned Reports will describe:

- Most effective locations to install chargers
- Optimum use of fast-charge stations
- Economic and vehicle range tradeoffs between availability of charge infrastructure and onboard battery capacity
- Changes in vehicle operator behavior
- Impacts of various factors on influencing infrastructure we use

REQUIRED SGIP DOCUMENTATION

Funding supplied by the PG&E SGIP program is obtained after the SGIP Reservation Form is submitted, the system is installed, documents in Appendix II are submitted, and the energy system passes inspection. A list of the required documents is described in Appendix II of this document.

EXECUTION

GELI is committed to working with the City of Benicia, sub-contractors and vendors to deliver the Fast EV Charger Energy Storage system for the Benicia City Hall.

This Letter of Commitment and Project Description document is understood and accepted by the City of Benicia and GELI on the date of _____(month), _____(day), _____(year).

Name and Position of Authorized Official of the City of Benicia

Signature of Authorized Official of the City of Benicia

Date _____

APPENDIX I: SGIP DOCUMENTS

1. SGIP Reservation Request
2. Interconnection Update
3. SGIP Projected Cost Breakdown Affidavit
4. Proof of Project Milestone
5. SGIP Inspection
6. SGIP Incentive Claim Form

APPENDIX II: SPECIFICATION DOCUMENTS FOR ENERGY SYSTEM

This appendix section summarizes the specification documents of components for the Fast EV Charging Energy Storage System, and is included as attachments.

1. Specification Sheet for CODA Energy Storage Tower
2. Specification Sheet for DC Fast Charger
 - BTC Power - a California manufacturer of DC chargers for the logistics industry which has launched EVSE Level 2 products and currently has the most advanced 30 kW DC Fast Charger controls with both Chademo and SAE connectors.
3. Specification Sheet on GELI EOS controls software
4. License agreement for GELI EOS
5. Specification Sheet for Electro-Industries Shark 100S Electrical Sub-Meter

Exhibit B

Bay Area EV Corridor
SubRecipient Agreement
- Base Document -

This SubRecipient Agreement is made and entered into as of the Effective Date by and between the Association of Bay Area Governments (ABAG), a joint powers agency (ABAG) and _____, a _____ (SubRecipient).

Recitals

A. In October 2009, the California Energy Commission (Energy Commission) issued solicitation PON-09-006 to fund projects that develop infrastructure necessary to store, distribute, and dispense the following transportation fuels: electricity, E-85, biomass-based diesel, and natural gas;

B. In January 2010, the ABAG submitted application #20 In response to the solicitation;

C. The Energy Commission issued a Notice of Award dated May 15, 2010 and revised January 11, 2011 stating that ABAG had been awarded grant funds in the amount of One Million Four Hundred-ninety-three Thousand One Hundred Sixty –five Dollars (\$1,493,165.00) (Award) to implement the EV charging stations project described in the application (Bay Area EV Corridor Project);

D. Effective August 12, 2011, ABAG accepted the Award for itself and on behalf of all eight subawardees and entered into Grant Agreement No. ARV-10-032 with the Energy Commission;

E. ABAG and this SubRecipient desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for SubRecipient’s participation in the Bay Area EV Corridor Project.

NOW THEREFORE, based upon the foregoing recitals, ABAG and SubRecipient further agree as follows:

1.0 Applicable Documents

1.1 The following are attached:

1.1.1 Exhibit 1 SubRecipient Scope of Work

1.1.2 Exhibit 2 Invoicing Procedures

1.1.2 Exhibit 3 Grant Agreement No. ARV-10-032 (Grant Agreement) including the following exhibits that were attached to the Grant Agreement:

- Exhibit A, ‘Work Statement’ [between ABAG and CEC]
- Exhibit A-1, ‘Schedule of Products and Due Dates’
- Exhibit B, ‘Budget’
- Exhibit C, ‘Terms and Conditions’

Exhibit C, Attachment 1, 'Payment Request Form'
Exhibit D, 'Special Terms and Conditions'
Exhibit E, 'Contacts List'
Exhibit F, 'Definitions'

1.2 The SubRecipient Agreement is comprised of this Base Document, Exhibit 1, SubRecipient Scope of Work, Exhibit 2, Invoicing Procedures and Exhibit 3, Grant Agreement and is the complete and exclusive statement of understanding between ABAG and the SubRecipient, and supersedes any and all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this SubRecipient Agreement.

3.0 Term of Agreement

The SubRecipient Agreement shall commence as of date it is approved by the Energy Commission (Effective Date) and continue until November 30, 2013, or until terminated by the Energy Commission pursuant to the terms of this SubRecipient Agreement.

4.0 Subaward Amount

4.1 Under the terms of the Grant Agreement, ABAG will disburse a portion of the Award to SubRecipient for carrying its responsibilities as part of the Bay Area EV Corridor Project as described in section 6 and Exhibits 1 and 3. The maximum amount to be funded by the Energy Commission and disbursed through ABAG to SubRecipient shall be _____ Dollars (\$_____) (Subaward Amount).

4.2 In accordance with the procedures set forth in section 4.5 and Exhibit 2, ABAG will pay SubRecipient for the acquisition of EV chargers as described in Exhibit 1.

4.3 In accordance with the procedures set forth in section 4.5 and Exhibit 2, ABAG will pay SubRecipient for the installation of EV chargers, storage system, battery storage, and Energy Operating System as described in Exhibit 1.

4.4 In accordance with section 4.5 and Exhibit 2, ABAG will pay SubRecipient for non-installation services based on the hourly rates for the individuals, or categories of individuals, as the case may be, all as described in Exhibit 1.

4.5 ABAG will review all invoices submitted and approve or disapprove each invoice in total, or in part, as the case may be, within ten (10) business days of receipt. ABAG will promptly forward all approved invoices to CEC for disbursement. CEC will review and approve or disapprove each invoice in total or in part. ABAG will promptly notify SubRecipient of any disapproval(s) by CEC. ABAG will promptly forward disbursements received from the CEC and in accordance with section 5.1.

5.0 ABAG Obligations

5.1 ABAG shall be the program lead and fiscal agent for the Bay Area EV Corridor Project. ABAG shall disburse CEC Award funds as required or permitted by the Grant Agreement. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to SubRecipient unless and until such are authorized and disbursed from CEC to ABAG.

5.2 ABAG shall coordinate the activities of all subrecipients, including this SubRecipient, so as to implement the Bay Area EV Corridor Project in accordance with the terms of the Grant Agreement.

5.2.1 ABAG shall promptly notify SubRecipient of any notices given or actions taken by the Energy Commission if such notices or actions are likely to affect SubRecipient's performance, duties, obligations or funding under this SubRecipient Agreement. To the extent practicable, ABAG shall consult with SubRecipient in carrying out ABAG's responsibilities.

6.0 SubRecipient Obligations

6.1 SubRecipient is, and at all times will continue to be, in full compliance with the terms and conditions of the Grant Agreement that are applicable to it. SubRecipient understands and agrees that for purposes of the foregoing, any requirements imposed upon ABAG as Recipient in the Grant Agreement are hereby passed-through and adopted by SubRecipient as obligations of SubRecipient, excepting only ABAG's obligations as defined in section 5.

6.1.1 Without limiting subsection 6.1, SubRecipient shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount; and

6.2 SubRecipient shall carry out all the tasks set forth in Exhibit 1 as it may be amended or modified. SubRecipient shall carry out all tasks in accordance with the Grant Agreement.

6.2.1 SubRecipient acknowledges that pursuant to the Grant Agreement, the Energy Commission has the right to modify tasks and budgets and to approve changes in personnel, subcontractors and vendors through ABAG. SubRecipient shall comply with any requirements imposed as a result of the Energy Commissions exercise of such rights.

6.3 SubRecipient shall not cause ABAG to be in violation of the Grant Agreement, whether by act or omission.

6.4 SubRecipient shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time. Any such laws, rules, regulations, ordinances, and directives required thereby to be included in this Subaward Agreement are incorporated herein by reference.

7.0 Indemnification and Ineligible Claims

7.1 Notwithstanding any provision to the contrary, whether expressly or by implication, SubRecipient agrees to indemnify, defend, and hold harmless the Energy Commission, ABAG, its members (excepting this SubRecipient), and their respective elected and appointed officers, employees, and agents from and against any and all liability resulting from SubRecipient's act(s) and/or omission(s) arising from and/or relating to the Grant Agreement or this SubRecipient Agreement, and as such would be imposed in the absence of Government Code section 895.2.

7.1.2 Without limiting the scope of subsection 7.1, such liability includes but is not limited to the following: any funding disallowance; audits; demands; claims; actions; liabilities; damages; fines; fees, costs, and expenses, including attorney, auditor, and/or expert witness fees.

7.3 SubRecipient understands and agrees that it is solely responsible for any and all of the Subaward Amount that the Energy Commission determines to be ineligible under the Grant Agreement. Immediately upon request by Energy Commission or ABAG, the SubRecipient shall return any funds that have been disbursed to the extent that their use has been disallowed.

8.0 Termination

8.1 SubRecipient acknowledges that pursuant to section 13 of Exhibit C to the Grant Agreement, the Energy Commission has the right to terminate the Grant Agreement in accordance with its terms.

8.1.1 Upon termination of the Grant Agreement, this Subaward shall terminate effective the same date as the Grant Agreement and in accordance with the terms and conditions for the termination of the Grant Agreement.

9.0 Notices and Administrative Contacts

9.1 All notices or notifications under this SubRecipient Agreement shall be in writing addressed to the persons set forth in this section 9.0

9.2 All notices or notifications to ABAG shall be sent to:

Jerry Lahr, Principal Investigator
Association of Bay Area Governments
P. O. Box 2050
Oakland, CA 94604-2050
JerryL@abag.ca.gov

9.3 All notices or notifications to the SubRecipient shall be sent to:

Charlie Knox, Community Development Director
City of Benicia
250 E. "L" Street
Benicia, CA 94510
cknox@ci.benicia.ca.us

10.0 Amendments and Changes

Except for changes described in subsections 5.2.1 and 6.2.1, this SubRecipient Agreement may be changed only by a written amendment duly signed by ABAG and SubRecipient.

11.0 Assignment and Delegation

SubRecipient shall not assign its rights or delegate its duties under this SubRecipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this SubRecipient Agreement.

12.0 Governing Law and Venue

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. SubRecipient further agrees and consents that the venue of any action brought between SubRecipient and ABAG shall be exclusively in the County of Alameda.

13.0 Validity and Severability

If any provision of this SubRecipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this SubRecipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14.0 No Waiver

No waiver by either party of any event of breach and/or breach of any provision of this SubRecipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time to time, of any provision of this SubRecipient Agreement shall not be construed as a waiver thereof.

15.0 Record Retention and Inspection/Audit Settlement

15.1 SubRecipient shall maintain accurate and complete financial records of its activities and operations relating to this SubRecipient Agreement in accordance with the Grant Agreement and generally accepted accounting principles.

15.2 SubRecipient agrees that ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this SubRecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the SubRecipient and shall be made available to ABAG during the term of this SubRecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

15.3 If an audit of the SubRecipient is conducted specifically regarding this SubRecipient Agreement by any Federal or State auditor, or by any auditor or accountant employed by the SubRecipient or otherwise, then the SubRecipient shall file a copy of such audit report with ABAG within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this SubRecipient Agreement.

15.4 Failure of SubRecipient to comply with this section 15 shall constitute a material breach of this SubRecipient Agreement, upon which ABAG may terminate or suspend under section 9.0 (Termination for Default).

16.0 Authorization Warranty

SubRecipient represents and warrants that the person executing this SubRecipient Agreement on its behalf is an authorized agent who has actual authority to bind SubRecipient to each and every term, condition, and obligation herein.

END OF BASE DOCUMENT
SIGNATURE PAGE TO FOLLOW

Bay Area Retrofit Bay Area
SubRecipient Agreement

* * * * *

Authorized Signatures

IN WITNESS WHEREOF, SubRecipient has duly executed this Agreement, or caused it to be duly executed, and ABAG, under the authorization of its Executive, has caused this Agreement to be duly executed on its behalf by the Executive Director, or his designee.

SubRecipient

Name, Title

Approved as to form:

Name, Title
Association of Bay Area Governments

Ezra Rapport, Executive Director

Approved as to Form:

Kenneth K. Moy, Legal Counsel

Exhibit C

EV Corridor Project
Invoicing Procedures
11/21/2011
Invoicing Procedures for ARV-10-032
Association of Bay Area Governments
Recipient Project Manager: Jerry Lahr
Commission Grant Manager: Leslie Baroody

Subrecipient:

1. Subrecipient submits payment request form, no more than one per month, and required backup documentation as outlined in "Backup Documentation section" by the 15th day after the calendar month in which the expenses are incurred.
 - a. Payments will generally be made on a reimbursement basis for Subrecipient expenditures, i.e., after the Subrecipient has paid for a service, product, supplies, or other approved budget item. Payments will also be made for charger(s) based on a Subrecipient's executed purchase order for it/them. The amounts and/or rates within the budget are caps, or the maximum amount allowed to be billed. The Subrecipient can only bill for actual expenses incurred at the Subrecipient's actual direct labor rate(s), fringe benefit rate(s), and indirect rate(s), not to exceed the rates specified in the budget.
 - b. The following certification shall be included on each Payment Request form and signed by the Subrecipient's authorized officer:
I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement and that the reimbursement of these costs has not and will not be received under other sources including, but not limited to, a Government Entity contract, subcontract or other procurement method. For projects considered to be a public work: Prevailing wages were paid to eligible works who provided labor for the work covered by this invoice; Recipient and all subcontractors have complied with prevailing wage laws.
 - c. The final payment request must be received by ABAG on or before February 18, 2013. Please note, this request should be accompanied by the Subrecipient Payment Request Form. In the "type of Request" field please denote "Release Retention".
 - d. As a general rule, advance payments are not allowed and discouraged.
2. GMA will review invoicing documentation, input into a master invoice and send to ABAG for review and finalizing for ABAG's submission to the CEC no more than 15 business days from receipt from Subrecipient.
3. ABAG will submit approved master invoice to CEC for payment

Backup Documentation

1. All payment requests must be submitted using a completed Payment Request form. This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share, including backup documentation for actual expenditures, such as time cards, purchase orders, vendor invoices,

and proof of payment. Purchase orders for charger equipment only are an acceptable form of backup documentation.

2. Any payment request that is submitted without expenses itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, GMA/ABAG will inform the project manager and the subrecipient and hold the invoice until all required information is received or corrected.

3. Any penalties imposed on the Subrecipient by a subcontractor because of delays in payment will be paid by the Subrecipient.

4. Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

Match

1. Match funds are required to be available and spent proportionately to total match or in advance of any funds being reimbursed to the Subrecipient. Exceptions must be approved in advance by ABAG.

2. If the grant budget includes cost or match share under the Agreement, the Subrecipient agrees to be liable for the percentage of cost or match share identified in this Agreement of the total allowable project costs paid even if the project is terminated early or is not funded to its completion.

3. Match funds should be reported in the monthly invoices. Therefore, Subrecipient Invoices should include line items and totals for match. This should include match budgeted, match expended in the invoicing period and amount remaining. The Subrecipient must submit match documentation to GMA/ABAG and maintain accounting records detailing the source of the match (actual cash and in-kind services, the item to which the match applies and provide complete documentation of expenditures).

4. Match funds are calculated against the total budget and do not necessarily have to be applied on a line item basis.

Retention

1. As required under the CEC ARV-10-032 agreement, CEC must retain 10 percent of any payment request. After the project is complete the Subrecipient must submit a completed payment request form requesting release of the retention. Please note that this form should be accompanied by the final payment request (see above) CEC and ABAG will review the project file and, when satisfied that the terms of the funding agreements have been fulfilled, CEC will authorize release of the retention.

Budget Reallocations

1. All budget reallocations and/or increases must be approved in advance by the Project Manager and ABAG.

2. The budget reallocation, if any, cannot substantially change the scope of work without approval from the Project Manager and ABAG.

3. A budget reallocation, if any, may only involve moving funds between tasks, line items, or categories.

4. The budget reallocation, if any, may not increase the percentage rate of Indirect Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget.

Record Retention

1. Subrecipient shall maintain accurate and complete financial records of its activities and operations relating to this Subrecipient Agreement in accordance with the Grant Agreement and generally accepted accounting principles.

2. ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Subrecipient and shall be made available to ABAG during the term of this Subrecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

**BAY AREA EV CORRIDOR
SUBRECIPIENT AGREEMENT
- BASE DOCUMENT -**

This SubRecipient Agreement is made and entered into as of the Effective Date by and between the Association of Bay Area Governments (ABAG), a joint powers agency (ABAG) and _____, a _____ (SubRecipient).

RECITALS

A. In October 2009, the California Energy Commission (Energy Commission) issued solicitation PON-09-006 to fund projects that develop infrastructure necessary to store, distribute, and dispense the following transportation fuels: electricity, E-85, biomass-based diesel, and natural gas;

B. In January 2010, the ABAG submitted application #20 In response to the solicitation;

C. The Energy Commission issued a Notice of Award dated May 15, 2010 and revised January 11, 2011 stating that ABAG had been awarded grant funds in the amount of One Million Four Hundred-ninety-three Thousand One Hundred Sixty – five Dollars (\$1,493,165.00) (Award) to implement the EV charging stations project described in the application (Bay Area EV Corridor Project);

D. Effective August 12, 2011, ABAG accepted the Award for itself and on behalf of all eight subawardees and entered into Grant Agreement No. ARV-10-032 with the Energy Commission;

E. ABAG and this SubRecipient desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for SubRecipient's participation in the Bay Area EV Corridor Project.

NOW THEREFORE, based upon the foregoing recitals, ABAG and SubRecipient further agree as follows:

1.0 APPLICABLE DOCUMENTS

1.1 The following are attached:

1.1.1 Exhibit 1 SubRecipient Scope of Work

1.1.2 Exhibit 2 Invoicing Procedures

1.1.2 Exhibit 3 Grant Agreement No. ARV-10-032 (Grant Agreement) including the following exhibits that were attached to the Grant Agreement:

Exhibit A, 'Work Statement' [between ABAG and CEC]
Exhibit A-1, 'Schedule of Products and Due Dates'
Exhibit B, 'Budget'
Exhibit C, 'Terms and Conditions'
Exhibit C, Attachment 1, 'Payment Request Form'
Exhibit D, 'Special Terms and Conditions'
Exhibit E, 'Contacts List'
Exhibit F, 'Definitions'

1.2 The SubRecipient Agreement is comprised of this Base Document, Exhibit 1, SubRecipient Scope of Work, Exhibit 2, Invoicing Procedures and Exhibit 3, Grant Agreement and is the complete and exclusive statement of understanding between ABAG and the SubRecipient, and supersedes any and all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this SubRecipient Agreement.

3.0 TERM OF AGREEMENT

The SubRecipient Agreement shall commence as of date it is approved by the Energy Commission (Effective Date) and continue until November 30, 2013, or until terminated by the Energy Commission pursuant to the terms of this SubRecipient Agreement.

4.0 SUBAWARD AMOUNT

4.1 Under the terms of the Grant Agreement, ABAG will disburse a portion of the Award to SubRecipient for carrying its responsibilities as part of the Bay Area EV Corridor Project as described in section 6 and Exhibits 1 and 3. The maximum amount to be funded by the Energy Commission and disbursed through ABAG to SubRecipient shall be _____ Dollars (\$_____) (Subaward Amount).

4.2 In accordance with the procedures set forth in section 4.5 and Exhibit 2, ABAG will pay SubRecipient for the acquisition of EV chargers as described in Exhibit 1.

4.3 In accordance with the procedures set forth in section 4.5 and Exhibit 2, ABAG will pay SubRecipient for the installation of EV chargers, storage system, battery storage, and Energy Operating System as described in Exhibit 1.

4.4 In accordance with section 4.5 and Exhibit 2, ABAG will pay SubRecipient for non-installation services based on the hourly rates for the individuals, or categories of individuals, as the case may be, all as described in Exhibit 1.

4.5 ABAG will review all invoices submitted and approve or disapprove each invoice in total, or in part, as the case may be, within ten (10) business days of receipt. ABAG will promptly forward all approved invoices to CEC for

disbursement. CEC will review and approve or disapprove each invoice in total or in part. ABAG will promptly notify SubRecipient of any disapproval(s) by CEC. ABAG will promptly forward disbursements received from the CEC and in accordance with section 5.1.

5.0 ABAG OBLIGATIONS

5.1 ABAG shall be the program lead and fiscal agent for the Bay Area EV Corridor Project. ABAG shall disburse CEC Award funds as required or permitted by the Grant Agreement. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to SubRecipient unless and until such are authorized and disbursed from CEC to ABAG.

5.2 ABAG shall coordinate the activities of all subrecipients, including this SubRecipient, so as to implement the Bay Area EV Corridor Project in accordance with the terms of the Grant Agreement.

5.2.1 ABAG shall promptly notify SubRecipient of any notices given or actions taken by the Energy Commission if such notices or actions are likely to affect SubRecipient's performance, duties, obligations or funding under this SubRecipient Agreement. To the extent practicable, ABAG shall consult with SubRecipient in carrying out ABAG's responsibilities.

6.0 SUBRECIPIENT OBLIGATIONS

6.1 SubRecipient is, and at all times will continue to be, in full compliance with the terms and conditions of the Grant Agreement that are applicable to it. SubRecipient understands and agrees that for purposes of the foregoing, any requirements imposed upon ABAG as Recipient in the Grant Agreement are hereby passed-through and adopted by SubRecipient as obligations of SubRecipient, excepting only ABAG's obligations as defined in section 5.

6.1.1 Without limiting subsection 6.1, SubRecipient shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount; and

6.2 SubRecipient shall carry out all the tasks set forth in Exhibit 1 as it may be amended or modified. SubRecipient shall carry out all tasks in accordance with the Grant Agreement.

6.2.1 SubRecipient acknowledges that pursuant to the Grant Agreement, the Energy Commission has the right to modify tasks and budgets and to approve changes in personnel, subcontractors and vendors through ABAG. SubRecipient shall comply with any requirements imposed as a result of the Energy Commissions exercise of such rights.

6.3 SubRecipient shall not cause ABAG to be in violation of the Grant Agreement, whether by act or omission.

6.4 SubRecipient shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time. Any such laws, rules, regulations, ordinances, and directives required thereby to be included in this Subaward Agreement are incorporated herein by reference.

7.0 INDEMNIFICATION AND INELIGIBLE CLAIMS

7.1 Notwithstanding any provision to the contrary, whether expressly or by implication, SubRecipient agrees to indemnify, defend, and hold harmless the Energy Commission, ABAG, its members (excepting this SubRecipient), and their respective elected and appointed officers, employees, and agents from and against any and all liability resulting from SubRecipient's act(s) and/or omission(s) arising from and/or relating to the Grant Agreement or this SubRecipient Agreement, and as such would be imposed in the absence of Government Code section 895.2.

7.1.2 Without limiting the scope of subsection 7.1, such liability includes but is not limited to the following: any funding disallowance; audits; demands; claims; actions; liabilities; damages; fines; fees, costs, and expenses, including attorney, auditor, and/or expert witness fees.

7.3 SubRecipient understands and agrees that it is solely responsible for any and all of the Subaward Amount that the Energy Commission determines to be ineligible under the Grant Agreement. Immediately upon request by Energy Commission or ABAG, the SubRecipient shall return any funds that have been disbursed to the extent that their use has been disallowed.

8.0 TERMINATION

8.1 SubRecipient acknowledges that pursuant to section 13 of Exhibit C to the Grant Agreement, the Energy Commission has the right to terminate the Grant Agreement in accordance with its terms.

8.1.1 Upon termination of the Grant Agreement, this Subaward shall terminate effective the same date as the Grant Agreement and in accordance with the terms and conditions for the termination of the Grant Agreement.

9.0 NOTICES AND ADMINISTRATIVE CONTACTS

9.1 All notices or notifications under this SubRecipient Agreement shall be in writing addressed to the persons set forth in this section 9.0

9.2 All notices or notifications to ABAG shall be sent to:

Jerry Lahr, Principal Investigator
Association of Bay Area Governments
P. O. Box 2050
Oakland, CA 94604-2050
JerryL@abag.ca.gov

9.3 All notices or notifications to the SubRecipient shall be sent to:

Charlie Knox, Community Development Director
City of Benicia
250 E. "L" Street
Benicia, CA 94510
cknox@ci.benicia.ca.us

10.0 AMENDMENTS AND CHANGES

Except for changes described in subsections 5.2.1 and 6.2.1, this SubRecipient Agreement may be changed only by a written amendment duly signed by ABAG and SubRecipient.

11.0 ASSIGNMENT AND DELEGATION

SubRecipient shall not assign its rights or delegate its duties under this SubRecipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this SubRecipient Agreement.

12.0 GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. SubRecipient further agrees and consents that the venue of any action brought between SubRecipient and ABAG shall be exclusively in the County of Alameda.

13.0 VALIDITY AND SEVERABILITY

If any provision of this SubRecipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this SubRecipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14.0 NO WAIVER

No waiver by either party of any event of breach and/or breach of any provision of this SubRecipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time

to time, of any provision of this SubRecipient Agreement shall not be construed as a waiver thereof.

15.0 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

15.1 SubRecipient shall maintain accurate and complete financial records of its activities and operations relating to this SubRecipient Agreement in accordance with the Grant Agreement and generally accepted accounting principles.

15.2 SubRecipient agrees that ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this SubRecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the SubRecipient and shall be made available to ABAG during the term of this SubRecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

15.3 If an audit of the SubRecipient is conducted specifically regarding this SubRecipient Agreement by any Federal or State auditor, or by any auditor or accountant employed by the SubRecipient or otherwise, then the SubRecipient shall file a copy of such audit report with ABAG within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this SubRecipient Agreement.

15.4 Failure of SubRecipient to comply with this section 15 shall constitute a material breach of this SubRecipient Agreement, upon which ABAG may terminate or suspend under section 9.0 (Termination for Default).

16.0 AUTHORIZATION WARRANTY

SubRecipient represents and warrants that the person executing this SubRecipient Agreement on its behalf is an authorized agent who has actual authority to bind SubRecipient to each and every term, condition, and obligation herein.

END OF BASE DOCUMENT
SIGNATURE PAGE TO FOLLOW

BAY AREA RETROFIT BAY AREA
SUBRECIPIENT AGREEMENT

* * * * *

AUTHORIZED SIGNATURES

IN WITNESS WHEREOF, SubRecipient has duly executed this Agreement, or caused it to be duly executed, and ABAG, under the authorization of its Executive, has caused this Agreement to be duly executed on its behalf by the Executive Director, or his designee.

SubRecipient

Name, Title

Approved as to form:

Name, Title

Association of Bay Area Governments

Ezra Rapport, Executive Director

Approved as to Form:

Kenneth K. Moy, Legal Counsel

BAY AREA EV CORRIDOR

Exhibit 1 SubRecipient Scope of Work - City of Benicia-

This Subrecipient Scope of Work is based on the Work Statement for the Bay Area EV Corridor Project (attached to the Subrecipient Agreement as Exhibit A to the Grant Agreement) ('Work Statement'), the Budget for the Bay Area EV Corridor Project (attached to the Subrecipient Agreement as Exhibit B to the Grant Agreement) ('Budget') and the Bay Area PEV Infrastructure Outreach and Regional Allocation Plan (as described in Task 2.0 of the Work Statement. This Scope of Work when combined with all of the other scopes of work for all other subrecipients comprise the Bay Area EV Corridor Project.

- A. Monthly Progress Reports – SubRecipient will provide monthly progress reports on its efforts on the Bay Area EV Corridor Project which report will comply with the requirements of Task 1.4 of the Work Statement.
- B. Final Report – SubRecipient will provide information as necessary on its efforts on the Bay Area EV Corridor Project to enable ABAG to meet the requirements of Task 1.5 of the Work Statement.
- C. Matching Funds – SubRecipient will identify, obtain and document the matching funds described at pages __ of 29 to __ of 29 of the Budget and the documentation will meet the requirements of Task 1.6 of the Work Statement.
- D. Permits – SubRecipient will obtain permits for constructing the portion of the Bay Area EV Corridor Project described in Attachment 1A to this Exhibit 1. SubRecipient will carry out this task in compliance with the requirements of Task 1.7 of the Work Statement
- E. Project Construction – SubRecipient will construct the portion of the Bay Area EV Corridor Project described in Attachment 1A to this Exhibit 1. SubRecipient will carry out this task in compliance with the requirements of Task 3.0 of the Work Statement and the Budget.
- G. Data Collection – SubRecipient will, for the portion of the Bay Area EV Corridor Project described in Attachment 1A to this Exhibit 1, collect and analyze data as required in Task 4.0 of the Work Statement and for the six month period agreed upon by ABAG and the Energy Commission.

Exhibit 2

EV Corridor Project

Invoicing Procedures



**GRANT
MANAGEMENT**
ASSOCIATES

11/21/2011

Invoicing Procedures for ARV-10-032
Association of Bay Area Governments
Recipient Project Manager: Jerry Lahr
Commission Grant Manager: Leslie Baroody

Subrecipient:

1. Subrecipient submits payment request form, no more than one per month, and required backup documentation as outlined in "Backup Documentation section" by the 15th day after the calendar month in which the expenses are incurred.
 - a. Payments will generally be made on a reimbursement basis for Subrecipient expenditures, i.e., after the Subrecipient has paid for a service, product, supplies, or other approved budget item. Payments will also be made for charger(s) based on a Subrecipient's executed purchase order for it/them. The amounts and/or rates within the budget are caps, or the maximum amount allowed to be billed. The Subrecipient can only bill for actual expenses incurred at the Subrecipient's actual direct labor rate(s), fringe benefit rate(s), and indirect rate(s), not to exceed the rates specified in the budget.
 - b. The following certification shall be included on each Payment Request form and signed by the Subrecipient's authorized officer:

I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement and that the reimbursement of these costs has not and will not be received under other sources including, but not limited to, a Government Entity contract, subcontract or other procurement method. For projects considered to be a public work: Prevailing wages were paid to eligible works who provided labor for the work covered by this invoice; Recipient and all subcontractors have complied with prevailing wage laws.
 - c. The final payment request must be received by ABAG on or before February 18, 2013. Please note, this request should be accompanied by the Subrecipient Payment Request Form. In the "type of Request" field please denote "Release Retention".
 - d. As a general rule, advance payments are not allowed and discouraged.
2. GMA will review invoicing documentation, input into a master invoice and send to ABAG for review and finalizing for ABAG's submission to the CEC no more than 15 business days from receipt from Subrecipient.
3. ABAG will submit approved master invoice to CEC for payment

Backup Documentation

1. All payment requests must be submitted using a completed Payment Request form. This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share, including backup documentation for actual expenditures, such as time cards, purchase orders, vendor invoices, and proof of payment. Purchase orders for charger equipment only are an acceptable form of backup documentation.
2. Any payment request that is submitted without expenses itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, GMA/ABAG will inform the project manager and the subrecipient and hold the invoice until all required information is received or corrected.
3. Any penalties imposed on the Subrecipient by a subcontractor because of delays in payment will be paid by the Subrecipient.
4. Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

Match

1. Match funds are required to be available and spent proportionately to total match or in advance of any funds being reimbursed to the Subrecipient. Exceptions must be approved in advance by ABAG.
2. If the grant budget includes cost or match share under the Agreement, the Subrecipient agrees to be liable for the percentage of cost or match share identified in this Agreement of the total allowable project costs paid even if the project is terminated early or is not funded to its completion.
3. Match funds should be reported in the monthly invoices. Therefore, Subrecipient Invoices should include line items and totals for match. This should include match budgeted, match expended in the invoicing period and amount remaining. The Subrecipient must submit match documentation to GMA/ABAG and maintain accounting records detailing the source of the match (actual cash and in-kind services, the item to which the match applies and provide complete documentation of expenditures).
4. Match funds are calculated against the total budget and do not necessarily have to be applied on a line item basis.

Retention

1. As required under the CEC ARV-10-032 agreement, CEC must retain 10 percent of any payment request. After the project is complete the Subrecipient must submit a completed payment request form requesting release of the retention. Please note that this form should be accompanied by the final payment request (see above) CEC and ABAG will review the project file and, when satisfied that the terms of the funding agreements have been fulfilled, CEC will authorize release of the retention.

Budget Reallocations

1. All budget reallocations and/or increases must be approved in advance by the Project Manager and ABAG.
2. The budget reallocation, if any, cannot substantially change the scope of work without approval from the Project Manager and ABAG.
3. A budget reallocation, if any, may only involve moving funds between tasks, line items, or categories.
4. The budget reallocation, if any, may not increase the percentage rate of Indirect Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget.

Record Retention

1. Subrecipient shall maintain accurate and complete financial records of its activities and operations relating to this Subrecipient Agreement in accordance with the Grant Agreement and generally accepted accounting principles.
2. ABAG, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Subrecipient and shall be made available to ABAG during the term of this Subrecipient Agreement and for a period of five (5) years thereafter unless ABAG's written permission is given to dispose of any such material prior to such time.

EXHIBIT A

WORK STATEMENT

TECHNICAL TASK LIST

Task #	CPR	Task Name
1	N/A	Administration
2	X	Electric Vehicle Infrastructure Coordination
3	X	Project Coordination and Design
4		Data Collection and Analysis

KEY NAME LIST

Task #	Key Personnel	Key Subcontractor(s)	Key Partner(s)
1	Susan Hsieh, ABAG Ezra Rapport, ABAG	Marin Link	
2	Susan Hsieh, ABAG Ezra Rapport, ABAG	Marin Link Alameda County City/County of San Francisco City of Palo Alto City of San Jose Monterey Bay EV Alliance/ Ecology Action (on behalf of partners in Monterey, San Benito, Santa Cruz) Santa Clara County 350 Green Coulomb Grant Management Associates Marin County	
3	Susan Hsieh, ABAG Ezra Rapport, ABAG	Same as above	
4	Susan Hsieh, ABAG Ezra Rapport, ABAG	Same as above	
5	Susan Hsieh, ABAG Ezra Rapport, ABAG	Marin Link	

GLOSSARY

Specific terms and acronyms used throughout this scope of work are defined as follows:

Term/ Acronym	Definition
ABAG	Association of Bay Area Governments
ARFVT	Alternative and Renewable Fuel and Vehicle Technology
CPR	Critical Project Review
DC Fast Charging	Direct Current Fast Charging
Energy Commission	California Energy Commission
EV	Electric Vehicle
EVSE	Electric Vehicle Supply Equipment
FTD	Fuels and Transportation Division
GHG	Greenhouse gas
PEV	Plug-in Electric Vehicle, including both Battery Electric Vehicles (BEVs) and Plug-in Hybrid Electric Vehicle (PHEVs)
PHEV	Plug-in Hybrid Electric Vehicle

Background:

Assembly Bill 118 (Núñez, Chapter 750, Statutes of 2007), created the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVT Program). The statute, subsequently amended by AB 109 (Núñez, Chapter 313, Statutes of 2008), authorizes the Energy Commission to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state's climate change policies. The Energy Commission has an annual program budget of approximately \$100 million and provides financial support for projects that:

- Develop and improve alternative and renewable low-carbon fuels;
- Optimize alternative and renewable fuels for existing and developing engine technologies;
- Produce alternative and renewable low-carbon fuels in California;
- Decrease, on a full fuel cycle basis, the overall impact and carbon footprint of alternative and renewable fuels and increase sustainability;
- Expand fuel infrastructure, fueling stations, and equipment;
- Improve light-, medium-, and heavy-duty vehicle technologies;
- Retrofit medium- and heavy-duty on-road and non-road vehicle fleets;
- Expand infrastructure connected with existing fleets, public transit, and transportation corridors; and
- Establish workforce training programs, conduct public education and promotion, and create technology centers

The California Energy Commission issued solicitation PON-09-006 to fund projects that develop infrastructure necessary to store, distribute, and dispense the following transportation fuels: electricity, E-85, biomass-based diesel, and natural gas. To be eligible for funding under PON-09-006, the projects must also be consistent with the

Energy Commission's ARFVT Investment Plan updated annually. In response to PON-09-006, the Recipient submitted application #20 which was proposed for funding in the Energy Commission's Notice of Proposed Awards of May 17, 2010 and revised January 11, 2011, and is incorporated by reference to this Agreement in its entirety.

Problem Statement:

Since the passage of Assembly Bill 32 (Núñez, Chapter 488, Statutes of 2006), the California Global Warming Solutions Act of 2006, Bay Area counties, municipalities, and regional public agencies have sought ways to reduce greenhouse gases (GHGs) across all key sectors of the economy, especially the transportation sector, which accounts for approximately 53% of regional emissions. In support of these emissions reduction goals, the Bay Area Electric Vehicle (EV) Corridor Project was developed beginning in late 2008 to help make the Bay Area the "EV Capital of the United States".

Goals of the Agreement:

The goals of this Agreement are to:

- Develop a region wide EV charger network
- Reduce GHG emissions
- Improve air quality
- Increase market penetration of Plug-in Electric Vehicles (PEV)

Objective of the Agreement:

The objective of this Agreement is to install up to 423 charge points in the bay area.

TASK 1 ADMINISTRATION

Task 1.1 Attend Kick-off Meeting

The goal of this task is to establish the lines of communication and procedures for implementing this Agreement.

The Recipient shall:

- Attend a "Kick-Off" meeting with the Commission Project Manager, the Grants Officer, and a representative of the Accounting Office. The Recipient shall bring its Project Manager, Agreement Administrator, Accounting Officer, and others designated by the Commission Project Manager to this meeting. The administrative and technical aspects of this Agreement will be discussed at the meeting. Prior to the kick-off meeting, the Commission Project Manager will provide an agenda to all potential meeting participants.

The administrative portion of the meeting shall include, but not be limited to, the following:

- Discussion of the terms and conditions of the Agreement
- Discussion of Critical Project Review (Task 1.2)
- Match fund documentation (Task 1.6). No work may be done until this documentation is in place.
- Permit documentation (Task 1.7)

- Discussion of subcontracts needed to carry out the project (Task 1.8)

The technical portion of the meeting shall include, but not be limited to, the following:

- The Commission Project Manager's expectations for accomplishing tasks described in the Scope of Work
- An updated Schedule of Products
- Discussion of Progress Reports (Task 1.4)
- Discussion of Technical Products (Product Guidelines located in Section 5 of the Terms and Conditions)
- Discussion of the Final Report (Task 1.5)

The Commission Project Manager shall designate the date and location of this meeting.

Recipient Products:

- Updated Schedule of Products
- Updated List of Match Funds
- Updated List of Permits

Commission Project Manager Product:

- Kick-Off Meeting Agenda

Task 1.2 Critical Project Review (CPR) Meetings

The goal of this task is to determine if the project should continue to receive Energy Commission funding to complete this Agreement and to identify any needed modifications to the tasks, products, schedule or budget.

CPRs provide the opportunity for frank discussions between the Energy Commission and the Recipient. CPRs generally take place at key, predetermined points in the Agreement, as determined by the Commission Project Manager and as shown in the Technical Task List above. However, the Commission Project Manager may schedule additional CPRs as necessary, and any additional costs will be borne by the Recipient.

Participants include the Commission Project Manager and the Recipient and may include the Commission Grants Officer, the Fuels and Transportation Division (FTD) team lead, other Energy Commission staff and Management as well as other individuals selected by the Commission Project Manager to provide support to the Energy Commission.

The Commission Project Manager shall:

- Determine the location, date, and time of each CPR meeting with the Recipient. These meetings generally take place at the Energy Commission, but they may take place at another location.

- Send the Recipient the agenda and a list of expected participants in advance of each CPR. If applicable, the agenda shall include a discussion on both match funding and permits.
- Conduct and make a record of each CPR meeting. One of the outcomes of this meeting will be a schedule for providing the written determination described below.
- Determine whether to continue the project, and if continuing, whether or not modifications are needed to the tasks, schedule, products, and/or budget for the remainder of the Agreement. Modifications to the Agreement may require a formal amendment (please see the Terms and Conditions, Section 8). If the Commission Project Manager concludes that satisfactory progress is not being made, this conclusion will be referred to the Transportation Committee for its concurrence.
- Provide the Recipient with a written determination in accordance with the schedule. The written response may include a requirement for the Recipient to revise one or more product(s) that were included in the CPR.

The Recipient shall:

- Prepare a CPR Report for each CPR that discusses the progress of the Agreement toward achieving its goals and objectives. This report shall include recommendations and conclusions regarding continued work of the projects. This report shall be submitted along with any other products identified in this scope of work. The Recipient shall submit these documents to the Commission Project Manager and any other designated reviewers at least 15 working days in advance of each CPR meeting.
- Present the required information at each CPR meeting and participate in a discussion about the Agreement.

Commission Project Manager Products:

- Agenda and a list of expected participants
- Schedule for written determination
- Written determination

Recipient Product:

- CPR Report(s)

Task 1.3 Final Meeting

The goal of this task is to closeout this Agreement.

The Recipient shall:

- Meet with Energy Commission staff to present the findings, conclusions, and recommendations. The final meeting must be completed during the closeout of this Agreement.

This meeting will be attended by, at a minimum, the Recipient, the Commission Grants Office Officer, and the Commission Project Manager. The technical and administrative aspects of Agreement closeout will be

discussed at the meeting, which may be two separate meetings at the discretion of the Commission Project Manager.

The technical portion of the meeting shall present an assessment of the degree to which project and task goals and objectives were achieved, findings, conclusions, recommended next steps (if any) for the Agreement, and recommendations for improvements. The Commission Project Manager will determine the appropriate meeting participants.

The administrative portion of the meeting shall be a discussion with the Commission Project Manager and the Grants Officer about the following Agreement closeout items:

- What to do with any equipment purchased with Energy Commission funds (Options)
- Energy Commission's request for specific "generated" data (not already provided in Agreement products)
- Need to document Recipient's disclosure of "subject inventions" developed under the Agreement
- "Surviving" Agreement provisions
- Final invoicing and release of retention
- Prepare a schedule for completing the closeout activities for this Agreement

Products:

- Written documentation of meeting agreements
- Schedule for completing closeout activities

Task 1.4 Monthly Progress Reports

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the research objectives of this Agreement on time and within budget.

The objectives of this task are to summarize activities performed during the reporting period, to identify activities planned for the next reporting period, to identify issues that may affect performance and expenditures, and to form the basis for determining whether invoices are consistent with work performed.

The Recipient shall:

- Prepare a Monthly Progress Report which summarizes all Agreement activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Each progress report is due to the Commission Project Manager within 10 days of the end of the reporting period. The recommended specifications for each progress report are contained in Section 6 of the Terms and Conditions of this Agreement.

Product:

- Monthly Progress Reports

Task 1.5 Final Report

The goal of the Final Report is to assess the project's success in achieving its goals and objectives, advancing science and technology, and providing energy-related and other benefits to California.

The objectives of the Final Report are to clearly and completely describe the project's purpose, approach, activities performed, results, and advancements in science and technology; to present a public assessment of the success of the project as measured by the degree to which goals and objectives were achieved; to make insightful observations based on results obtained; to draw conclusions; and to make recommendations for further projects and improvements to the FTD project management processes.

The Final Report shall be a public document. If the Recipient has obtained confidential status from the Energy Commission and will be preparing a confidential version of the Final Report as well, the Recipient shall perform the following activities for both the public and confidential versions of the Final Report.

The Recipient shall:

- Prepare an Outline of the Final Report.
- Prepare a Final Report following the approved outline and the latest version of the Final Report guidelines which will be provided by the Commission Project Manager. The Commission Project Manager shall provide written comments on the Draft Final Report within fifteen (15) working days of receipt. The Final Report must be completed at least 60 days before the end of the Agreement Term.
- Submit one bound copy of the Final Report with the final invoice.

Products:

- Draft Outline of the Final Report
- Final Outline of the Final Report
- Draft Final Report
- Final Report

Task 1.6 Identify and Obtain Matching Funds

The goal of this task is to ensure that the match funds planned for this Agreement are obtained for and applied to this Agreement during the term of this Agreement.

City is providing "in-kind" staff hours, but no \$ match Fy!

The costs to obtain and document match fund commitments are not reimbursable through this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient may utilize match funds for this task. Match funds shall be spent concurrently or in advance of Energy Commission funds for each task during the term of this Agreement. Match funds must be identified in writing and the associated

commitments obtained before the Recipient can incur any costs for which the Recipient will request reimbursement.

The Recipient shall:

- Prepare a letter documenting the match funding committed to this Agreement and submit it to the Commission Project Manager at least 2 working days prior to the kick-off meeting. If no match funds were part of the proposal that led to the Energy Commission awarding this Agreement and none have been identified at the time this Agreement starts, then state such in the letter. If match funds were a part of the proposal that led to the Energy Commission awarding this Agreement, then provide in the letter a list of the match funds that identifies the:
 - Amount of each cash match fund, its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied.
 - Amount of each in-kind contribution, a description, documented market or book value, and its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied. If the in-kind contribution is equipment or other tangible or real property, the Recipient shall identify its owner and provide a contact name, address and telephone number, and the address where the property is located.
- Provide a copy of the letter of commitment from an authorized representative of each source of cash match funding or in-kind contributions that these funds or contributions have been secured. For match funds provided by a grant, a copy of the executed grant shall be submitted in place of a letter of commitment.
- Discuss match funds and the implications to the Agreement if they are reduced or not obtained as committed, at the kick-off meeting. If applicable, match funds will be included as a line item in the progress reports and will be a topic at CPR meetings.
- Provide the appropriate information to the Commission Project Manager if during the course of the Agreement additional match funds are received.
- Notify the Commission Project Manager within 10 days if during the course of the Agreement existing match funds are reduced. Reduction in match funds must be approved through a formal amendment to the Agreement and may trigger an additional CPR.

Products:

- A letter regarding match funds or stating that no match funds are provided
- Copy(ies) of each match fund commitment letter(s) (if applicable)
- Letter(s) for new match funds (if applicable)
- Letter that match funds were reduced (if applicable)

Task 1.7 Identify and Obtain Required Permits

The goal of this task is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track.

Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient shall budget match funds for any expected expenditures associated with obtaining permits. Permits must be identified in writing and obtained before the Recipient can make expenditures for which a permit is required.

The Recipient shall:

- Prepare a letter documenting the permits required to conduct this Agreement and submit it to the Commission Project Manager at least 2 working days prior to the kick-off meeting. If there are no permits required at the start of this Agreement, then state such in the letter. If it is known at the beginning of the Agreement that permits will be required during the course of the Agreement, provide in the letter:
 - A list of the permits that identifies the:
 - Type of permit
 - Name, address and telephone number of the permitting jurisdictions or lead agencies
 - The schedule the Recipient will follow in applying for and obtaining these permits.
- Discuss the list of permits and the schedule for obtaining them at the kick-off meeting and develop a timetable for submitting the updated list, schedule and the copies of the permits. The implications to the Agreement if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in the Progress Reports and will be a topic at CPR meetings.
- If during the course of the Agreement additional permits become necessary, provide the appropriate information on each permit and an updated schedule to the Commission Project Manager.
- As permits are obtained, send a copy of each approved permit to the Commission Project Manager.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the Commission Project Manager within 5 working days. Either of these events may trigger an additional CPR.

Products:

- Letter documenting the permits or stating that no permits are required
- A copy of each approved permit (if applicable)
- Updated list of permits as they change during the term of the Agreement (if applicable)
- Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)

Task 1.8 Obtain and Execute Subcontracts

The goal of this task is for Recipients to identify any subcontracts required to carry out the tasks under this Agreement and to procure them consistent with the terms and conditions of this Agreement and the Recipient's own procurement policies and procedures. It will also provide the Energy Commission an opportunity to review the subcontracts to ensure that the tasks are consistent with this Agreement, that the budgeted expenditures are reasonable and consistent with applicable cost principles.

The Recipient shall:

- Prepare a letter documenting the subcontracts required to conduct this Agreement, and submit it to the Commission Project Manager at least 2 working days prior to the kick-off meeting. If there are no subcontracts required at the start of this Agreement, then state such in the letter. If it is known at the beginning of the Agreement that subcontracts will be required during the course of the Agreement, provide in the letter:
 - A list of the subcontracts that describes the anticipated maximum budget and general scope of work for each
 - A description of the procurement process to be used
 - The schedule the Recipient will follow in applying for and obtaining these subcontracts
- Submit a draft of the subcontract that will include a budget with the information required in the budget details to the Commission Project Manager for review and approval, and incorporate any changes recommended by the Commission Project Manager.
- Submit a final copy of the executed subcontract. (space issues)

Products:

- Letter describing the subcontracts needed, or stating that no subcontracts are required
- Draft subcontracts
- Final subcontracts

Technical Tasks

Task 2.0 Electric Vehicle Infrastructure Coordination

The goals of this task are to provide a coordinated response to the deployment of Electric Vehicle Supply Equipment (EVSE) in California by the recipients of applicable ARFVT Program funding, and to maximize the public benefit.

The Recipient shall:

- Develop a Bay Area PEV Infrastructure Outreach and Regional Allocation Plan in consultation with key Energy Commission staff and Energy Commission defined stakeholders, including the cities and utilities. This plan will prioritize deployment and articulate a strategy and proposed approach for installing EVSE, including, but not limited to the following categories:

- **Multi-Unit Dwellings**
 - Estimates of Original Equipment Manufacturer (OEM) PEV deployment and their corresponding geographic location
 - A strategy to provide charging for multi-unit dwelling and homes without garages.
- **Workplace**
 - Identification of attributes that would result in workplace charging being a priority.
 - Coordination with the Business Council on Climate Change and their "EV Guide for Businesses".
- **Fleets/Public**
 - A strategy to identify and prioritize state and municipal government fleets that have more need for state funds
 - A strategy to identify , prioritize, and support public infrastructure on public property
 - A strategy to leverage fleet charging to accommodate residential, workplace and opportunity charging (eg. Sonoma County fleet charging strategy)
- **Commercial/Retail**
 - Marketing and advertising campaign
 - A method to determine which responses represent an interested party and a viable site
 - The rationale for determining whether the station will be used and how to minimize stranded assets
 - A strategy to mitigate stranded assets
- **DC Fast Charging**
 - Strategy for identifying and prioritizing optimal sites for fast chargers
- **Utility Notification**
 - A plan for communicating the location of charging installations to the appropriate electricity provider.

[Before this task begins, all relevant subcontracts must be executed. See Task 1.8 for details.]

[CPR WILL OCCUR DURING THIS TASK. See Task 1.2 for details.]

Products:

- Bay Area PEV Infrastructure Outreach and Regional Allocation Plan

TASK 3.0 PROJECT COORDINATION AND CONSTRUCTION

The goals of this task are to coordinate activities and communications among the project partners and subcontractors, to review proposed charging station locations and plans for procurement and installation, and to install charging stations.

The Recipient shall:

- Prepare and submit an organizational chart for the project

- Meet monthly with project partners to track and evaluate project progress, goals, barriers, and project approach
- Prepare request for proposals for charging station equipment and installation
- Prepare and submit a Project Coordination Summary Report that includes an evaluation of approach to charging station installation and barriers encountered
- Install charging stations according to priorities established in Bay Area PEV Infrastructure Outreach and Regional Allocation Plan.
- Confirm successful testing and startup of charging stations.
- Prepare and submit a Construction Report listing charging station locations with the number and type of chargers, pictures of representative charging stations, and confirmation of successful start-up and testing for each station.

[Before this task begins, all relevant subcontracts must be executed. See Task 1.8 for details.]

[CPR WILL OCCUR DURING THIS TASK. See Task 1.2 for details]

Products:

- Organizational Chart
- Project Coordination Summary Report.
- Summary Construction Report

TASK 4.0 DATA COLLECTION AND ANALYSIS

The goal of this task is to collect and analyze data from EVSE use over a 6 month period. This information will be included in the final report.

→ We are working out the details, i.e. who is responsible for collecting data, most likely one of the project partners, not the City.

The Recipient shall:

- Collect data on charging stations and vehicle use as available:
 - Vehicle use patterns
 - Charging frequency and profiles
 - Electric fuel use
 - Climate variations
 - Availability of vehicle chargers
 - "Real world" electric range
 - Operating costs
 - Time of use rates
- Describe lessons learned which should include, but are not limited to:
 - Most effective locations to install chargers
 - Optimum use of fast-charge stations
 - Economic and vehicle range tradeoffs between availability of charge infrastructure and onboard battery capacity
 - Changes in vehicle operator behavior
 - The impacts of various factors on influencing infrastructure we use.

- Provide additional data as requested by the Commission Project Manager, as is reasonably available.

[Before this task begins, all relevant subcontracts must be executed. See Task 1.8 for details.]

Products:

- None. Data from this task will be included in the Final Report

AGENDA ITEM
CITY COUNCIL MEETING DATE - JUNE 4, 2013
BUSINESS ITEMS

DATE : May 26, 2013

TO : City Manager

FROM : Economic Development Manager

SUBJECT : **APPROVAL OF LEASE AGREEMENT WITH CBS OUTDOOR FOR MODIFICATION AND OPERATION OF DIGITAL BILLBOARD AT 4850 PARK ROAD**

RECOMMENDATION:

Adopt proposed Resolution approving proposed lease agreement with CBS Outdoor to modify an existing billboard sign at 4850 Park Road.

EXECUTIVE SUMMARY:

CBS Outdoor proposes to lease the land of the former "Nationwide" I-680 freeway-oriented electronic billboard sign that is located on City property adjacent to Park Road and Interstate-680. CBS Outdoor intends to remove the existing sign, replace it with an enhanced electronic readerboard digital LED screen.

BUDGET INFORMATION:

The proposed lease agreement is expected to provide the City of Benicia with annual lease revenue starting at approximately \$250,000. The income generated from the lease is divided into two separate revenue streams, a guaranteed base rent and revenue share. The Initial annual Base (guaranteed) rent rate will be \$120,000 escalating to \$204,000 in year 16. The second revenue stream is a revenue sharing agreement where the City will share with CBS Outdoor the net profit earned from advertisers. In year one of the Agreement, the City revenue share will be 35%. This share will escalate to 40% in Year 11.

Staff has estimated that the annual revenue share for the City in the first year will be approximately \$130,000.

ENVIRONMENTAL ANALYSIS:

The Planning Commission, on November 29, 2012 reviewed the project and determined that the proposed project is Categorically Exempt per the California Environmental Quality Act (CEQA) Guidelines Section 15302, which applies to replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will

have substantially the same purpose and capacity as the structure replaced. The height of the sign will remain 42 feet 9 inches. Because the existing sign includes an electronic readerboard sign with a changing message, the modified sign is not considered a change in purpose or capacity.

The decision of the Planning Commission was appealed by two appellants to the City Council. Those appeal hearings were heard originally on January 15, 2013 and due to procedural error heard again on April 2, 2013. By the time of the appeal hearing on April 2nd one of the appellants dropped the appeal. The remaining appeal was denied when the City Council voted to sustain the Planning Commission decision.

GENERAL PLAN:

Relevant General Plan goals, policies and programs include the following, as discussed in the Summary section below:

- *GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.*
- *GOAL 2.7: Attract and retain industrial facilities that provide fiscal and economic benefits to—and meet the present and future needs of—Benicia.*
- *GOAL 2.13: Support the economic viability of existing commercial centers.*
 - *GOAL 3.3: Increase public awareness of cultural resources and activities.*
 - *POLICY 3.3.1: Preserve and enhance cultural organizations, resources and activities.*
 - *Program 3.3.A: Utilize the City's web page and other information sources to advertise cultural activities.*
 - *Program 3.3.E: Develop promotional materials that increase community awareness of the Camel Barn museum.*
- *GOAL 3.5: Promote events with wide community attraction.*
 - *POLICY 3.5.1: Support community-wide and special events, such as arts in the park, a farmers' market, and open studios.*
- *GOAL 3.6: Support and promote the arts as a major element in Benicia's community identity.*
- *GOAL 3.9: Protect and enhance scenic roads and highways.*

- POLICY 3.9.1: Preserve vistas along I-780 and I-680.
 - Program 3.9.A: Inventory scenic resources along I-780 and I-680.
 - Program 3.9.B: Investigate and apply for State Scenic highway designation of Interstate Highways I-780 and I-680.

STRATEGIC PLAN:

- Strategic Issue 3 – Strengthening Economic and Fiscal Conditions
 - Strategy 1 – Implement Economic Development Strategy
 - Action (c) – Replace Nationwide sign with tourism sign on I-680 freeway

BACKGROUND:

Since 2008 the City has been engaged in the process of soliciting and then negotiating with a third party for the replacement of the existing City-owned digital “Nationwide” sign. Over the course of nearly five years, the City has worked with CBS Outdoor in developing sign design plans and acceptable lease terms.

On August 31, 2010 and again on October 5, 2010 staff reviewed with the City Council in closed session key terms of a potential lease agreement with CBS Outdoor, including potential revenue to the City, which at the time was estimated to be \$150,000 per year. Additionally, staff was directed to bring forward more information related to the brightness and safety of LED digital reader boards. On November 2, 2010 the City Council, satisfied with the information provided by staff and CBS outdoor, directed staff to proceed with an Exclusive Negotiating Right Agreement with CBS Outdoor to replace the existing digital reader board (Nationwide Sign) at 5-1E Park Road. As negotiations were being finalized, staff reviewed, in Closed Session on January 15th, April 2nd, and May 21st, the key lease terms of price and terms of payment and received direction from Council.

On April 5, 2011, as an informational item in open session, the City Council and community were advised on the City’s intent to negotiate with CBS outdoor for the development of a readerboard sign. At that meeting the Exclusive Negotiating Rights Agreement was reviewed and discussed.

This project was identified as a key action in Strategic Issue 3 in the City’s Strategic Plan in 2009. This action was reaffirmed in 2011 and again most recently on May 7, 2013 when the City Council adopted the 2013-2015 Strategic Plan.

Once the lease negotiations reached a point where consummation of an

agreement seemed promising, City staff began engaging stakeholders and the community on the proposed agreement. Staff discussed or provided updates to the Planning Commission on June 14, 2012, met with the Chamber of Commerce Board of Directors on October 23, 2012, the Economic Development Board on November 15, 2012, and the Benicia Industrial Park Association (BIPA) Board of Directors on November 21, 2012. Staff also met and talked with the adjacent property owners at Insight Glass during the week of November 26th.

CBS Outdoor is proposing to enter into a lease for a term of twenty (20) years with the City of Benicia, which owns the land, to allow upgrading and alteration of the existing sign. As additional consideration for the lease, the City will also receive, on a space available basis, free advertising on the north facing side for its own messages and programs. Both the City and CBS Outdoor estimate that there will almost always be space available for City content. The industry standard assumes an 85% occupancy rate. Therefore, assuming there is not 100% occupancy, the City will have content once every eight displays or stated another way, one display every 64 seconds, each display last eight seconds.

In addition to the consideration noted above, the Agreement puts forth an abatement schedule to remove the two existing CBS Outdoor vinyl billboards. Within 90 days of operation of the new digital billboard CBS Outdoor will remove the southern-most structure located at Park Road and Bayshore Road. Within seven years of the proposed agreement's anniversary date the northern-most structure, located at Park Road and Industrial Way, will be removed.

For convenience, the following key lease terms have been listed:

 **Lease Term:** 20 years

 **Rent Rate:**

- Initial Annual Base (guaranteed) Rent Rate: \$120,000 escalating to \$204,000 in year 16.
- Revenue Share: 35% in Year one, escalate to 40% in Year 11.

 **Ownership of Sign**

- Upon expiration of the lease the City will own the sign.

 **Mutually Agreed Prohibited Content:**

- tobacco
- sexually oriented or adults only entertainment
- pawn shops
- payday loans or check cashing establishments
- bail bond sellers
- medical marijuana dispensaries

🚧 City of Benicia Advertising:

- Constant 1 out of 8 advertising clicks on a space-available basis (North-facing screen).

🚧 Abatement of Existing CBS Vinyl Billboards

- CBS Outdoor to abate, within 90 days of operation of the proposed digital board, the southern CBS Outdoor structure. Additionally, within seven years of the anniversary of the proposed lease CBS Outdoor shall abate the northern structure.

If the proposed lease agreement is approved, it is estimated that the structure will be constructed in the fall of 2013 and should be operational by the end of the calendar year. Staff recommends approval of the proposed lease agreement.

ATTACHMENTS:

- ❑ Proposed Resolution
- ❑ Proposed Lease Agreement

RESOLUTION NO. 13-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF BENICIA AND CBS OUTDOOR, A DELEWARE CORPORATION, TO MODIFY THE EXISTING BILLBOARD AT 4850 PARK ROAD, BY REPLACING AND OPERATING A NEW LED DIGITAL BILLBOARD STRUCTURE

WHEREAS, the City of Benicia prioritized the replacement of the existing “Nationwide” Sign located at 4850 Park Road with a new structure as a strategic action when it adopted the 2009-2011 Strategic Plan; and

WHEREAS, that strategic action was twice reaffirmed with the adoption of the 2011-13 and 2013-2015 Strategic Plans; and

WHEREAS, on July 1, 2008 the City Council directed staff to prepare and release an RFP for the replacement of the existing “Nationwide” readerboard with a new sign; and

WHEREAS, CBS Outdoor was selected as the preferred respondent, entering into an Exclusive Negotiation Rights Agreement with the City to begin negotiations of a lease agreement; and

WHEREAS, on April 5, 2012, Robert Harbin on behalf of CBS Outdoor requested use permit approval to modify the existing billboard at 4850 Park Road; and

WHEREAS, the Planning Commission, at a special meeting on November 29, 2012, conducted a public hearing and reviewed the proposed project; and

WHEREAS, the Planning Commission approved Resolution No. 12-8 for the modification of the billboard at 4850 Park Road; and

WHEREAS, the Planning Commission approved the proposed project to modify the existing billboard to an LED display; and

WHEREAS, on December 13, 2012, Craig Andres and Susan Cohen Grossman filed an appeal of the approval of the modification of the existing billboards to the City Council; and

WHEREAS, the City Council, at their regular meeting on April 2, 2013, reviewed the appeal to modify the existing billboard; and

WHEREAS, on March 28, 2013 Susan Cohen Grossman withdrew her appeal; and

WHEREAS, at their regular meeting on April 2, 2013 the appeal of Craig Andres was denied; and

WHEREAS, the proposed project is a Class 2 Categorical Exemption from the California Environmental Quality Act, because it can be seen with certainty that the proposed project does not have the potential to have any effects on the environment; and

WHEREAS, the proposed location of the structure and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the City because the sign alteration is required to be approved by Caltrans and subject to Caltrans permitting enforcement consistent with State and national regulations for placement, luminance, and safety; and

WHEREAS, the proposed use will comply with the provisions of Title 17 as they apply, and consistent with Title 18, the Sign Ordinance; and

WHEREAS, the proposed use is consistent with General Plan Goals 2.5, 2.7, 2.13, 3.3, 3.5, 3.6, and 3.9.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves the attached Lease Agreement between the City of Benicia and CBS Outdoor, a Delaware Company, to replace, install and operate a new LED digital billboard at 4850 Park Road, and authorize the City Manager to execute the agreement on behalf of the City, subject to approval by the City Attorney.

* * * * *

On a motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at the regular meeting of said Council held on the 4th day of June, 2013, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

DIGITAL SIGN LOCATION LEASE

CBS OUTDOOR

This Sign Location Lease (this “Lease”) is made and entered into as of _____, 2013 (the “Effective Date”) by and between the CITY OF BENICIA, a municipal corporation (“LESSOR”), and CBS OUTDOOR, INC., a Delaware corporation (“LESSEE”) upon the terms and conditions set forth below.

1. Premises. LESSOR hereby agrees to lease to LESSEE and LESSEE agrees to lease from LESSOR that certain real property owned by the City in its right-of-way at 5-1E (Park Road) in the City of Benicia, County of Solano, State of California, as more particularly described in Exhibit “A” (the “Premises”). This Lease is subject to the terms, covenants and conditions hereinafter set forth, and LESSEE covenants, as a material part of the consideration for this Lease, to keep and perform each and every term, covenant and condition of this Lease.

2. Term.

A. The term of this Lease shall be for ten (10) years, commencing on the earlier of (i) the date the City of Benicia, in the reasonable exercise of its regulatory capacity, determines the Facilities (as defined in Section 4.A below) are complete, or (ii) two hundred seventy (270) days after the Effective Date (the “Commencement Date”), and ending on the tenth anniversary thereof (the “Term”), subject to two (2) conditional options to renew for additional periods of five (5) years each pursuant to Paragraph 2.B. below. This Lease shall terminate and become null and void without further notice upon the expiration of the Term, or any agreed upon extension thereof, and any holding over by LESSEE after the expiration of the Term shall not constitute a renewal hereof nor give LESSEE any rights hereunder in or to the Premises.

B. In the event LESSEE shall not be in default in the performance of any term, condition, covenant or provision of this Lease, LESSEE shall have the option, upon prior written notice delivered no earlier than 180 days and no later than 90 days prior to the expiration of the initial Term or prior to the expiration of the first extension term, as the case may be, to renew this Lease for an additional period of five (5) years each (an “Option”). Each Option shall be exercised by the giving of written notice in the manner otherwise required for notices hereunder. Upon exercise of an Option, LESSEE shall not have the right to revoke said election to exercise the Option. In the event that an Option is not timely and properly exercised hereunder, then the Option shall expire, and LESSEE shall not have any right to renew this Lease.

C. Upon the expiration or earlier termination of the Term of this Lease, both parties shall be relieved of any further obligations hereunder (except for those duties or obligations accruing prior to such expiration or earlier termination, and except for those duties or obligations which expressly survive the expiration or earlier termination of this Lease), although each party shall continue to have available all remedies for any breach of this Lease occurring prior to the date of expiration or earlier termination.

D. In the event that the Facilities are not completed by the Commencement Date, LESSOR shall have the right to terminate this Lease upon thirty (30) day's written notice to LESSEE.

E. Prior to the Commencement Date, in the event LESSEE reasonably determines that it will be unable to secure or maintain any required permit or license from any appropriate governmental authority or that any federal, state or local statute, ordinance, regulation or other governmental action precludes or materially limits use of the Leased Premises for outdoor advertising purposes, LESSEE may terminate this Lease on thirty (30) days' written notice.

F. At any time after the Commencement Date, if (i) the view of LESSOR's Sign (as defined in Section 4) on the Premises becomes entirely or partially (in a manner that adversely affects revenue from the Sign) obstructed or destroyed; (ii) the view of LESSEE's Sign is obstructed or impaired in any way by any object or growth on the Property or on any neighboring property; (iii) there occurs a material diversion of traffic from, or a change in the direction of, traffic past the Sign; (iv) LESSEE is prevented from maintaining electrical power to the Premises or illuminating its Sign; (v) maintenance will be hampered or made unsafe due to conditions caused by nearby properties, land uses, or utilities; or (vi) LESSEE fails to receive, or loses, required governmental permits necessary to operate the Sign; then LESSEE shall notify LESSOR in writing of the circumstances, providing reasonable documentation thereof, and LESSOR shall have sixty (60) days in which to exercise the right, but not the obligation, to attempt to find a solution reasonably acceptable to LESSEE and LESSOR. If the parties are unable to agree that solution has been identified during such sixty (60) day period, LESSEE shall have the right to terminate this Lease upon thirty (30) days notice in writing to LESSOR and LESSOR shall refund to LESSEE any rental payment paid in advance.

3. Rent.

A. Minimum Base Rent

1) Monthly Rent. LESSEE agrees to pay to LESSOR as base rent, without notice or demand, Ten Thousand and no/100ths Dollars (\$10,000.00) ("Minimum Base Rent"), on or before the first day of each and every successive calendar month during the Term of this Lease. LESSEE's obligation to pay rent shall commence on the Commencement Date; provided, however, that if LESSEE is unable to complete the Facilities or obtain necessary operational permits for reasons beyond LESSEE's reasonable control, the obligation to begin paying Minimum Base Rent will be delayed for sixty (60) days. If such condition persists after such sixty (60) day period LESSEE may terminate the lease upon thirty (30) day notice. Upon giving such notice, LESSEE shall be excused from any obligation the pay Base Rent Minimum Base Rent shall be paid to LESSOR without deduction or offset, in lawful money of the United States of America and at such place as LESSOR may from time to time designate in writing. Minimum Base Rent for any period that is less than one (1) month shall be a prorated portion of the monthly installment herein based on a thirty (30) day month.

2) Mid-term Adjustments to Monthly Minimum Base Rent.

Commencing on the Anniversary date of year Six (6) of the Lease, the Minimum Monthly Base

Rent established in paragraph 3.A.1 of the Lease shall increase to Thirteen Thousand and no/100 Dollars (\$13,000.00). Commencing on the Anniversary date of year Eleven (11) of the Lease, the Minimum Monthly Base Rent established in paragraph 3.A.1 of the Lease shall increase to Fifteen Thousand and no/100 Dollars (\$15,000.00). Commencing on the Anniversary date of year Sixteen (16) the Lease, the Minimum Monthly Base Rent established in paragraph 3.A.1 of the Lease shall increase to Seventeen Thousand and no/100 Dollars (\$17,000.00).

B. Percentage Rent

1) Annual Percentage Rent. In addition to Minimum Base Rent, LESSEE agrees to pay to LESSOR an amount equal to thirty-five percent (35%) of Net Revenues (as defined below) that exceed the amount of the Base Rent (“Percentage Rent”). Commencing on the Anniversary date of year Eleven (11) of the Lease, LESSEE agrees to pay LESSOR an amount equal to forty percent (40%) of Net Revenues (as defined below) that exceed the amount of the Base Rent (“Percentage Rent”).

2) Net Revenues Defined. For the purposes of this section 3.B, “Net Revenues” shall mean all revenue received by LESSEE for use of the Sign less commissions actually paid to advertising agencies or media buyers that are not affiliated with Lessee or any other entity controlled, controlling or under control with LESSEE, less taxes, if any, imposed by the City of Benicia or taxes imposed directly on such billboard or the revenue derived therefrom by any governmental entity (excluding any tax on LESSEE’s gross or net income); provided that no commissions shall exceed 16.67%.

3) Payment of Percentage Rent. Percentage Rent shall be paid once annually, but no later than the last day of February for the prior calendar year. LESSEE shall, with the submission of its Percentage Rent payment, provide the LESSOR with a copy of reasonable records documenting its revenue and payments to advertising agencies or media buyers. LESSEE shall keep records related to its business operations including, but not limited to, its calculations of its Net Revenue in a commercially reasonable form and detail, and in accordance with standard practices used in the outdoor advertising industry. All documents, books and accounting records kept by LESSEE relating to revenue generated by the Facilities under this Lease shall be open to inspection by LESSOR or its authorized representative at LESSEE’s Berkeley, California office during reasonable business hours during the Lease Term and for one (1) year thereafter. Such documents shall remain with Lessee and their contents shall be deemed confidential and shall not be disclosed by LESSOR other than to its staff auditor or legal counsel, except as needed to enforce the terms of this Lease, discovery requests or demands in pending litigation or as required by court order.

4. Use.

LESSEE shall use the Premises for the sole purpose of erecting, constructing, installing, maintaining, securing, replacing, operating and removing LESSEE’s advertising sign thereon, including supporting structures, illumination facilities and connections, back up panels, service ladders, cameras, and other appurtenances and ancillary equipment (collectively, the “Facilities”). CBS shall comply with all state regulations pertaining to the LED Message Center including, but not limited to, allowable ambient light levels.

Notwithstanding anything to the contrary in this Lease, it is understood and agreed that the Facilities shall at all times, whether during their construction, otherwise during the term hereof or thereafter, be and remain the sole and exclusive property of LESSEE no matter what their degree of attachment to the Premises and the Property. The advertising sign included in the Facilities shall be a double-sided electronic message board of approximately 14' x 48' (display area of each face) in size (the "Sign"). The Facilities may be configured as required by LESSEE, provided LESSEE obtains all permits and approvals required by LESSOR and/or any other public agency having jurisdiction thereof. Lessee shall not attach or cause to be attached any radio, wireless or cellular type equipment except that which is directly related to the operation of the message center, without LESSOR's consent which shall not be unreasonably withheld, delayed or conditioned.

A. LESSOR agrees that LESSEE's ability to use the Premises is dependent upon LESSEE's obtaining all necessary certificates, permits and/or other approvals which may be required from any federal, state or local authority. LESSOR agrees to cooperate with LESSEE as to LESSEE's obtaining such certificates, permits or other approvals.

B. LESSEE shall not do nor permit anything to be done in or about the Premises nor bring or keep anything therein which will cause cancellation of any insurance policy covering the Premises. For standard risks associated with the operation of LESSEE's business on the Premises, LESSEE agrees to pay any material increase in the rate of fire, commercial general liability or other insurance policy covering the Premises which arises as a result of LESSEE's leasing or use of the Premises, or provide for such insurance itself. LESSEE agrees to defend, hold harmless and indemnify LESSOR for any and all claims arising from LESSEE'S use of the property, and to have LESSOR named as an additional insured as to any and all insurance carried by LESSEE which applies to this location. The minimum coverage on such insurance is 2 million dollars of commercial general liability; the policy must cover advertising injury risks.

C. Currently on the Premises exists an advertising sign owned by the City of Benicia. Upon issuance of all local and state permits for the new LED structure ("digital billboard"), LESSEE shall remove the existing, non-operable 14' x 28' LED structure located on the subject property at no expense to the LESSOR. The existing sign structure and all associated equipment shall be returned to the LESSOR.

D. Construction of the Facilities shall be at LESSEE's sole cost and expense and shall be performed in a good and workmanlike manner, in accordance with the requirements set forth by the City's General Plan and Municipal Code and all applicable building, electrical, grading and other safety permits. LESSEE shall complete construction of the Facilities in accordance with the following:

1) LESSEE shall complete construction no later than one hundred twenty (120) days following the issuance of all required local and state permits for the Facilities. All persons and companies working on the installation shall satisfy all applicable requirements of licensing and bonding; the architectural drawings shall be signed under seal by a California

Registered Electrical or Civil Engineer whose registration is current, active, and good standing. The structure shall satisfy all technical requirements imposed by California law.

2) LESSEE shall be responsible, at its sole cost and expense, for completing construction of all improvements necessary for the installation and continuous operation of the Facilities, including all permitting and inspection costs, regulatory charges, the provision of electricity to the sign, and landscaping and irrigation around the sign base.

3) LESSEE will be the owner of the digital billboard during the term of this Agreement and will be responsible for all permits required until the end of the term of this Agreement, at which time the LESSOR will become the owner of the digital billboard, including any and all necessary equipment to operate the billboard. Upon the termination of this Agreement, LESSEE shall have the right, but not the obligation, to remove any proprietary equipment. If LESSEE elects to remove its equipment, it shall immediately replace the equipment with new equipment so that the digital billboard is at an operating and technology level not less than what existed during the term of this Agreement.

E. LESSEE shall, at its own expense, comply with any and all actions required by the California Environmental Quality Act (“CEQA”).

F. Beginning on the Commencement Date, LESSEE shall operate the Facilities in conformance with the approvals described in Paragraphs E and 4A4A above at all times during the Term of this Lease; provided, however, that if, due to no failure on LESSEE’s part, LESSEE has been unable to obtain from Caltrans the entitlements, licenses and permits necessary to operate the Sign, commencement of operations may be delayed for a reasonable period, not to exceed ninety (90) days. LESSEE shall, at its own expense, maintain the Sign Facilities and Premises in a commercially reasonable manner during the Term hereof. LESSEE shall be responsible, at its sole cost and expense, for maintaining the Facilities and all landscaping on the Premises in accordance with such maintenance agreement and to LESSOR’s satisfaction and in compliance with all applicable law. For the purposes of this Paragraph, “maintenance” shall include, but not be limited to, keeping all electronic parts of the Facilities in good working order, periodically painting the exterior of the Facilities, and replacing light emitters/bulbs or any worn or damaged lettering or art on the Facilities. Further, LESSEE shall maintain the Premises free from hazards or risks to the public health, safety or welfare. In the event that LESSEE does not maintain the Premises as so required, and such failure continues for ten (10) days after written notice thereof, LESSOR has the right, but not the obligation, to (i) enter the Premises and perform the maintenance, and LESSEE shall reimburse LESSOR for the costs it incurs in doing so within thirty (30) days of written notice to LESSEE, or (ii) pursue other remedies pursuant to Section 1313 of this Agreement, including termination of this Lease. Notwithstanding the foregoing, in no event shall LESSOR or any of its employees, agents or contractors ascend upon and/or work on the Sign unless they have been properly trained and certified in accordance with OSHA requirement and unless they utilize appropriate fall protection equipment.

G. LESSEE shall, upon commencement of Sign operations, provide LESSOR free advertising on 1 out of 8 advertising clicks (1 click every 64 seconds) on the North facing side, on a space-available basis. LESSOR may use the display time for its own messages or

programs. LESSOR, or LESSOR's designee, is responsible for providing LESSEE with digital imaging of the LESSOR-approved advertising copy. Advertising copy shall be provided to LESSEE no less than five (5) days in advance of an advertising start date.

PROHIBITED CATEGORIES OF ADVERTISING. Lessee shall not accept or display on the subject sign display faces commercial advertising that falls into any of these categories: tobacco, sexually oriented or adults only entertainment, pawn shops, payday loans or check cashing establishments, bail bond sellers, or medical marijuana dispensaries.

5. Abatement of Existing CBS Outdoor Billboard Structures. CBS Outdoor operates two existing billboard structures on Interstate 680 in Benicia, located at the West-side of I-680 on Park Road at Bayshore Road, APN: 80-080-18 and West-side I-680 on Park Road at Industrial Way, APN: 80-080-01. In consideration for this lease agreement and operation of the digital LED board, CBS Outdoor shall abate the existing two above mentioned structures in the following manner: the structure located at Park Road at Bayshore shall be abated and structure completely removed within ninety (90) days of operation of the digital LED board. The structure located on Park Road at Industrial Way shall be abated and the structure completely removed within seven (7) years of the anniversary date of this lease agreement. LESSOR is entirely responsible for the costs related to the abatement and removal of these two structures.

6. Compliance with Law. LESSEE shall not use the Premises nor permit anything to be done in or about the Premises which will in any way conflict with any federal, state or local law, statute, ordinance or other governmental rule or regulation now in force or which may hereinafter be enacted or promulgated. LESSEE shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and other governmental rules, regulations or requirements now in force or which may hereinafter be enacted or promulgated, relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by LESSEE's improvements or acts. The judgment of a court of competent jurisdiction or the admission by LESSEE in any action against LESSEE, whether LESSOR be a party thereto or not, that LESSEE has violated any law, statute, ordinance or any other governmental rule or regulation affecting the Premises shall be conclusive of that fact as between LESSOR and LESSEE.

7. Alterations and Additions. Other than as expressly required or permitted herein, LESSEE shall not make or suffer to be made any alterations, additions or improvements in or to or about the Premises or any part thereof without the written consent of LESSOR first had and obtained. (Excepting only the installation of the Facilities and related equipment (which shall remain the property of LESSEE), any alterations, additions or improvements in, to or about the Premises shall, on the expiration or earlier termination of this Lease, become a part of the realty and belong to LESSOR and shall be surrendered with the Premises. Any alterations, additions or improvements to the Premises desired by LESSEE, other than those expressly required or permitted herein, shall require LESSOR's prior written consent, and shall be made by LESSEE at LESSEE's sole cost and expense and in a good and workmanlike manner, free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises, in accordance with Paragraph 8 hereof. If LESSEE makes any alterations to the Premises as provided herein, the alterations shall not be commenced until

fifteen (15) days after LESSOR has received notice from LESSEE stating the date that construction of the alterations is to commence, so that LESSOR can post an appropriate notice of non-responsibility. Upon completion of the alterations to LESSOR's satisfaction, a notice of completion shall be recorded.

8. Physical Condition of Premises; Waiver.

A. Prior to taking possession of the Premises, LESSEE shall have the right to inspect the Premises at reasonable times, and shall be deemed to have accepted the Premises as being in good sanitary order, condition and repair. LESSEE shall, at LESSEE's sole cost and expense, keep the Premises and any part thereof in good condition and repair for the term of the Agreement and prevent the Facilities from becoming a hiding place for vermin or a fire or earthquake hazard LESSOR shall have no obligation whatsoever to alter, improve or repair the Premises, or any part thereof, and the parties hereto acknowledge and agree that LESSOR has made no representations to LESSEE respecting the condition of the Premises except as specifically set forth herein. LESSEE further agrees that it shall submit to LESSOR, prior to applying for any permits to renovate, reconstruct, improve, alter or in any way modify the Premises, plans and specifications for LESSOR's prior written approval.

B. LESSOR shall not be liable for any failure to make any repairs, or to perform any maintenance except as specifically provided herein. Except as may otherwise be provided herein, there shall be no abatement of rent and no liability of LESSOR by reason of any injury to or interference with LESSEE's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises or in or to any fixtures, appurtenances or equipment therein. LESSEE hereby specifically waives the right to make repairs at LESSOR's expense under any law, statute or ordinance now or hereafter in effect.

C. LESSEE shall accept possession of the Premises, in their physical condition on the day of the term's commencement on an "AS IS" basis with no warranty, express or implied, by LESSOR as to the condition of the soil, its geology, the presence of known or unknown defects or faults, its suitability for the use intended by the LESSEE, any onsite soils contamination or any similar matters. Notwithstanding the foregoing, LESSEE shall have no liability to LESSOR or any third party for any hazardous materials existing on the Premises prior to the date on which LESSEE first enters takes possession of the Premises or which are otherwise not attributable to it or anyone acting by through or under it.

D. LESSOR shall, upon request and at LESSEE's cost, provide to LESSEE copies of all reports, studies, surveys and other data and information regarding the Premises which is now available to LESSOR. LESSOR represents that it has no information disclosable pursuant to California Health and Safety Code § 25359.7(a).

9. Claims Against Premises. LESSEE shall not suffer or permit to be enforced against the Premises, or any portion thereof, any mechanic's, materialman's, contractor's or subcontractor's liens arising from, or any claim for any work of construction, repair, restoration, replacement or improvement of or to the Premises or any other similar claim or demand arising from the act or omission of LESSEE or anyone acting by, through, or under LESSEE. LESSEE shall pay or cause to be paid any and all such claims or demands before any action is brought to

enforce the same against the Premises. LESSEE agrees to indemnify, defend, protect and hold LESSOR and LESSOR parties and the Premises free and harmless of all liability for any and all such claims and demands, together with LESSOR's reasonable attorneys' fees and all reasonable costs and expenses in connection therewith.

10. Utilities. LESSEE shall pay the cost of any and all water, electrical, gas or other utility services delivered to the Premises pertaining to LESSEE'S use hereunder during the Term and shall have such utilities installed underground and/or connected if already installed, and maintained at LESSEE's sole cost and expense and subject to LESSOR's reasonable approval. LESSEE shall submit plans for underground construction of required utility lines to LESSOR for review prior to commencement of construction thereof. LESSOR shall approve or disapprove of same in writing within fourteen (14) days of its receipt of such plans. Detailed reasons for any disapproval shall be included in the written disapproval.

11. Taxes. LESSEE shall pay without abatement, deduction, or offset possessory interest taxes levied on or assessed against the Premises, the improvements located on the Premises, equipment, fixtures and personal property located on or in the land or improvements, the leasehold estate, or any subleasehold estate which are attributable to this LEASE or LESSEE's use of the Premises, to the full extent of installments falling due during the Term, whether belonging to or chargeable against LESSOR or LESSEE. LESSEE shall make all such payments directly to the charging authority at least thirty (30) days before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their non-payment. If, however, the law expressly permits the payment of any or all of the above items in installments, LESSEE may, at LESSEE's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency. LESSEE agrees that, without prior demand or notice by LESSOR, LESSEE shall, not less than fifteen (15) days prior to the day upon which any such possessory interest or other such tax is due, provide LESSOR with proof of payment of such tax.

12. Entry by LESSOR. LESSEE hereby agrees that representatives of the LESSOR, as designated by LESSOR's City Manager, shall, during normal business hours (except in the event of an emergency), have the right to enter the Premises and inspect the same to determine if the same complies with each and every term and condition of this Lease and with all applicable City, County, State and Federal laws, rules, ordinances and regulations relating to outdoor signage and the conduct of LESSEE's business. LESSOR hereby agrees that it shall not unreasonably disturb or interfere with LESSEE's operation on the Premises. Notwithstanding anything to the contrary herein, in no event shall LESSOR or any of its employees, agents or contractors ascend upon and/or work on the Sign under this have been trained and certified in accordance with OSHA requirements and unless they utilize appropriate fall protection equipment.

13. Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by LESSEE:

A. Abandonment of the Premises by LESSEE where the same shall continue without cure by LESSEE for a period of thirty (30) days after written notice thereof by LESSOR

to LESSEE; the parties agree that failure to post electronic copy of the Sign, by itself, shall not constitute abandonment;

B. The failure by LESSEE to make any payment of rent or any other payment required to be made by LESSEE hereunder (including but not limited to taxes, assessments, insurance premiums, liens, claims or other charges), as and when due, where such failure shall continue for a period of ten (10) days without cure by LESSEE after written notice thereof by LESSOR to LESSEE;

C. A failure by LESSEE to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by LESSEE, other than as described in subparagraph 12.B., above, where such failure shall continue without cure by LESSEE for a period of thirty (30) days after written notice thereof by LESSOR to LESSEE; provided, however, that if the nature of the default involves such that more than thirty (30) days are reasonably required for its cure, then LESSEE shall not be deemed to be in default if LESSEE commences such cure within such thirty (30) day period and thereafter diligently prosecutes said cure to completion;

D. The occurrence of any of the following events: (1) the making by LESSEE of any general assignment or general arrangement for the benefit of creditors; (2) the filing by or against LESSEE of a petition to have LESSEE adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against LESSEE, the same is dismissed within sixty (60) days); (3) the appointment of a trustee or a receiver to take possession of substantially all of LESSEE's assets located in or about the Premises or of LESSEE's interest in this Lease, where possession is not restored to LESSEE within thirty (30) days; or (4) the attachment, execution or other judicial seizure of substantially all of LESSEE's assets located in or about the Premises or of LESSEE's interest in this Lease, where such seizure is not discharged in thirty (30) days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect and shall not affect the validity of the remaining provisions of this Lease;

E. The assignment or sublease of all or any portion of the Premises or of LESSEE'S interest in this Lease without the prior written consent of LESSOR, except as permitted by Section 16 below;

F. The failure to use, maintain, and operate the Premises as herein required, or the committing of waste on the Premises, or the maintaining, committing, or permitting the maintenance or commission of a nuisance on the Premises; or

G. The use of the Premises for any purpose not permitted by this Lease, or the use of the Premises for any unlawful purpose, whether or not such purpose is in addition to or in lieu of the use(s) herein permitted.

14. Remedies Upon Lessee's Default. In the event of any default or breach by LESSEE, as defined in Paragraph 12 above, LESSOR may at any time thereafter and without

notice or demand and, without limiting LESSOR in the exercise of a right or remedy LESSOR may have by reason of such default or breach:

A. Terminate LESSEE's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and LESSEE shall immediately surrender possession of the Premises to LESSOR. In such event, LESSOR shall be entitled to recover from LESSEE:

1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;

2) The worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that LESSEE proves could have reasonably been avoided;

3) The worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that LESSEE proves could be reasonably avoided; and

4) Any other amount necessary to compensate LESSOR for all the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, actual attorneys' fees and costs, and any real estate commission(s) actually paid. Unpaid installments of rent or other sums shall bear interest from due date thereof at the rate of eighteen percent (18%) per annum or at the maximum legal rate then in effect in California, whichever is lesser.

B. Pursue any other remedy now or hereafter available to LESSOR under the laws or judicial decisions of the State of California. Furthermore, LESSEE agrees that no election by LESSOR as to any rights or remedies available hereunder or under or pursuant to any law or judicial decision of the State of California shall be binding upon LESSOR until the time of trial of any such action or proceeding.

C. Notwithstanding anything to the contrary herein, LESSOR shall have a duty to reasonably mitigate damages.

15. Eminent Domain. If more than fifty percent (50 %) of the Premises or such portion that LESSEE cannot make use the Premises or fully make use of the Sign for the purpose specified herein in paragraph 4.A shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, including the LESSOR, LESSEE hereto shall have the right, at its option, to terminate this Lease. In any such proceeding LESSEE may at LESSEE's option negotiate separately with the condemning authority, and shall be entitled to all proceeds attributable to LESSEE'S interest taken. This Agreement does not constitute a waiver or limitation on the LESSOR'S power of eminent domain; such power is reserved by the LESSOR and may be exercised at any time and in any manner that is consistent with California law.

16. Estoppel Certificate. LESSOR or LESSEE shall, at any time and from time to time upon not less than ten (10) days' prior written notice from the other party, execute, acknowledge and deliver to the other party a statement in writing (a) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to the knowledge of the party delivering the estoppel, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises, or of any larger parcel of real property of which the Premises are a part.

17. Assignment and Subletting. Except as otherwise set forth herein, LESSEE shall not assign or transfer this Lease or any right hereunder to any other party or parties nor shall LESSEE assign or sublet all or any portion of the Premises without first obtaining the written consent of LESSOR. LESSOR shall not unreasonably withhold, condition or delay such consent, provided that the proposed assignee has the financial capacity, relevant industry experience, and sufficient staffing reasonably necessary to perform LESSEE's obligations hereunder, and provided further that the assignee does not plan any material aesthetic modifications to the Facilities. Notwithstanding the foregoing, with prior written notice to LESSOR, LESSEE may assign or sublet to any entity controlled, controlling, or under common control with Lessee or the purchaser of a majority of LESSEE's assets in the local market without approval of LESSOR. Any assignment or subletting of the Premises without such prior written consent, except as provided for herein, shall be null and void. LESSEE may additionally grant or transfer rights to sign panels on any terms otherwise consistent with, and do not exceed the term and conditions of this Lease. In the event of a prohibited assignment or subletting, LESSOR may, at its option, declare a forfeiture of the same in any manner provided by law. Consent to any such assignment or subletting shall not be unreasonably withheld by LESSOR, and LESSOR agrees to exercise reasonable discretion in considering the same for approval. LESSEE covenants that LESSEE and such approved assignee or sublessee shall execute a written agreement, in form and content reasonably acceptable to LESSOR, provided that such agreement does not materially change the parties' obligations hereunder.

18. Attorneys' Fees. In the event any action or proceeding is brought between the parties hereto seeking interpretation or enforcement of any of the terms and provisions of this Lease, the prevailing party in such action shall be entitled to have and to recover its actual attorneys' fees and other expenses in connection with such action or proceeding, in addition to its recoverable court costs, from the losing party.

19. Fixtures. Subject to the continuous operation covenant in Section 4.FF above, all Facilities, trade fixtures and/or temporary facilities installed or placed on the Premises by LESSEE may be removed by LESSEE at any time during the Term, so long as the same may be removed without permanent damage to the Premises. LESSEE shall repair all damage which may result therefrom, at LESSEE's sole cost and expense, to the reasonable satisfaction of LESSOR.

20. Indemnification. LESSEE agrees to defend, protect, indemnify and hold LESSOR and LESSOR and its officials, employees and contractors free and harmless from any

and all claims for damage to persons or property by reason of LESSEE's breach of this Lease, LESSEE's negligence or LESSEE's acts or omissions in connection with the Facilities and/or the Premises or those of LESSEE's employees, agents, guests or invitees in connection with LESSEE's use and occupancy of the Premises, except to the extent of liability arising out of the negligence or willful misconduct of LESSOR, its officials, employees or contractors.

21. Insurance.

A. Fire and Extended Coverage. Throughout the Term, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept insured, the Facilities and all of its other improvements located on or appurtenant to the Premises against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for such structures, including vandalism and malicious mischief. The amount of insurance shall be the then replacement cost, excluding costs of replacing excavations and foundations but without deduction for depreciation (herein called "full insurable value"). If any dispute as to whether the amount of insurance complies with the above cannot be resolved by agreement, LESSOR may, not more than once every three (3) months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision, and the resulting determination shall be conclusive between the parties hereto for the purposes of this subparagraph. LESSEE shall include the holder of any mortgage or deed of trust on the Premises identified to it by LESSOR as an additional insured to the extent of that mortgagee's or beneficiary's interest.

B. Commercial General Liability Insurance. Throughout the Term, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept in full force and effect, commercial general liability insurance against claims and liability for personal injury, death, or property damage or advertising injury arising from the use, occupancy, disuse, or condition of the Premises, improvements thereon, or adjoining areas or ways, providing protection of at least Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury or death, and at least Five Hundred Thousand Dollars (\$500,000.00) for property damage.

C. Policy Form, Contents and Insurer. All insurance required by express provision of this Lease shall be carried only by financially responsible insurance companies licensed to do business in the State of California with a current A.M. Best rating of no less than A:VII. All such policies shall contain language to the effect that: (1) the policies are primary and noncontributing with any insurance that may be carried by LESSOR; (2) the policies cannot be canceled, terminated or materially altered except after such prior notice to LESSOR by the insurer as it customarily provides; (3) LESSOR and each of LESSOR's elected officials, officers and employees are additional insureds thereunder; (4) any failure by LESSEE to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect the required coverage; and (5) the required insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. LESSEE shall furnish LESSOR with copies of all such policies promptly upon receipt of them, or certificates and endorsements evidencing the insurance. LESSEE may effect for its own account any insurance not required under this Lease.

D. Failure to Maintain Insurance; Proof of Compliance. LESSEE shall deliver to LESSOR, in the manner required for notices, copies of or endorsements to all insurance policies required by this Lease, within the following time limits: (1) For insurance required at the commencement of this Lease, within ten (10) days after execution of this Lease and prior to LESSEE's occupancy of, or performance of any construction on, the Premises; (2) For insurance becoming required at a later date, at least ten (10) days before that requirement takes effect, or as soon thereafter as the requirement, if new, takes effect; (3) For any renewal or replacement of a policy already in existence, at least thirty (30) days before expiration or other termination of the existing policy.

If LESSEE fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish LESSOR with required proof that the insurance has been procured and is in full force and effect and paid for, then LESSOR shall have the right, at LESSOR's election and upon five (5) days' notice, to procure and maintain such insurance. The premiums paid by LESSOR shall be treated as added rent due from LESSEE with interest at the rate of nine percent (9%) per year or the maximum allowable legal rate in effect in the State of California on the date when the premium is paid, whichever is lesser, to be paid on the first day of the month following the date on which the premium was paid. LESSOR shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the effective date of coverage until reimbursed by LESSEE.

22. Authority of Parties. Each individual executing this Lease on behalf of each party represents and warrants that he or she is fully authorized to execute and deliver this Lease on behalf of such party and that this Lease is binding upon such party in accordance with its terms.

23. Waiver. The waiver by either party of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of such term, provision, covenant or condition on any subsequent breach of the same or any other term, provision, covenant or condition herein contained. The subsequent payment or acceptance of rent hereunder shall not be deemed to be a waiver of any preceding breach by the party so acting, of any term, provision, covenant or condition of this Lease, other than the payment or failure to pay the particular rental so paid or accepted, regardless of the aggrieved party's knowledge of such preceding breach at the time of payment or acceptance of such rent.

24. Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

25. Late Charges. LESSEE hereby acknowledges that late payment by LESSEE to LESSOR of rent or other sums due hereunder will cause LESSOR to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or of a sum due from LESSEE shall not be received by LESSOR or LESSOR's designee within ten (10) days after written notice that said amount is past due, then LESSEE shall pay to LESSOR a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represented a fair and reasonable estimate of the cost that LESSOR will incur by reason of the late payment by LESSEE. Acceptance of such late charge by LESSOR shall in no event constitute a waiver of LESSEE's default with respect to

such overdue amount, nor prevent LESSOR from exercising any of the other rights and remedies granted hereunder or available at law or in equity.

26. Force Majeure. This Lease and the obligations of the parties hereunder shall not be affected or impaired because one such party, or both of them, is unable to fulfill any of its or their obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, war, civil insurrection, acts of God, governmental action, or any other cause beyond the reasonable control of the parties hereto, or either of them. Any prevention, delay or stoppage due to any Force Majeure delay shall excuse the performance of the party affected only for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money to the other party), which period shall commence to run from the time of the commencement of the cause provided that written notice of such cause is given to the other party within ten (10) days after the commencement of the cause.

27. Successors. Subject to the provisions of this Lease with respect to assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the respective parties.

28. Notices. Any notice or payment required or permitted to be given hereunder shall be in writing and may be either personally served or sent by a nationally recognized overnight courier service or by United States mail, certified or registered, return receipt requested, with postage prepaid and properly addressed. Such notice or payment shall be deemed to have been given: (a) if personally served, on the same day that such personal service is made; (b) if sent by overnight delivery service, on the next succeeding business day; or (c) if deposited in the United States mail, on the third (3rd) business day thereafter. For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is given as provided in this Paragraph 2828) shall be as follows:

LESSOR: City of Benicia 250 East L Street
Benicia, California 94510
Tel: (707) 746-4215
Fax: (707) 747-8120
Attention: Economic Development Manager

LESSEE: CBS Outdoor, Inc.
Attn:
1695 Eastshore Highway
Berkeley, CA 94710
Tel: (510) 527-3350
Fax: (510) 527-7041

With a copy to: CBS Outdoor
405 Lexington Avenue
New York, NY 10174
Attention: General Counsel
Tel: (212) 297-6400
Fax: (212) 297-6552

29. Execution by LESSOR Not a Waiver. LESSEE understands and agrees that LESSOR, by entering into and executing this Lease, shall not have waived any right, duty, privilege, obligation or authority vested in the City of Benicia to approve, disapprove or conditionally approve any application which LESSEE may be required to make under any laws, rules, ordinances or regulations now or hereafter in effect which said LESSOR may be empowered to apply, including but not limited to any use permit or approval, whether similar in nature or not.

30. Entire Agreement. This Lease contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all negotiations, representations, or oral or written agreements made prior to the execution of this Lease. No promise, representation, warranty, or covenant not included in this Lease has been or is relied upon by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in this Lease itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

31. Interpretation. This Lease is to be interpreted and construed according to the laws of the State of California.

32. Captions. The captions in the headings of the paragraphs of this Lease are for convenience only and are not part of the substantive terms of this Lease.

33. Amendments. This Lease may be modified only by a written instrument signed by the parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the rent or other charges payable under this Lease.

34. Rent Defined. All monetary obligations of LESSEE to LESSOR under the terms of this Lease are deemed to be rent.

35. Severability. Each and every provision of this Lease is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Lease or the application thereof shall to any extent be held to be invalid or unenforceable as determined by a court of competent jurisdiction, the remainder of this Lease, or the application of such term or provision to circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected hereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

36. Attornment. LESSEE agrees to attorn to any party who acquires ownership of the Premises, and that in such event, such new owner shall not be: (a) liable for any act or omission of any prior LESSOR or with respect to events occurring prior to acquisition of ownership of the Premises; or (b) subject to any offsets or defenses which LESSEE might have against any prior LESSOR. Nothing herein shall relieve any subsequent LESSOR from curing a continuing breach.

37. Memorandum of Lease. LESSOR and LESSEE shall execute, acknowledge and record a Memorandum of Lease in the form attached as Exhibit C with respect to LESSEE's lease of the Premises in the official records of the county in which the Premises is located.

38. Counterparts. This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Lease, facsimile signatures shall be deemed to be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

WHEREFORE, the parties hereto have entered into this Lease as of the date set forth below above the name of each signatory hereto.

“LESSEE”

CBS OUTDOOR, INC., A DELAWARE CORPORATION

DATED: _____

BY: _____

PRESIDENT

DATED: _____

BY: _____

SECRETARY

“LESSOR”

**CITY OF BENICIA,
A MUNICIPAL CORPORATION**

DATED: _____

BY: _____

BRAD KILGER, CITY MANAGER

APPROVED AS TO FORM:

BY: _____

HEATHER McLAUGHLIN, CITY ATTORNEY

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

EXHIBIT "B"
SITE PLAN OF PREMISES

EXHIBIT “C”

FORM OF MEMORANDUM OF LEASE

[Attached]

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO AND MAIL TAX
STATEMENTS TO:

City of Benicia
250 East L Street
Benicia, CA 94510
Attn: City Clerk

(SPACE ABOVE FOR RECORDER'S USE ONLY)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made as of _____, 2013, by and between the CITY OF BENICIA, a California municipal corporation ("**Lessor**"), and CBS OUTDOOR, INC., a Delaware corporation ("**Lessee**"), with respect to the following recitals:

RECITALS

A. Lessee and Lessor have entered into that certain Lease of even date herewith (the "**Lease**"), pursuant to which Lessor has agreed to lease and demise to Lessee, and Lessee has agreed to lease and accept from Lessor, a portion of that certain real property located in the City of Benicia, County of Solano, State of California, commonly known as City Right-of-Way 5-1E and more particularly described on Exhibit A attached hereto (the "**Premises**"), as provided in the Lease.

B. Pursuant to Section 3737 of the Lease, Lessee and Lessor now desire to enter into this Memorandum to provide record notice of the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessee and Lessor agree as follows:

1. Lease. Lessor hereby leases and demises to Lessee, and Lessee hereby leases and accepts from Lessor, the property defined as the "Premises" in the Lease for an initial term of ten (10) years at the rental and upon the other terms and conditions set forth in the Lease, which terms and conditions are incorporated herein by this reference.

2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Lease. In the event any provision of this Memorandum is inconsistent with any term or condition of the Lease, the term or condition of the Lease shall prevail.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first written above.

“LESSEE”

CBS OUTDOOR, INC., A DELAWARE CORPORATION

DATED: _____

BY: _____
PRESIDENT

DATED: _____

BY: _____
SECRETARY

“LESSOR”

**CITY OF BENICIA,
A MUNICIPAL CORPORATION**

DATED: _____

BY: _____
BRAD KILGER, CITY MANAGER

APPROVED AS TO FORM:

BY: _____
HEATHER MCLAUGHLIN, CITY ATTORNEY

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

